

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2466 of 2016 (O&M)

Date of Decision: 17.05.2016

Smt. Charan Kaur (now deceased) through LRs.

... Appellant(s)

Versus

Ravel 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. L.M.Gulati, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the legal representatives of plaintiff, against judgment & decree, passed by both the Courts below, whereby suit of the plaintiff was dismissed and first Appellate Court dismissed the appeal on the ground of limitation.

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 plaintiff-Smt. Charan Kaur had filed suit for joint possession of the suit land. Defendants contested the suit on the ground that they are owners of the suit property by

virtue of oral exchange and mutation has already been sanctioned in their favour. Plaintiff-Smt.Charan Kaur had exchanged her land in favour of defendants No.1 & 2 and mutation of exchange was also sanctioned vide mutation No. 2849. Thus, the suit is without any merit and same be dismissed.

On these facts, the Court of first instance settled the issues and thereafter, the case was fixed for plaintiff's evidence. But the plaintiff failed to adduce any evidence despite availing sufficient adjournments and suit of the plaintiff was dismissed under Order 17 Rule 3 CPC on 3.3.2011. Aggrieved thereof, legal representatives of the plaintiff preferred appeal on 21.5.2010 and the first Appellate Court dismissed the appeal being much beyond the period of limitation and in the absence of any justified cause for condonation of delay.

I have heard learned counsel for the appellants and perused record of the case. Learned counsel for the appellants does not make out a case that suit filed by the plaintiff could be decreed by the Court of first instance in absence of any support to the pleadings by way of evidence. Therefore, there is no illegality in the judgment & decree dated 7.8.2014, passed by the first Appellate Court, thereby dismissing the appeal on the ground of limitation. Present appeal is, thus, liable to be dismissed based on the concurrent findings having been recorded by the first Appellate Court and there being no substantial question of law involved therein.

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, *in limine*.

(Shekher Dhawan)
Judge

May 17, 2016

"DK"