



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 261 of 2020 (O&M)

Date of Decision: 12.03.2025

Balvir Kaur

... Appellant(s)

Versus

Jangir Kaur and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. H.S.Dhindsa and Mr. Praagbir Singh Dhindsa, Advocates
for the appellant(s).

Mr. Deepak Gupta, Advocate
for the respondents.

Anil Kshetarpal, J.

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 plaintiff assails the correctness of the First Appellate Court's judgment, which, in turn, has modified the Trial Court's judgment.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Mukhtiar Singh was the owner of a big plot upon which, he carved out the plots. He executed the sale deed in favour of Jangir Kaur (respondent No.1) reflecting that there is a passage on the Northern side of the property sold to Jangir Kaur.

Subsequently, Mukhtiar Singh sold the property to Balvir Kaur.

4. Balvir Kaur filed a suit for mandatory injunction against Mukhtiar Singh, Jangir Kaur etc. for the grant of decree of mandatory injunction directing Mukhtiar Singh to execute the sale deed of a land under passage measuring 2 karams in width and 15 karams in length. It was further prayed that defendants No.2 and 3 be directed to remove their new gate which opened towards the passage. The suit was partly decreed and the defendants were restrained from encroaching upon the passage. Jangir Kaur and Amar Singh (defendants No.2 and 3) filed an appeal. It would be noticed here that during the pendency of the suit, Mukhtiar Singh executed a registered sale deed of the property which was a passage in favour of Balvir Kaur. The First Appellate Court has found that the aforesaid passage is maintained by the Gram Panchayat and pucca drain has been constructed in the street.

5. Appellant-Balvir Kaur claims exclusive right over the property which is the passage. Now she claims that it is her private passage because she has purchased the same. It is not in dispute that Balvir Kaur had purchased the plot subsequently whereas Jangir Kaur purchased the plot from Mukhtiar Singh prior in point of time. Jangir Kaur constructed the house. At certain point of time, she opened her gate towards Northern side as is also in her sale deed it was recorded that on the north of her plot, there is a passage. Thus, it is evident that the passage has been provided by Mukhtiar Singh. The sale by Mukhtiar Singh in favour of Balvir Kaur cannot deprive Jangir Kaur from using the passage.

6. Keeping in view the aforesaid facts, no ground is made out to

interfere with the First Appellate Court's judgment. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

March 12, 2025

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No