

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 882 of 2010 (O&M)

Sohan Singh and Another

... Appellant(s)

Versus

Sewa Singh

... Respondent(s)

AND

2. Regular Second Appeal No. 881 of 2010 (O&M)

Sohan Singh and Another

... Appellant(s)

Versus

Sewa Singh and Another

... Respondent(s)

Date of Decision : 31.03.2016

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. Manish Kumar Singla, Advocate
for the appellant(s) (In both the appeals).

Mr. M.L.Sarin, Senior Advocate
with Ms. Alka Sarin, Advocate
for respondent-Sewa Singh (In both the appeals).

Shekher Dhawan, J.

This order of mine shall dispose of two regular second

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appeals i.e. Regular Second Appeal No. 882 of 2010 titled "Sohan Singh and Another v. Sewa Singh" and Regular Second Appeal No. 881 of 2010 titled as "Sohan Singh and Another v. Sewa Singh and Another" against the concurrent findings of facts having been recorded by both the Courts below in Civil Suit No. 78 dated 7.11.2001, filed by Sohan Singh and Ranjodh Singh for possession of land measuring 24 kanals 18 marlas and Civil Suit No. 53 dated 10.3.2000, filed by Sewa Singh for seeking declaration that agreement dated 23.12.1999, allegedly executed by Sewa Singh in favour of Sohan Singh and Ranjodh Singh is null and void, inoperative with respect to the same property. For the purpose of adjudication, facts are being taken from Regular Second Appeal No. 882 of 2010.

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 Civil Suit No. 78 dated 19.4.2000 (first civil suit) was filed by Sohan Singh and Ranjodh Singh against Sewa Singh and Punjab and Sind Bank and Civil Suit No. 53 dated 10.3.2000 (second civil suit) was filed by Sewa Singh against Ranjodh Singh and Sohan Singh.

As per plaintiffs in first civil suit, they had filed a suit for possession of the suit land measuring 24 kanals 18 marlas as per jamabandi for the year 1997-98 or in alternative suit for recovery of ₹ 7,65,500/- along with interest at the rate of 18% per annum from 23.12.1999 till payment by way of specific performance of the agreement dated 23.12.1999. Defendant No.1 had entered into an

agreement dated 23.12.1999 for sale of suit land for a total consideration of ₹ 7,65,500/- and the target date was fixed to be on or before 31.3.2000 at the convenience of the defendant No.1 after getting the land redeemed from defendant No.2-Punjab and Sind Bank, Chanalon. The plaintiffs paid ₹ 5,00,000/- as earnest money towards completion of sale which amount was to be adjusted and balance sale consideration of ₹ 2,65,500/- was to be paid to defendant No.1 on the date of execution of sale deed. Plaintiffs asked defendant No.1 specifically to perform his part of the agreement but he has not done so. Legal notice was also served upon the defendant but he failed to reply thereto and also failed to perform his part of the agreement and as such suit for possession before the Court of first instance.

Defendant No.1 contested the suit inter alia taking the plea that plaintiff No.2 is the real sister's son of Harminder Singh and Mohan Singh and plaintiff No.1 is also closely related to them being their sister's husband. There was a Tata Trailer truck bearing registration No. PB-12-C-1714 belonging to Harminder Singh and Mohan Singh and they had sold the same for a sum of ₹ 10,60,000/- to defendant No.1 and his companion Gurminder Singh. That Tata Trailer truck was financed by Punjab Motors, Kurali and Harminder Singh had been paying instalments to the financier. An amount of ₹ 5,00,000/- was to be paid by Harminder Singh to the financier. Plaintiffs and Gurminder Singh had paid ₹ 5,60,000./- 2.4.1999 at the time of purchase of the said Tata Trailer truck. Defendant No.1 undertook to pay the remaining

instalments of ₹ 5,00,000/-. Harminder Singh suggested defendant No.1 and his companion that they had handed over the Tata Trailer truck to the defendant but defendant was to give some guarantee of his land to the tune of ₹ 5,00,000/- and the remaining amount which was yet to be paid to Punjab Motors, Kurali and for that purpose agreement dated 2.4.1999 was executed regarding land of defendant. Although Harminder Singh did not pay anything to the defendant. But admittedly, Harminder Singh had paid a sum of ₹ 5,00,000/- to the defendant as earnest money and the sale deed was to be executed upto 30.9.1999 as per agreement dated 2.4.1999. Defendant No.1 filed a separate suit with regard to the agreement dated 24.9.1999 and prayed the suit filed by plaintiffs Sohan Singh and Ranjodh Singh be dismissed.

Defendant No.2 filed a written statement taking preliminary objections that defendant No.2 is unnecessary party as defendant No.1 has mortgaged his property in favour of the plaintiffs and on merits defendant No.2 took the plea that averments of the plaint were not relating to the bank.

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 appreciating the entire evidence, dismissed Civil Suit No. 78 dated 19.4.2000 titled as "Sohan Singh and Another v. Sewa Singh and Another" and Civil Suit No. 53 dated 10.3.2000 titled as "Sewa Singh v. Ranjodh Singh and Another" was decreed and decree for declaration that agreement dated 23.12.1999 allegedly executed by

Sewa Singh in favour of Ranjodh Singh and Sohan Singh was proved to be without any conspiracy and the same is having no effect qua the rights of Sewa Singh. Against the said judgment & decree dated 7.11.2001, two separate appeals were filed, one by the plaintiffs-Sohan Singh and Rajodh Singh and another by defendant Sewa Singh and the first Appellate Court dismissed both the appeals vide judgment & decree dated 7.10.2009 and as such two regular second appeals before this Court.

Learned counsel for the appellants submitted that both the Courts below have misread and misappreciated the evidence because properties in both the agreements Ex.DA & Ex.DB are different. More so, Deed Writer Ramesh Kumar, who appeared in the witness box as DW.2 admitted in his cross-examination that Sewa Singh confirmed about receipt of consideration but the Courts read it otherwise. Similarly, PW.2 Jagjit Singh admitted receipt of payment by Sewa Singh. PW.3 Ranjodh Singh also admitted receipt of payment. Even Sewa Singh appeared as DW.1 admitted his signatures on Ex.P1. Both the agreements are relating to different properties and the Courts below misread the evidence that there was no payment of consideration before the Deed Writer. Respondent failed to prove the plea of fraud though filed the suit earlier and prayed that appeal be accepted and judgments & decrees, passed by both the Courts below be set aside and suit filed by plaintiff/appellants-Sohan Singh and Ranjodh Singh be decreed.

While arguing on this point, learned counsel for the

respondent No.1 submitted that the present regular second appeal is against concurrent findings of facts having been recorded by both the Courts below and there is no substantial question of law involved in the case. More so, same arguments were addressed before the first Appellate Court and the Courts below have already appreciated the entire evidence but the first appeal was dismissed and as such present regular second appeal against the concurrent findings of facts is not maintainable as per Section 100 CPC. More so, there was no date for execution of the sale deed. The document itself shows that even the entries were blank.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that both the Courts below have already scanned the entire evidence and recorded concurrent finding of fact that plaintiffs/appellants failed to prove their case. There is absolutely no substantial question of law involved in the present 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

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appeal cannot be entertained if there is no substantial question of law involved therein.

Hence, in view of the above, both the appeals are not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stand dismissed.

**(Shekher Dhawan)
Judge**

March 31, 2016

"DK"