

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1493 of 2012 (O&M)

Date of Decision: 17.05.2016

Sandeep Kumar and Others

... Appellant(s)

Versus

Shivala Lala Rama Ditta Mal, Kartarpur 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. Gagan Oberoi, Advocate
for the appellant(s).

Shekher Dhawan, J.

CM-4027-C-2012

For the reasons mentioned in the application, the same is allowed and delay of 28 days in refiling the appeal stands condoned.

RSA-1493-2012

Present regular second appeal, filed by legal representatives of defendant No.1, against concurrent findings of facts having been recorded by the Courts below, whereby suit filed by the plaintiffs for declaration that sale deeds dated 18.6.1997 and 23.6.1997 are illegal, null and void, was decreed and the first Appellate Court

dismissed the appeal.

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 had filed suit for declaration on the ground that Shivala Lala Ram Ditta Mal is owner in possession of the land in dispute and under the management of Baldev Krishan, who is one of the Trustees of the said Shivala and is being managed and maintained by Baldev Krishan, who is relative of Lala Ram Ditta Mal, founder of the Trust. Defendants No. 2 to 4 are amongst the heirs and relatives of Lala Ram Ditta Mal, who wanted to dispose of the property of Trust for their own benefits and for that purpose, they wrongly executed the sale deeds dated 18.6.1997 & 23.6.1997 allegedly executed by defendant No.1-Krishan Kumar as attorney of defendants No.2 & 3. As per plaintiffs, the suit property is "Dharmarth" property and it cannot be alienated for personal benefits of anybody.

Defendants took the plea that legal heirs of Lala Ram Ditta Mal are Mohatmims/Managers of the Shivala, which is a private property and there is neither any Trust nor the plaintiffs are its Trustees and Baldev Krishan is not managing the Shivala. Infact, defendants No.2 to 4 are the Mohatmims/Managers of the Shivala properties and sale deeds dated 18.6.1997 & 23.6.1997 have been validly executed and suit of the plaintiffs is without any merit and the same deserves dismissal.

On these facts, the Court of first instance settled the issues and parties were put to trial. After recording of evidence and appreciation thereof, the Court of first instance decreed suit of the

plaintiffs. Defendants No.1 to 5 preferred appeal before first Appellate Court and the same was dismissed and as such present regular second appeal before this Court.

Learned counsel for the appellants submitted that as per revenue record, suit property has been alienated on the basis of sale deeds. The suit property has never been recorded as Shivala. More so, the suit property was in exclusive possession of the appellant/defendants and the same was never used for any religious and public purpose. The respondents have also failed to mention the detail of the suit property. But the Courts below completely ignored this fact while appreciating the evidence and recorded concurrent findings of facts and the same are liable to be set aside.

Having considered the submissions made by learned counsel for the appellants and appraisal of the record of the case, this Court is of the considered view that the Courts below have already appreciated the entire controversy and scanned the pleadings as well as evidence of the parties and have rightly recorded the finding that defendants have got no right to execute the sale deeds No. 251 dated 18.6.1997 & No. 271 dated 23.6.1997 and accordingly recorded concurrent findings of facts declaring the said sale deeds to be illegal, null and void. Defendants being "Mohatmim" or Manager cannot alienate the property of Trust. The said concurrent findings of facts do not call for any interference by this Court and there is no involvement of any substantial question of law 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.

In view of the above, 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**

May 17, 2016

"DK"