

Dhanna Singh

Vs

Baljinder Kaur

(K. Ramaswamy, G. B. Pattanaik JJ)

04.04.1997

ORDER

1. Leave granted.

2. This appeal by special leave arises from the order of the Single Judge of the Punjab and Haryana High Court, made on May 22, 1996 in C.R. No. 4333/1995.

3. The undisputed facts are that the respondents filed a suit for permanent injunction with the following prayer :

"It is, therefore, prayed that a decree for permanent injunction restraining the defendants from raising any construction over any specific portion of the property detailed in the heading of the plaint, and also restraining the defendants from filling any part of the property by sand and also restraining the defendants from alienating any specific portion of the property and also restraining the defendants from transferring the possession of the property without the same being partitioned between the parties to the suit; may kindly be passed in favour of the plaintiffs against the defendants with costs and any other relief which the Hon'ble Court may deem fit be also granted."

4. Pending the suit, though several opportunities were given, no evidence was adduced by the defendant. The court passed an order on September 22, 1995 foreclosing the evidence of the defendant on the statement of the counsel that the first defendant was not willing to lead any evidence. An application for impleadment was filed earlier by the appellant who is a subsequent purchaser from the first defendant. After impleadment, he filed application for adduction of evidence which was rejected. Thus this appeal.

5. The undisputed fact is that in the plaint the plaintiff-respondent had already sought for a relief of injunction of alienation, yet the alienation came to be made. Apart from the doctrine of lis pendense under Section 52 of the T.P. Act, the subsequent purchaser does not get any right to lead to any evidence, as he stepped into the shoes of the first defendant, who had given up the right to lead evidence. In view of these circumstances, he does not get any right to lead any evidence.

6. The appeal is, accordingly, dismissed. No costs.