

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1133 of 1994

Date of Decision: 02.02.2024

Punjab State and Others
... Appellant(s)

Versus

Kehar Singh
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gurpreet Singh, Additional Advocate General,
Punjab, for the appellant(s).

None 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. A perusal of the file proves that the respondent has refused to accept the notice of appeal issued by this Court on 18.08.1994.
3. The State of Punjab and its officials pray for setting aside the judgment and decree passed by the First Appellate Court which, in turn, has reversed the judgment and decree passed by the trial Court.
4. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

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5. The officials of the State of Punjab filed an application under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as “the 1973 Act”) seeking eviction of respondent-Kehar Singh, which was allowed on 20.03.1986 by the Collector. An *ex-parte* order was passed as Kehar Singh refused to accept notice. The Collector found that Kehar Singh had encroached upon a part of the road while constructing his house.

6. Thereafter, Kehar Singh filed a suit on 14.09.1990 for the grant of decree of permanent injunction. He claimed that that order passed under the 1973 Act is illegal, null and void and he, being in possession for the last 50 years, is entitled to continue in possession. The defendants (State of Punjab) and its officials contested the case. It was asserted that Moga-Kotkapura road is a scheduled road and governed by the Punjab Scheduled Roads and Controlled, Areas of Restriction of Unregulated Development Act, 1963 and no person can erect a building within 30 meters of any scheduled road.

7. During the evidence, the order passed by the Collector on 20.03.1986 was produced as Ex.D1.

8. The suit was dismissed by the trial Court with the following observations:-

“The mere fact that the department had not got the demarcation made from the bridge does not mean that the demarcation made by the department was not correct. Lastly, it is in the statement of Bhag Singh DW2 that the encroachment in question was removed in the first week of September, 1990. The plaintiff Kehar Singh has also admitted in his statement recorded today that the alleged encroachment has already been removed by

demolishing a portion of his house. He has also stated that he has got now no threat regarding the demolition of his house from the defendants.”

9. It is evident that respondent-Kehar Singh suffered a statement in the Court that the alleged encroachment has already been removed and now he has no threat regarding demolition. Thus, the suit was dismissed.

10. However, the respondent filed an appeal. The First Appellate Court has reversed the judgment and decree passed by the trial Court on the ground that the proceedings under the 1973 Act were initiated against the plaintiff-Kehar Singh when he was not the owner. The First Appellate Court held that on the day the proceedings were initiated, Jeon Singh, father of the appellant, was the owner. Hence, the order passed by the Collector is *ab initio*. The First Appellate Court further held that though DW.2-Bhag Singh has proved encroachment, however, no demarcation has taken place from the bridge side and, therefore, the demarcation, so made, was not correct. The Court further held that the statement made by the plaintiff does not affect the ultimate decision of the case.

10. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned the Court's record which is available in digital form.

11. It is evident that the First Appellate Court has erred in accepting the appeal on all the three counts. Firstly, it is the respondent who had constructed the house while making encroachment. Hence, the notice was sent to the plaintiff even though, at the relevant time, his father was the owner. However, it is not the case of the plaintiff (respondent herein) that he

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was required to issue notice to the respondent.

12. As regards the second reason, it shall be noted that the State of Punjab produced demarcation report and examined DW.2-Bhag Singh, Junior Engineer of the department. The respondent was the plaintiff before the trial Court. He was required to prove that there was no encroachment. He, being the plaintiff, was required to stand on his own legs. It was not for the defendants to negatively prove that the plaintiff has encroached upon. Moreover, once the defendants led some evidence, the onus shifted on the plaintiff to prove that the demarcation report is not correct. The First Appellate court has wrongly shifted the entire onus on the appellants (defendants).

13. The First Appellate court has also erred in overlooking the plaintiff's statement before the trial Court on the day the judgment was passed. The respondent has specifically made a statement that the encroachment has been removed and now he has got no threat regarding demolition of his house from the defendants. The respondent never filed an application for permission to amend the plaint.

14. Keeping in view the aforesaid facts and discussion, the present appeal is allowed. The judgment passed by the First Appellate Court is set aside being unsustainable. The respondent shall have the liberty to file an application for rehearing, if aggrieved.

(Anil Kshetarpal)
Judge

February 02, 2024
"DK"

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No