

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3035 of 1994 (O&M)

Date of Decision: 25.01.2024

Bachan Kaur (Deceased) through her Legal Representatives
... Appellant(s)

Versus

Navdeep Kaur and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Pritam Singh Saini, Advocate
for the appellant(s).

Mr. Ritesh Aggarwal and Mr. Harkirat Singh Sakrali,
Advocates, for the respondent No.1.

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 judgment and decree passed by the Additional District Judge, Patiala, which, in turn, has reversed the judgment and decree passed by the trial Court.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

grant of decree of declaration that the suit property is the joint Hindu coparcenary property and Chhaja Singh had acquired interest in the suit land by birth. It was, thus, claimed that two consent decrees suffered by Arjan Singh are illegal, null and void.

5. The trial Court dismissed the suit, however, the First Appellate Court, on reappreciation of the evidence which was produced, held that since the property in the hands of Arjan Singh was the coparcenary property, therefore, Chhajja Singh, being the coparcener, was the owner to some extent. The First Appellate Court examined the revenue record from 1989-90 along with the record of consolidation of the holdings. Ultimately, the Court came to a conclusion that the suit property is the joint Hindu coparcenary property being ancestral. The First Appellate Court also noticed that while replying to para 2 and 3 of the plaint, the defendants have not disputed that the property is not only the ancestral, but also a coparcenary property. Thus, the suit filed by plaintiff-Navdeep Kaur was decreed to the extent of 1/12th share. On the other hand, the learned counsel representing the appellants submits that the First Appellate Court has erred in setting aside the judgment and decree of the trial Court whereas, the learned counsel representing the cross-objectors contends that due to typographical mistake, the share of Navdeep Kaur has been calculated as 1/12th share which should be 1/9th.

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

7. It shall be noted here that the First Appellate Court has extracted the contents of para 2 and 3 of the plaint as well as the written

statement, which are produced as under:-

“The parties and Chhajja Singh deceased are Hindu-Sikhs and are governed by Mitakshara branch of Hindu law as prevalent in Northern India and form a Joint Hindu Family.”

XXXX XXXX XXXX XXXX XXXX

“Para no.2 is correct.”

XXXX XXXX XXXX XXXX XXXX

“The suit land was the ancestral and coparcenary property of Chhajja Singh in the hands of defendant No.1 and Chhajja Singh had acquired an interest in it equal to that of defendant no.1 by virtue of his birth in the family.”

XXXX XXXX XXXX XXXX XXXX

“Para no.3 is correct to the extent that the suit property is ancestral property qua defendant no.1 and Chhajja Singh. Rest of the para is wrong and denied. It is wrong that defendant no.7 is the widow of Chhajja Singh.”

8. It has also come on record that Arjan Singh has two sons namely Chhajja Singh and Joginder Singh. Since the property was coparcenary property, therefore, Chhajja Singh son of Arjan Singh was the coparcener. Hence, he had a share in the coparcenary property. The First Appellate Court has elaborately discussed the evidence. Though the learned counsel representing the appellants made sincere attempt, however, he failed to draw the attention of the Court to any substantive error. He also failed to put forth any significant argument, “How the First Appellate Court has calculated the share of Navdeep Kaur to the extent of 1/12th instead of

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1/9th?” It is evident that Chhajja Singh had left behind only females. Thus, there will be a deemed partition as per Section 6 of the Hindu Succession Act, 1956.

9. 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. However, the cross-objections are allowed. The suit of the plaintiff shall stand decreed to the extent of 1/9th share instead of 1/12th.

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

(Anil Kshetarpal)
Judge

January 25, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No