

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 557 of 2012 (O&M)

Date of Decision: 29.04.2016

Satya Devi and Others

... Appellant(s)

Versus

Tara Singh and Another

... 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. Sewa Singh, Advocate
for the appellant(s).

Ms. Harveen Kaur, 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 in a suit for permanent injunction.

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 plaintiffs filed suit for permanent injunction to restrain the defendants from interfering into the possession of the suit property as

well as motor, kotha and shed constructed in the suit property bearing khasra Nos. 193/1 (18-4), 193/5 min (9-11 $\frac{3}{4}$) situated at Sirhind, Tehsil & District Fatehgarh Sahib. As per plaintiffs, plaintiff No.1 is owner in possession to the extent of $\frac{3}{4}$ share and plaintiff No.2 is joint owner in possession to the extent of $\frac{1}{4}$ share. As per plaintiffs, plaintiff No.1 had sold land measuring 6 marlas of land out of khasra No. 193/5(2-18) to one Paramjit Singh. Plaintiffs had installed electric motor & tube-well and also constructed a kotha and shed in khasra No. 193/1. Defendants were trying to interfere in the possession of the plaintiffs. Oral requests of the plaintiffs were of no avail and as such necessity of the suit.

Defendants contested the suit thereby taking the plea that they have been using the suit property since time immemorial. The construction of room/bathroom/veranda/kitchen and temporary chapper belong to the defendants. Infact, plaintiffs are threatening to interfere into possession of the defendants in their suit property, though they have no right and suit deserves dismissal.

On these facts, the Court of first instance settled the issues and the parties were put to trial. The Court of first instance, after recording evidence of parties and appreciation thereof, returned the finding that plaintiffs have proved their case and as such decreed the suit. The first Appellate Court dismissed the appeal. Hence, present regular second appeal before this Court.

Learned counsel for the appellants mainly submitted that both the Courts below have completely ignored the factual position.

Learned counsel for the appellants also submitted that during pendency of the appeal, applications bearing Nos. CM-10536-C-2012 under Order 41 Rule 21 CPC for seeking permission to lead additional evidence and CM-1557-C-2012 under Order 6 Rule 17 CPC for amendment of written statement, were filed and the same are also being taken up for disposal along with the main appeal.

While arguing on application bearing No. CM-10536-C-2012, learned counsel for the appellants submitted that electricity bills (Annexures A to C) and ration cards (Annexures D & E) and photographs (Annexure G) attached with the application, established that in fact, applicant/appellants are in possession of the suit property. By filing application bearing No. CM-1557-C-2012, applicant/appellants sought permission to amend the written statement that that in para No.4 of the written statement, it was wrongly averred as under:-

"4. That para No. 4 of the plaint is wrong and denied. The allegation to the effect that the defendants have no concern or connection with the suit property in any manner are wrong and denied, it is submitted that the defendants has been using the suit property time immemorial. The plaintiffs have constructed one room, bathroom, varanda/kitchen and a temp. chaper/shed/khurli for cattle and a Toka machine, one Hand Pump and so many trees standing in the suit property, which exclusively belong to the defendants.

Applicant/appellants prayed that para No.4 of the written statement be

read as under:

"4. That para No. 4 of the plaint is wrong and denied. The allegation to the effect that the defendants have no concern or connection with the suit property in any manner are wrong and denied, it is submitted that the defendants has been using the suit property time immemorial. The defendants have constructed one room, bathroom, varanda/kitchen and a temp. chaper/shed/khurli for cattle and a Toka machine, one Hand Pump and so many trees standing in the suit property, which exclusively belong to the defendants.

Learned counsel for the respondents, while arguing on the aforementioned applications, submitted that these documents cannot be allowed to be tendered into evidence by way of additional evidence before this Court as the same are not relevant and applicants have not been able to connect these documents with the controversy. The proposed amendment shall change the nature and litigation altogether and the same also deserves dismissal.

Having considered the submissions made by learned counsel for the parties on applications bearing No. CM-10536-C-2012 under Order 41 Rule 21 CPC, this Court is of the considered view that application for leading additional evidence deserves dismissal because even if these documents are taken into consideration, the applicants are not able to connect these documents to the suit property. More so, applicant/defendants were given due opportunity to lead evidence

before the Court below. Such an evidence could be produced at the trial stage although the said evidence was in existence and the applicant/appellants were aware of the existence thereof. Now the said application cannot be allowed being irrelevant and there being no justification to do so.

As regard to application for amendment of written statement, if the proposed amendment is allowed at this stage, the same would change the nature of litigation altogether and shall start *de novo* trial and the said application is also without any merit.

Taking the case otherwise, on the basis of evidence available on the file, both the Courts below have already recorded concurrent findings of facts. Both the Courts below have already returned the findings that plaintiffs have been able to prove that they are owners in possession of the suit property and defendants have no concern therewith. While recording such an observation, the Court below placed reliance upon the pleadings of the parties by way of para No.4 of the written statement, wherein defendants/appellants admitted that construction of one room, bathroom, veranda, kitchen, temporary shed, chapper and khurli for cattle were raised by the plaintiffs and they are in possession of the suit land. Thus, there was no reason for the Courts below to return any finding in favour of defendants/appellant and the said findings do not call for any interference. There is no substantial question of law involved in the present appeal.

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 discussions made 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

April 29, 2016
"DK"