

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1601 of 2016

Date of Decision: 03.05.2016

State of Haryana and Another

... Appellant(s)

Versus

Randhir 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. Kapil Bansal, Deputy Advocate General,
Haryana, for the appellant(s).

Shekher Dhawan, J.

CM-4449-C-2016

In view of the averments made in the application, the same is allowed. Delay of 146 days in filing the appeal stands condoned.

RSA-1601-2016

Present regular second appeal, filed by the State of Haryana against concurrent findings of facts having been recorded by both the Courts below in a suit for mandatory injunction filed by the plaintiffs/respondents.

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 mandatory injunction on the ground that they are owners of 0-7 marlas of land comprised in khewat No. 485, khata No. 568, khasra No. 369 situated within the revenue estate of village Khubru, Tehsil Ganaur, District Sonapat. They got the plot No. 369 demarcated from Local Commissioner in the presence of Junior Engineer of PWD Department. As per report of Local Commissioner, the land of plaintiffs was occupied by PWD (B&R) for laying metalled road. The plaintiffs requested the defendants either to remove the road or to make the payment of the price of the land as per prevailing market rate, but to no effect and as such necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that defendants are legal owners of the land and the road is existing at the spot since the year 1962.

On these facts, the Court of first instance settled the issues and both the parties led their respondent respective evidence. After appreciation of the evidence of both the parties and material available on record, the Court of first instance returned the finding that plaintiffs are owners of the suit property and the same have been illegally encroached upon by the defendants and decreed the suit of the plaintiff. The defendants would either acquire the suit property and pay the compensation to the plaintiffs or hand over the vacant physical possession thereof to the plaintiffs within a period of two months. Defendant-State preferred appeal but remained unsuccessful and

hence, present regular second appeal before this Court.

Learned State counsel, while assailing the concurrent findings of facts recorded by both the Courts below, took the plea that the respondents have filed the present litigation after 50 years. The suit of the plaintiffs is time barred as the road was got constructed by the appellants in the year 1962 for the use of general public and the same is being used as such for the last more than 50 years. This fact was not considered by the Court below which resulted into erroneous findings and the same are liable to be set aside.

Having considered the submissions made by learned counsel for the appellants and having gone through the record of the case, this Court is of the considered view that most of the facts are not disputed that as per revenue record, plaintiffs are owners of the land measuring 0-7 marlas bearing khewat No. 485, khata No. 568, khasra No. 369 situated within the revenue estate of village Khubru, Tehsil Ganaur, District Sonapat. The State through PWD (B&R) had constructed metalled road on the land owned by the plaintiffs without acquiring the same or making any payment of compensation in lieu thereof. The State has neither denied the existence of the road nor had come with the plea that the suit land was acquired in accordance with law at any point of time.

As regard to plea taken by learned State counsel that road is in existence for the last more than 50 years, it does not make out a case for denial of valuable right of plaintiffs to get fair compensation for acquisition of land by the State.

The Court of first instance rightly decreed the suit of the plaintiffs and first Appellate Court affirmed the said findings. The said concurrent findings of facts having been recorded by both the Courts below 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 above, the appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stand dismissed.

(Shekher Dhawan)
Judge

May 03, 2016

"DK"