

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3324 of 2007 (O&M)

Date of Decision: 30.03.2016

Ramesh and Others

... Appellant(s)

Versus

Ram Rattan 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. Amit Kumar Jain, Advocate
for the appellant(s).

Mr. Ramesh Sharma, Advocate
for respondents No.1 to 4.

Shekher Dhawan, J.

Present regular second appeal against the judgment & decree dated 24.8.2007, passed by learned Additional District Judge, Jind, whereby judgment & decree dated 23.4.2005, passed by learned Additional Civil Judge (Senior Division), Safidon, was modified.

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 plaintiffs filed suit for declaration to the effect that plaintiff No.1-Inder Singh was owner in

possession of ghar/plot bearing khasra No. 256/2 and plaintiff No.2-Dharampal is owner in possession of residential house comprised in khasra No. 243 and defendants No.5, 10 & 11 are owners in possession of house comprised in khasra No. 242/2 on the basis of judgment dated 15.6.1996 and mutation No. 904 on the basis of sale deed No. 788 dated 1.3.1974 was duly registered with Sub Registrar, Safidon. Plaintiffs challenged that sale deed dated 927 dated 14.12.1998 allegedly executed by defendant No.4 in favour of defendant No.1 pertaining to suit land measuring 2 kanals 3 marlas to the extent of $\frac{1}{3}^{\text{rd}}$ share and mutation No. 935 dated 23.12.1998 (Ex.P5) are null and void and not binding upon the plaintiffs and defendants No.5, 10 & 11. Plaintiffs also sought relief of permanent injunction thereby restraining the defendants No.1 to 3 from interfering into peaceful possession of plaintiffs and defendants No.5, 10 & 11 over the suit property and also from dispossessing the plaintiffs from their respected properties.

Defendants No.1 to 3 contested the suit *inter alia* taking the plea that present suit has been filed by the plaintiffs just to usurp the land measuring 2 kanals 3 marlas to the extent of $\frac{1}{3}^{\text{rd}}$ share comprised in khasra No. 256/2, which is in exclusive possession of defendant No. 1 as the same was purchased by him against valuable consideration of ₹ 20,000/- from defendant No.4 vide registered sale deed No. 927 dated 14.12.1998 and delivered the possession. Co-sharer Smt. Darshani, defendant No.4, had sold her share i.e. 14 marlas of

land out of the alleged land of the answering defendant No.1 vide sale deed No. 927 dated 14.12.1998 (Ex.P6) against valuable consideration and delivered the possession. As per defendants No.1 to 3, sale deed No. 788 dated 1.3.1974 is not pertaining to the suit property. Infact, there is no construction or structure in existence of khasra No. 256/2 min and prayed that suit of the plaintiffs be dismissed.

Defendant No.4 appeared and filed admitted written statement.

Defendants No. 10 & 11 also filed admitted written statement.

On these facts, following issues were framed by the Court of first instance:-

- "1. *Whether the sale deed No. 927 dated 14.12.1998 along with mutation No. 935 are illegal, null and void and alleged in the plaint? OPP*
2. *Whether the plaintiff has no locus standi to file the present suit? OPD*
3. *Whether the plaintiff has got no cause of action to file the present suit? OPD*
4. *Whether the suit is bad for non joinder and mis joinder of necessary parties? OPD*
5. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*

7. Relief.”

Thereafter, parties led their respective evidence and the Court of first instance, after appreciating the entire oral and documentary evidence, returned the finding that plaintiff No.1 has failed to prove that sale deed (Ex.P6) is illegal, null and void. Plaintiffs have not been able to prove that defendant No.1 is not the owner of khasra No. 256/2 vide sale deed (Ex.P6). However, the plaintiffs have been able to prove the ownership and possession of khasra Nos. 242 & 243 as admitted by the defendants and the suit of the plaintiffs was partly decreed regarding ownership and possession qua khasra Nos. 242 & 243 and relief regarding declaration of khasra No. 256/2 was declined.

Being aggrieved by passing of said judgment, plaintiffs preferred an appeal before the first Appellate Court, which was accepted and judgment & decree dated 23.4.2005 was modified to the effect that plaintiffs are owners in possession of the entire suit land as described in the head note of the plaint and defendants No.1 to 3 are before this Court by way of present regular second appeal.

Learned counsel for the appellant/defendants submitted that the first Appellate Court modified the findings having been recorded by the Court of first instance without any reason. Learned counsel for the appellants further submitted that the Court of first appeal relied upon the admitted written statement and statement of defendant No.4 Smt. Darshani, who had sold the land to the present appellants and also to the respondents. Defendant No.4 Smt. Darshani could not be declared as a reliable witness and her conduct shows that

she is a cheater and supported the claim of the plaintiffs just to defeat the right of the appellants. The Court of first appeal fell in error while placing reliance upon the report (Ex.P7) submitted by Chander Bhan, Local Commissioner, who, while appearing as witness in another case titled as "Ramesh v. Inder Singh" pending between the contesting parties, failed to prove that he had demarcated the land as per law and had not located the pucca points. The report of Local Commissioner do not even connect with the boundaries given in the headnote of the plaint. More so, the present suit is barred by the principle of *res judicata* because judgment passed by the Court of learned Additional Civil Judge (Senior Division), Safidon in a civil suit, which was decided between the plaintiffs and defendants along with Smt. Darshani Devi and the said judgment had attained finality as the appeal filed against the same was dismissed as withdrawn on 24.7.2007 and prayed that appeal be accepted and judgment & decree passed by the Courts below be set aside and suit of the plaintiffs be dismissed.

Learned counsel for the respondents submitted that both the Courts below have already appreciated the entire oral and documentary evidence available on the file. There is no substantial question of law involved in this case against the concurrent findings of facts having been recorded by the Courts below. Smt. Darshani Devi had been asked for the land and she was left with no land and the Courts below have recorded the findings, which do not call for any interference. More so, FAO No. 16 was filed and as the record, which was burnt in the fire incident in this Court, the said points have already

been decided and the present appeal is without any merit and same deserves dismissal.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there are infact three disputed khasra numbers i.e. 242, 243 & 256/2. The Court of first instance has rightly decreed the suit of plaintiffs qua khasra Nos. 242 & 243 as they have been able to prove the said fact by leading positive evidence and for that purpose even defendants had admitted their ownership and possession thereon. Smt. Darshani Devi had already sold her share to the plaintiffs vide sale deed No. 788 dated 1.3.1974, which is Ex.PW.7/A on the file and possession was also delivered to the plaintiffs by her. More so, plaintiffs had become owner of the suit land on the basis of judgment & decree dated 15.6.1996, passed by learned Additional Civil Judge (Senior Division), Safidon in civil suit titled as "Inder Singh v. Ramdulari etc." and mutation was sanctioned in their favour on 31.1.1977. Defendants have failed to lead any evidence on that point and the said findings have been duly affirmed by the Court of first appeal and the same do not call for any interference.

As regard to dispute regarding khasra No. 256/2, the Court of first appeal has rightly observed that defendant No.4-Smt.Darshani Devi had sold the suit land measuring 484 square yards on the basis of sale deed dated 1.3.1974 in favour of the plaintiffs. As per jamabandi (Ex.P3), Smt. Darshani Devi was having 1/3rd share. She had already

sold land measuring 484 square yards, which comes around 14 marls. That way, after execution of sale deed dated 1.3.1974, she was left with no land but she had further sold 1/3rd share out of joint khewat by mentioning specific killa No. 256/2 vide sale deed dated 14.12.1998 (Ex.P6). The Court of first appeal has rightly observed that the said sale deed (Ex.P6) is liable to be set aside as on that day, Smt. Darshani Devi was not having any share in the property. More so, she had filed admitted written statement thereby taking the plea that she had already sold her share vide registered sale deed dated 1.3.1974. The Court of first appeal has rightly placed reliance upon the report of Local Commissioner, who had submitted his report (Ex.P7) after visiting the spot in the presence of both the parties and the demarcation was done as there was no dispute regarding identity of the property. As per report of Local Commissioner (Ex.P7), Inder Singh was found to be in possession of khasra No. 256/2, where he started throwing "cow dung and cow dung cakes".

In view of above, findings recorded by the first Appellate Court are based on material and evidence available on the file and correct appreciation of the evidence and the same do not call for any interference. There is absolutely no substantial question of law involved in this case.

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.

Hence, in view of the above, the present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

(Shekher Dhawan)
Judge

March 30, 2016

"DK"