

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2719 of 1993 (O&M)

Date of Decision: 27.02.2024

Wazir Singh and Others
... Appellant(s)

Versus

Dharam Singh and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.K.Sharma, Advocate
for the appellant(s).

Mr. Vijay Sharma, Advocate
for the resonvents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. In this regular second appeal, the correctness of the concurrent findings of fact arrived at by both the Courts below is assailed by the plaintiffs.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiffs filed a suit for the grant of decree of declaration that they are owners to the extent

of 1/4th share in the suit property located in village Dighal. It was claimed

by the plaintiffs that the Joint Hindu Family was owner of the property located in three different revenue estates, namely Dighal, Mamyan and Raipur. In the year 1933, the family divided the property with the condition that anyone getting share lesser than his entitlement will be entitled to make good the deficiency from villages Raipur and Mamyan. The plaintiffs claim that they got the land measuring 5 bighas and 14 biswas in village Raipur and land measuring 2 bighas and 18 bighas in village Mamyan. The ancestors of defendant No.1 to 11 filed a civil suit against the plaintiffs claiming half share in the land located at village Raipur, which was dismissed. The correctness of the judgment passed by the Trial Court on 30.10.1978 was upheld in the first appeal as well as the second appeal. The plaintiffs and the defendants were held to be the co-sharers in the land located in village Raipur. Thereafter, the plaintiffs filed a suit in the year 1986 claiming 1/4th share in one parcel of land, whereas half share in the second part of the property located in village Dighal. The defendants contested the suit and submitted that there was no Joint Hindu Family and the property had already been partitioned in the year 1933. Both the Courts below have come to a conclusion that the Joint Hindu Family divided the property located in village Dighal as per mutation entered in the year 1933 and therefore, the plaintiffs cannot claim that they are co-sharers in the land.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record.

5. The learned counsel representing the appellants submits that the defendants (respondents herein) have themselves claimed that the property

in village Raipur was joint. He further submits that in the aforesaid suit, the parties have been held to be the joint owners and, therefore, both the Courts below have erred in dismissing the suit with respect to the land located in village Dighal. He further contends that there was not appended to the mutation entered in the year 1933 which was sanctioned on 08.06.1933 that the deficiency, if any, shall be made good from the joint land located in village Dighal. He submits that the plaintiffs have not been given proper share in the joint property.

6. On the other hand, the learned counsel representing the respondents submits that the joint property located in village Raipur was never the subject matter of partition in the year 1933 and it continued to be joint as has been held by the Court in the previous round of litigation. He further submits that the land located in village Dighal was specifically the subject matter of partition and now the plaintiff again cannot claim that they are co-sharers in the aforesaid land.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. It is evident that in the previous suit, the plaintiffs sought to take the same plea which was rejected. In any case, the plaintiffs have failed to draw the attention of the Court to any document to show that in the year 1933 the property located in the revenue estate of Raipur was the subject matter of partition.

9. The mutation of partition of the joint property was sanctioned in the year 1933. The plaintiffs never took any objection before filing the

suit in the year 1986. In the revenue record, both the parties were shown to

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be owner in possession of separate parcels of the land. The judgment passed in the suit filed by the defendants with respect to the land located in village Raipur will not give cause of action to the plaintiffs to file the present suit particularly when in the year 1933 the parcel of land located in the revenue estate of Raipur was not the subject matter of partition.

10. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the present appeal is dismissed.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 27, 2024
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No