



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1941 of 1994 (O&M)

Date of Decision: 17.07.2024

Lakshmi Narain (Since Deceased) through his Legal Representatives

... Appellant(s)

Versus

Kartar Singh (Since Deceased) through his Legal Representatives

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Prateek Gupta and Mr. Shubham Pathania, Advocates
for the appellant(s).

Mr. Amit Jain, Senior Advocate
with Mr. Aryaman Thakur, 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 (hereinafter referred to as “CPC”), 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 defendant assails the correctness of the concurrent findings of fact arrived at by both the Courts below while decreeing the plaintiff's suit for declaration that he is the owner in possession of the land measuring 32 kanals and 7 marlas in view of the Civil Court decree dated 07.09.1981.

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3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

4. The plaintiff filed a suit on the basis of a Civil Court decree dated 07.09.1981 claiming that he is the owner in possession. He claimed that the defendant claims the property on the basis of a Will allegedly executed by Shyam Dass but it will not impact his rights. The defendant, while contesting the suit, claimed that the decree is the result of fraud, misrepresentation and therefore, illegal. The Trial Court decreed the suit as the defendant failed to lead any evidence to prove fraud. After re-appreciation of the evidence, the First Appellate Court upheld the judgment and decree passed by the Trial Court.

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

6. The learned counsel representing the appellant submits that the decree dated 07.09.1981, would not confer ownership upon the plaintiff because the decree results in transfer of immovable property worth more than ₹100/- and as per Section 17 of the Registration Act, 1908, it required mandatory registration as the Act makes such transfer compulsorily registrable. He further submits that in the absence of the registered instrument, the immovable property worth more than ₹100/- cannot be transferred in favour of a stranger.

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

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Singh against Shyam Dass. In the aforesaid suit, Kartar Singh has claimed that he is in cultivating possession of the aforesaid land for the last more than 20 years and his adverse possession has resulted in conferring ownership rights on him. Notice of the suit was issued to Shyam Dass who filed the written statement admitting the plaintiff's claim. He also suffered statement in the Court to this effect on 04.09.1981. Consequently, the suit was decreed.

9. The aforesaid judgment does not amount to transfer of the property. Moreover, whenever such decree, passed on the basis of consent of the parties, is challenged in the subsequent suit, the previous decree can be set aside only on the ground of fraud, misrepresentation or coercion as laid down by the Division Bench judgment in *Gurdev Kaur and Another v. Mehar Singh and Others 1989 PLJ 182*.

10. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts 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

July 17, 2024
"DK"

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