

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1106 of 2020 (O&M)

Date of Decision: 19.03.2024

Sukhwinder Singh alias Bindi and Another
... Appellant(s)
Versus
Narinder Kaur and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.
Present: Mr. P.S.Dhaliwal, Advocate
for the appellant(s).

Anil Kshetarpal, J.
CM-3522-C-2020

1. For the reasons stated in the application, the same is allowed and delay of 89 days in refiling the appeal is condoned.

RSA-1106-2020

2. 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*.

3. This is the defendants' regular second appeal against 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 understand the controversy involved in the present case, the relevant facts, in brief, are required to be narrated. Narinder Kuar,

daughter-in-law, two grandsons and two granddaughters of Sh.Gurbachan Singh son of Sh. Mukand Singh filed a suit seeking declaration to the effect that Sh. Gurbachan Singh's civil death be declared as his whereabouts are not known for the last 60 years after he went to Delhi. The plaintiffs claimed that they should be declared owner of 1/4th share. In substance, the plaintiffs are the widow and children of late Sh.Kulwant Singh who was the son of Sh.Gurbachan Singh.

5. The defendants, while contesting the suit, alleged that Gurbachan Singh had two more brothers, namely Avtar Singh and Dalip Singh. Subsequently, Dalip Singh sold the 1/3rd share to Avtar Singh on 14.02.1977. Hence, Avtar Singh became the owner of 2/3rd share of the property. Subsequently, there was a family settlement in which Sh.Gurbachan Singh was allotted property No. 3-C/394, whereas the suit property fell to the share of Avtar Singh exclusively, who, in turn, bequeathed the same in favour of defendant No.6 and 7, vide Will dated 06.07.1998. Subsequently, the aforesaid property was sold to various persons.

6. The Trial Court dismissed the suit on the ground that the identity of the property has not been clearly established. Except the statement of PW.1-Jasbir Singh, there is no evidence to prove that whereabouts of Sh. Gurbachan Singh are not known. The First Appellate Court, on re-appreciation of the evidence, came to a firm finding that the identity of the suit property has been established as defendant-Sukhwinder Singh, in his cross-examination, has admitted the dimensions of the suit property and in the municipal record, Sh.Gurbachan Singh is recorded as co-

owner to the extent of half share. He also admitted that a house having property No. B-7/299 is bounded as East 80' house, again said on West side 808 house of Nirmal Singh, North side 288 street and South side 288 house of Sukhwinder Singh son of Didar Singh. He also admitted that second property in dispute is having property Unit No. BVII-315. The First Appellate Court came to the conclusion that the defendants failed to lead any evidence to prove that whereabouts of Sh.Gurbachan Singh are known to anyone for the last 60 years. The First Appellate Court also held that the defendants have failed to prove any family settlement. Thus, the First Appellate Court accepted the appeal.

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

8. The learned counsel representing the appellants has made the following submissions:-

- i) The plaintiffs have not led sufficient evidence to prove that whereabouts of Sh.Gurbachan Singh are not known for the last 60 years. He submits that the solitary statement of one of the plaintiffs is not sufficient to prove this fact.
- ii) The identity of the suit property is not established.

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

10. In this case, the daughter-in-law and grand children of Sh.Gurbachan Singh have filed a suit for declaration. Jasbir Singh, grandson of Sh.Gurbachan Singh has stated that whereabouts of his grandfather are not known for the last 60 years. Sukhdev Singh, while appearing as DW.1

has stated that Sh.Gurbachan Singh died at Barnala. Similarly, in cross-examination, he admitted that Sh.Gurbachan Singh left for Delhi about 60/70 years ago and now he is dead. He stated that Sh.Gurbachan Singh died about 60/70 years back at Delhi in an accident. Thus, there was an overwhelming evidence including the admission of the witnesses to prove that Sh.Gurbachan Singh is either dead or his whereabouts are not known for the last 60/70 years. Hence, there is no error in finding of the First Appellate Court that his civil death is required to be declared as his whereabouts are not known for the last more than 70 years to the persons whom it is required to be known.

11. With reference to the second argument, it shall be noted that the First Appellate Court has relied upon the admission of the defendants to identify the properties left behind by Sh.Gurbachan Singh. It is admitted that there is no evidence to prove the family settlement. In these circumstances, there is no error in the detailed and elaborated judgment passed by the First Appellate Court.

12. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by First Appellate Court. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

March 19, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No