

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 3520 of 2018 (O&M)****Date of Decision: 23.01.2024**

Shakuntala Devi (Deceased) through her Legal Representative

... Appellant(s)

Versus

Gopal Krishan and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Nitin Thatai, Advocate
for the appellant(s).**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 plaintiff, through her legal representative, assails the correctness of the concurrent findings of facts, arrived at by both the Courts below while dismissing her suit for possession. She claimed that her neighbours (the respondents herein) have encroached upon the land measuring 10 feet from Northern side and 5 feet from Southern side. It has come in evidence that she is the owner of a plot measuring 40 square yards. The plaintiff has not produced any evidence to prove encroachment of the land by her neighbours.

3. Heard the learned counsel representing the appellant at length and with his able assistance, perused the paper-book along with the requisitioned record.

The learned counsel representing the appellant contends that on

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11.10.2014, an application for appointment of the Local Commissioner, filed by the appellant through her legal representative, was dismissed. Whereas Ravi Kumar was permitted to demarcate the area on the application filed by the defendants. He submits that the trial Court erred in refusing to appoint the Local Commissioner on the application filed by the plaintiff.

5. This Court has considered the submissions made by the learned counsel representing the appellant.

6. The plaintiff through her legal representative has come to the Court with a subsequent stand that her property has been encroached upon by her neighbours. The onus lays upon her to prove that fact. She could have got the property demarcated and produced the report along with the aforesaid witness in order to help the Court for properly adjudicating the matter. It is not the responsibility of the Court to collect evidence on behalf of the plaintiff.

7. 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.

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

(Anil Kshetarpal)
Judge

January 23, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No