

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4983 of 2012 (O&M)

Date of Decision: 22.03.2016

Bikkar Singh

... Appellant(s)

Versus

Baldev 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. P.K.S.Phoolka, Advocate
for the appellant(s).

Mr. Binderjit Singh, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts, having been recorded by both the Courts below, whereby suit for declaration, filed by the plaintiff, was dismissed 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 for the purpose of decision of the present appeal that plaintiff-Bikkar Singh had filed a suit for declaration that he

is owner of the land in dispute and the registered sale deed No. 9290 dated 16.3.2001, allegedly executed by the plaintiff in respect of the suit land in favour of defendant No.1, is illegal, null and void as a result of fraud and misrepresentation and the same is liable to be set aside and mutation No. 8014 dated 30.9.2002, sanctioned on the basis of the said sale deed, is also liable to be set aside.

As per plaintiff, he had mortgaged the suit land with possession with defendants No.1 & 2 vide registered mortgage deed No. 471 dated 25.4.2000 for ₹ 1,00,000/- for a period of two years. Defendant No.1, on misrepresentation and with the assurance to get the period of mortgage deed extended, took the plaintiff to Tehsil Office and got his signatures on various papers that the same were required for extension of mortgage period. When plaintiff made efforts to redeem the land, then through Halqua Patwari, he came to know about the sale deed dated 16.3.2001 and mutation No. 8014 dated 30.9.2002. As per plaintiff, no consideration was ever passed on to him at the time of execution of sale deed.

Defendant No.1 contested the suit taking the plea that an agreement to mortgage was executed by the plaintiff on 25.2.2000 regarding the land measuring 40 kanals including the suit land and received a sum of ₹ 52,000/- as earnest money from him. The mortgage deed was to be executed on or before 10.5.2000. Plaintiff did not keep his words of agreement and mortgaged his land measuring 17 kanals 7 marlas for ₹ 1,00,000/- in favour of defendants No.1 & 2 after receiving the further sum of ₹ 48,000/- vide mortgage deed dated

25.4.2000. Thereafter, plaintiff sold the mortgaged land to the defendant vide impugned sale deed for ₹ 3,75,000/- and mutation No. 9290 was rightly sanctioned. Plaintiff had earlier filed an objection petition before the Tehsildar, Bathinda against the sanction of mutation and later on withdrew the said petition and mutation was sanctioned. So, defendant No.1 had further sold the suit land to defendant No.3 through legal and valid sale deed dated 4.5.2004. Even before that, he had mortgaged the same with Oriental Bank of Commerce and thereafter got the same registered and prayed that suit be dismissed.

Defendant No.3 filed a separate written statement *inter alia* taking the plea that he is bonafide purchaser of the suit property from defendant No.1 and prayed that suit be dismissed.

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 findings that the sale deed was duly executed. More so, plaintiff was not in possession of the suit property and he admitted that possession is of Ram Karan, defendant No.3 since 4.5.2004 and as such mere suit for declaration is not maintainable. More so, sale deed dated 16.3.2001 was challenged in the present suit after expiry of limitation period of three years as the suit was filed on 20.4.2005 and there was no ground for codonation of delay and the suit was dismissed by the Court of first instance. First appeal was dismissed by the First Appellate Court and as such present regular second appeal before this Court.

Learned counsel for the appellant submitted that appellant

was victim of fraud and misrepresentation and he was taken by defendant No.1 to Tehsil Office for the purpose of extending time for mortgage and the Courts below have completely ignored this fact while returning the findings.

Learned counsel for the respondents submitted that both the Courts below have already appreciated the evidence and material available on the file. The possession of the suit land is admittedly with defendant No.3. So, the suit filed by the plaintiff was not maintainable. As mere suit for declaration is not maintainable, therefore, the present appeal is also not maintainable as concurrent findings of facts have been recorded by both the Courts below, thereby no substantial question of law involved in this case.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the matter in controversy is short and simple that plaintiff challenged the registered sale deed dated 16.3.2001 on the ground of fraud and misrepresentation. The said plea was taken before both the Courts below, who have already recorded concurrent findings of facts that plaintiff failed to prove the same. 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 appeal cannot be entertained if there is no substantial question of law involved therein.

In the present regular second appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the entire evidence. Hence, the present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908.

In view of above, present regular second appeal stands dismissed.

(Shekher Dhawan)
Judge

March 22, 2016
"DK"