

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 619 of 2016 (O&M)

Date of Decision: 06.05.2016

Nachattar Dass

... Appellant(s)

Versus

Boota Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Dhirinder Chopra, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal having been filed by the plaintiff against concurrent findings of facts recorded by both the Courts below in a suit for declaration and consequential relief of permanent injunction.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts of the case that plaintiff had filed suit for declaration that he is owner in possession of 1/3rd share of suit land and in alternative suit for possession with consequential relief of permanent injunction.

As per plaintiff, Maghi Dass is recorded as owner of 1/3rd share who was unmarried and died issue-less. Plaintiff is real nephew of the deceased. He was "Mahant" of Suraj Devta Mandir. Maghi Dass had

executed Will dated 19.11.2006. Plaintiff is in possession of the suit property and the same has not been disturbed. However, defendants, in collusion with each other, are threatening to alienate the suit property and to dispossess the plaintiff therefrom for which they have no right.

Defendants contested the suit *inter alia* taking the plea that the suit is otherwise barred under Order 2 Rule 2 CPC. Maghi Dass was infact served and looked after by the defendants and had executed Will in their favour.

On these facts, the Court of first instance settled the issues and parties were asked to lead their respective evidence. The Court of first instance, after recording of evidence and appreciation thereof returned the finding that Will dated 22.10.1984 (Ex.D1) was duly executed by Maghi Dass out of love and affection in favour of defendants No.1 to 5, who are the real nephews and Maghi Dass was living with Baldev Singh, defendant and dismissed suit of the plaintiff. First appeal preferred by the plaintiff/appellant was dismissed by the first Appellate Court and as such, present regular second appeal before this Court.

Learned counsel for the appellant mainly submitted that both the Courts below have not appreciated the correct facts and the Will set up by the plaintiff in his favour dated 19.11.2006 is the genuine Will, which has been disbelieved by the Court below without any justified reason. The said findings be reversed; present appeal be accepted and suit of the plaintiff be dismissed.

Having considered the submissions made by learned

counsel for the appellant, this Court is of the considered view that both the Courts below have already appreciated the entire oral and documentary evidence and recorded concurrent findings of facts that Will (Ex.D1) was duly executed and the same was registered by Sub Registrar (Ex.D2). The remaining documentary evidence i.e. copy of ration card (Ex.D9) and voter card (Ex.D10) of Maghi Dass were duly relied upon by the Courts below and suit of the plaintiff was dismissed. There is no substantial question of law involved in the present appeal.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57***, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of finding of fact. As per view taken by Hon'ble the Apex Court in ***Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201*** and ***Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582***, second appeal cannot be entertained if there is no substantial question of law involved therein.

In view of the above, the appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stand dismissed, *in limine*.

(Shekher Dhawan)
Judge

May 06, 2016

"DK"