

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2454 of 2017 (O&M)

Reserved On: 01.02.2024
Pronounced On: 08.02.2024

Mahabir (Since Deceased) through his Legal Representatives and Others

... Appellant(s)

Versus

Zile Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.A.Sheoran, Advocate
for the appellant(s).

Mr. Jagjeet Beniwal, Advocate
for the respondents.

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 assails the correctness of the concurrent findings of facts arrived at by both the Courts below while decreeing the plaintiffs' suit for the grant of permanent injunction restraining the defendants from interfering in their peaceful possession over the land measuring 6 kanals and 13 marlas comprised in killa No. 86/16.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiffs filed a suit claiming that their father Badlu Ram had been in cultivating possession

of the suit property as a tenant at the yearly rent of ₹400/- and the defendant No.2, who had purchased the land measuring 8 marlas from Suraj Bhan in the disputed property vide registered sale deed dated 16.05.2006, should be restrained from forcibly dispossessing them. The defendants, while contesting the suit, submitted that Suraj Bhan, vendee, was in possession of the property who had transferred the same in favour of the defendants vide sale deed dated 16.05.2006 with respect to the land measuring 8 kanals.

4. In evidence, the plaintiffs produced a copy of the judgment and decree passed by the Civil Court in a suit filed by Suraj Bhan and Others as Ex.P9 and Ex.P10, respectively. The suit filed by Suraj Bhan for the grant of decree of permanent injunction was dismissed against Badlu Ram, predecessor of the plaintiffs. Both Badlu Ram and Mool Chand were held to be in possession of the property as tenants. The correctness of the aforesaid judgment and decree was upheld in appeal by the Additional District Judge vide judgment dated 12.09.2009. On the basis of the aforesaid overwhelming evidence, both the Courts below have decreed the suit.

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 appellants, while referring to the order (Ex.D19), submits that Badlu Ram filed a suit for permanent injunction against Suraj Bhan in which injunction was refused. He further submits that khasra girdawari (Ex.D24) reflects Chandgi Ram to be in possession. A perusal of Ex.D25 shows that Chandgi Ram is in possession as a co-sharer. He further referred to nahri khasra girdawari to contend that the defendants are in possession.

7. This Court has considered the submissions of the learned counsel representing the parties. At the cost of repetition, it shall be noticed that the appellants are deriving their title from Suraj Bhan by virtue of the sale deed dated 16.05.2006 with respect to the land measuring 7 kanals and 6 marlas out of 30 kanals and 10 marlas. In the previous litigation, Suraj Bhan, the predecessor-in-interest of the appellants, was not found to be in possession, whereas Badlu Ram and Mool Chand were held to be tenants.

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The aforesaid judgment has become final between the parties. Once Suraj Bhan was not found in possession of the suit property, he could not deliver the possession of the suit land to his vendees. Furthermore, Ex.D19 is only an order passed by the Court while dismissing the application for grant of temporary injunction. Moreover, it would not be appropriate to rely upon the entries in the khasra girdawari particularly when there is a final judgment passed by the competent Court declaring that the plaintiffs are in possession as tenants.

8. Keeping in view the aforesaid facts, there is no merit in the appeal. Consequently, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

February 08, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No