

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4649 of 2012 (O&M)

Date of Decision: 19.05.2016

Krishana and Others

... Appellant(s)

Versus

Smt. Girdawari Devi 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. Vivek Suri, Advocate
for the appellant(s)

Shekher Dhawan, J.

Present regular second appeal, filed by legal representatives of defendant No.2-Goraksh Kumar, against the judgment & decree dated 15.6.2012, passed by learned Additional District Judge, Sirsa, whereby appeal filed by respondent No.1/plaintiff was partly accepted and decreed the suit for permanent injunction on the basis of possession and affirmed the findings recorded by the Court of first instance that plaintiff failed to prove her ownership.

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

Relevant facts for the purpose of decision of the present appeal that plaintiff had filed suit for declaration that she is owner in possession of the land as recorded in jamabandi for the year 1998-99 on the basis of sale

deeds dated 31.5.2001 and 7.6.2001 executed by defendant No.1 in her favour. The relinquishment deed dated 21.10.2003, executed by defendant No.1, in favour of defendants No. 2 to 5, is wrong, against law and facts and the same is liable to be corrected. Plaintiff also sought relief of permanent injunction for restraining the defendants from alienating the suit property in any manner.

Defendant No.1 failed to put in appearance before the Court of first instance, whereas defendants No.2 to 5 contested the suit *inter alia* taking the plea that land in dispute was erroneously held to be tenant permissible area of Om Parkash and Surjeet Singh. The order of allotment dated 1.12.1992, passed by the Prescribed Authority-cum-Collector, Dabwali, was set aside by the order of Commissioner, Hisar Division, vide order dated 13.3.1997 and as such Om Parkash and Surjeet Singh were not owners of the land but remained as tenant over the same. The so called delivery of possession to the plaintiff by the vendor is also nonest in the eyes of law. The relinquishment deed dated 21.10.2003 executed by defendant No.1 in favour of defendants No. 2 to 5 is legal and valid and they are in possession of the suit land and prayed that suit be dismissed.

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 the evidence and appreciation thereof, returned the finding that plaintiff failed to prove that she is owner in possession of the suit land as no valid title was passed to the plaintiff on the basis of sale deeds dated 31.5.2001 & 7.6.2001. The relinquishment deed dated 21.10.2003 executed by defendant No.1 in favour of defendants No.2 to 5

are wrong, against law and facts and accordingly dismissed the suit of plaintiff. However, first Appellate Court affirmed the findings regarding ownership but held that plaintiff was in possession of the suit property and passed order that plaintiff cannot be dispossessed from the suit property except in due course of law and present regular appeal is before this Court.

Notice was issued to respondent No.1/plaintiff but nobody has put in appearance in this Court on her behalf.

After hearing learned counsel for the appellants and perusal of the record, this Court is of the view that following substantial question of law is involved in the present case:

“Whether the Courts below misread and misappreciated the evidence resulted into erroneous findings regarding possession?”

While arguing on the substantial question of law, learned counsel for the appellants submitted that the first Appellate Court fell in error while recording the findings that plaintiff has been able to prove her possession over the suit property. The said findings are mainly based upon orders (Ex.D2 & Ex.D3). However, the said revision petition before this Court was not filed by Surjeet Singh. Otherwise, there was no material or evidence available on the file to reverse the finding that plaintiff has been able to prove the possession of the suit property and the said finding is liable to be set aside.

Having considered the submissions made by learned counsel for the appellant and appraisal of the record of the case, this Court is of the considered view that finding, recorded by the first Appellate Court on the

point of possession, has been reversed mainly on the ground that possession of plaintiff was protected by this Court in ***Civil Revision No. 4971 of 2004 titled as “Surjeet Singh v. State of Haryana and Others”*** (Ex.D2). More so, earlier Om Parkash and Surjeet Singh had filed Civil Suit No. 40-C of 2001/2007, which was decided by learned Civil Judge (Junior Division), Dabwali on 10.11.2009, copy of which is Ex.D3 in the file. Vide said judgment, suit of the plaintiff was dismissed and the version of plaintiffs Om Parkash and Surjeet Singh that they are owners in possession of the suit land was declined. As such, Om Parkash and Surjeet Singh were declared as owners of the land vide order passed by the Collector, Surplus Area and the same was set aside by the Commissioner, Hisar Division vide order dated 13.3.1997. The first Appellate Court reversed the finding of the Court of first instance merely on the ground that respondent No.1 is in possession of the suit land, whereas she never came into possession thereof and the Court below has not considered the main document (Ex.D2), which resulted into misappreciation and erroneous findings regarding possession and the same are liable to be reversed.

More so, respondent No.1 failed to put in appearance before this Court despite notice so as to controvert the claim of the appellants.

In view of my above discussion, the substantial question of law is answered in favour of the appellants. Resultantly, present appeal is hereby accepted. The judgment & decree, passed by the lower Appellate Court are set aside and that of the Court of first instance stands upheld.

(Shekher Dhawan)
Judge