



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 57 of 1992 (O&M)

Date of Decision: 25.02.2025

Suraj Mal (Deceased) through his Legal Representatives and Others

... Appellant(s)

Versus

Mange Ram (Since Deceased) through his Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Avnish Mittal and Ms. Ishika Jain, Advocates
for the appellant(s).

Mr. Amit Jain, Senior Advocate
with Mr. Chetan Salathia, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

I. Brief Facts

1. The Regular Second Appeal in the States of Punjab, 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. The defendants assail the correctness of the First Appellate Court's judgment, which, in turn, has reversed the judgment of the Trial Court. It would be noticed here that in this case, the question of ownership of the suit property was not the subject matter of debate before both the Courts below. The disputed property is located in the residential area of the

village. With respect to the residential area, no revenue record is maintained and the proprietor or non-proprietor, whosoever is in possession, is considered to be the owner of the same. While filing the suit, the plaintiff claims that he is in possession of a plot and has made two Bitoras i.e. a heap of cow-dung cakes, there is a kikkar tree and the plaintiff is using the same for some time. It was also alleged that the plaintiff used to have a Kohlu (a crusher for making jaggery). The defendants are threatening the forcible and illegal interference in his possession. Subsequently, the plaint was amended and the relief of mandatory injunction was sought on the ground that the defendants have forcibly constructed 4 Khors for storage of animal feed and a hut.

3. The defendants contested the suit claiming that the defendant No.1 is the owner and defendant No.3 is in possession of the property where four Bitoras, one Kurari, one kikkar tree and three Khors etc. have been constructed. The defendant No.1 has also claimed that there used to be a crusher on the said plot.

4. During the pendency of the suit, a Local Commissioner was appointed who submitted his report on 22.12.1984. He was also examined in the evidence as PW.5. The Trial Court dismissed the plaintiff's suit whereas the First Appellate Court has, upon re-appreciation of evidence, decreed the plaintiff's suit. During the pendency of this appeal, an application for additional evidence has been filed by the defendants in order to place on record the judgment dated 04.11.1957 and the layout plan.

II. Arguments put forth by the learned counsel representing the parties.

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 contends that from oral evidence, it is proved that the defendants are in possession of the property. He submits that the report of the Local Commissioner cannot be made a basis to hold that the plaintiff is in possession of the property in dispute particularly when there is a difference in the report and the case pleaded by the plaintiff. He further submits that in the judgment dated 04.11.1957, the defendants were declared owners of the property in dispute.

7. Per contra, the learned counsel representing the respondent No.1 submits that the judgment dated 04.11.1957 is only with respect to a street and the plaintiff is not a party to the same. Hence, it is not binding on the plaintiff. He further submits that the Local Commissioner's report corroborates the case of the plaintiff.

III. Analysis and Discussion

8. This Court has considered the submissions of the learned counsel for the parties.

9. In this case, the Court is required to adjudicate as to who was in possession on the date of filing of the suit i.e. 11.12.1984. Within a period of ten days of the filing of the suit, the Local Commissioner visited the spot. He has made a detailed report. The defendants refused to sign the attendance sheet. In the report, the Court has been informed that there are certain existing Bitoras and some fresh construction is in progress. The defendants have not raised any objection to the aforesaid report. The Local Commissioner appeared in the witness box as PW.5. Despite his lengthy

cross-examination, his credibility could not be impeached. In such circumstances, the First Appellate Court has not erred in relying upon the aforesaid report.

10. This Court has considered the judgment passed on 04.11.1957, in a *lis* between Chatru and Surja. In the aforesaid judgment, the issue was with regard to the existence of street. The suit of the plaintiff was dismissed and there was no declaration in favour of the plaintiff that he is owner of the suit property.

11. The scope of interference in the second appeal is limited. In the absence of evidence to prove that the findings of facts arrived at by the First Appellate Court suffer from any material irregularity arising from misreading or failure to take into consideration the evidence, the First Appellate Court is not expected to interfere.

IV. Decision

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

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

(Anil Kshetarpal)
Judge

February 25, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No