

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1722 of 1991(O&M)

Date of Decision: 22.02.2024

Risal Singh and Others

... Appellant(s)

Versus

Maru Ram (Deceased) through his Legal Representatives

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. C.S.Tiwana, Advocate
for the appellant(s).

Mr. R.A.Yadav, Advocate
for the respondent.

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 defendants assail the correctness of the findings of facts arrived at by the First Appellate Court, which, in turn, has reversed the judgment and decree passed by the Trial Court.

3. The plaintiff filed a suit for the grant of decree of permanent injunction claiming that he is owner in possession of the plot for the last

70/80 years in which he had constructed two rooms and a chhaper. He also

claimed to have perfected his title by way of adverse possession. The defendants, while contesting the case, pleaded that Sheo Nath and his wife Smt.Laxmi Rani constructed the house. Risal Singh-defendant No.1 was adopted by Smt.Laxmi Rani. The Trial Court dismissed the suit on the ground that there is no clear evidence to prove that the plaintiff is in possession of the property. However, the First Appellate Court, on re-appreciation of the evidence, came to a conclusion that the plaintiff is in possession of the property but he is not owner of the same. The First Appellate Court relied upon the deposition of the Sarpanch and Numbardar (Headman of the village) to come to a conclusion that the plaintiff is in possession of the property. Only limited injunction against his forcible dispossession has been granted by the First Appellate Court.

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

5. The learned counsel representing the appellant (defendant No.1), while referring to house tax receipt (Ex.D1), deposition of Chhotu, plaintiff's father in Civil Suit No. 209 of 1971 and the revenue record submits that Smt.Laxmi is the owner of the property who had constructed the house.

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

7. In this case, there is no documentary evidence to prove that the appellants are in possession of the property. The plaintiff has been held to be in possession on the basis of the testimony of the Sarpanch and

Numbardar (Headman of the village). This Court, in the absence of

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conclusive evidence to prove that the findings of facts arrived at by the First Appellate Court is erroneous, is not expected to interfere. The defendants can file a suit for possession. In fact, they should have filed the suit in the year 1991.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the findings of facts arrived at by the First Appellate Court. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

February 22, 2024
“DK”

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