

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 320 of 1994

Date of Decision: 01.03.2024

Mohan Singh

... Appellant(s)

Versus

Harnek Singh (Since Deceased) through his Legal Representatives and
Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. B.R.Rana, Advocate
for the appellant(s).

Ms. Manju Sharma, Advocate
for Mr. Vivek Gupta, Advocate
for respondent No.1 to 3.

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 appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by both the Courts below while partly dismissing his suit for grant of decree of permanent injunction.

3. In order to comprehend the issue involved in the present case,

Regular Second Appeal No. 320 of 1994

the relevant facts, in brief, are required to be noticed. The plaintiff along with defendant No.4 to 6 are the co-sharers in the land measuring 58 kanals and 15 marlas. Defendant No.4 sold the land measuring 1 kanal and 14 marlas from the land comprised in rectangle No. 46 khasra No. 17/1 in favour of defendant No.1 to 3. The plaintiff prayed that such sale of specific khasra number is null and void and defendant No.5 and 6 should be restrained from selling any specific portion of the undivided joint property. It was also claimed by the plaintiff that defendant No.1 to 3 have dispossessed him from the land comprised in rectangle No. 46 khasra No. 17/1.

4. The defendants contested the suit. The Trial Court, on appreciation of evidence, held that the sale deed executed by defendant No.4 in favour of defendant No.1 to 3 is not illegal, null and void and the plaintiff is not entitled to decree of possession. However, defendant No.5 and 6 were restrained from selling any portion of the undivided joint property. The aforesaid judgment and decree was affirmed in the first appeal.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book along with the scanned copy of the record which is available in digital form.

6. The learned counsel representing the appellant contends that the sale of specific portion of the undivided joint property is void.

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

8. The sale of a specific portion of the undivided joint property is ~~not~~ null and void if such sale is deemed to be sale of share out of undivided

property.

9. 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.

March 01, 2024

“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No