

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 777 of 1994 (O&M)

Date of Decision: 14.03.2024

Keshav Ram (Deceased) through his Legal Representatives and Another

... Appellant(s)

Versus

Raja Ram and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Jai Singh Yadav, Advocate
for the appellant(s).

Mr. Arvind Kumar Yadav, Advocate
for respondent No.7 to 11.

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, defendant No.1 and 3 assail the correctness of the concurrent findings of fact arrived at by both the Courts below while decreeing the plaintiffs' suit for the grant of decree of permanent injunction with respect to the property identified with alphabets 'ABCDEFGH' in the accompanying site plan which is a part of Ahata No. 65 Ghar No. 68.

3. It is the case of the plaintiffs that the aforesaid property is being used for religious purposes and there is one bhaiyan, a Madhi and a Chabutra of Lord Hanuman ji. The defendants, while contesting the suit, claimed that they had purchased the property from Kishori Lal son of Net Ram vide sale deed dated 13.04.1981. Both the Courts below, on appreciation of the evidence, came to the following conclusions:-

- I) Admittedly, the property is being used for religious purpose by all the villagers and this fact is admitted by DW.1 Manohar Lal, DW.2 Kanwar Singh and DW.3 Prabhati.
- II) The defendants failed to prove title of his vendor, namely Kishori Lal.

Thus, the suit filed by the plaintiffs was decreed.

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

5. The learned counsel representing the appellants has contended as under:-

- i) The Local Commissioner's report has been relied upon by both the Courts below, however, he did not fix the pucca points before starting demarcation.
- ii) No permission under Section 91 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") has been taken before filing the suit.
- iii) The benefit should be given in favour of the appellants as they had purchased the property vide registered sale deed dated 13.04.1981.

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

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7. It shall be noted here that the report of the Local Commissioner is exhibited as Ex.P12. He was only directed to visit the spot and give status report. He has accordingly submitted the report. This Court has examined the Local Commissioner's report. He has only submitted a status report of the existing position. Hence, there is no substance in the first argument of the learned counsel representing the appellants.

8. With reference to the second argument, it shall be noted that the plaintiff filed a simplicitor suit for permanent injunction. This suit was not filed under Order I Rule 8 CPC. Undoubtedly, the property was claimed to be the public property used for religious purpose. However, the suit was not filed under Section 91 CPC. Hence, there is also no substance in the second argument of the learned counsel representing the appellants.

9. With reference to the last argument, it shall be noted that both the Courts below have specifically framed the issue and called upon the defendants to prove the title of their vendor, however, they failed to lead any evidence.

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

March 14, 2024
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No