

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1734 of 2015 (O&M)

Date of Decision: 25.02.2016

Sarabjit Singh

... Appellant(s)

Versus

Dharam Singh

... 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. Sandeep Arora, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts of both the Courts below in suit for permanent injunction having been filed by the plaintiff, which was dismissed by the Court of first instance. First appeal having been filed by the appellant was also dismissed.

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

Relevant facts for the case that plaintiff has filed suit for permanent injunction for restraining the defendant from dispossessing

him from the residential plot marked as ABCD, which is the suit property. As per plaintiff, he is in possession of the suit property and the said suit land is *shamlat deh* and defendant has no legal right, title or interest with the suit property. Defendant contested the suit taking the plea that the suit property is residential house. Father of the plaintiff never remained in possession of the suit land. Earlier, the property was owned by Joginder Singh son of Harnam Singh who had donated some property in favour of Baba Yakeen Sahib and some property to Gurdwara Sahib and the suit property was also donated to Gian Singh son of Veer Singh i.e. father of the defendant about 45 years back. Father of defendant Gian Singh had expired and after his death, he is in peaceful possession over the suit land. He had obtained electric connection in the residential house and suit is liable to be dismissed. The Court of first instance settled the issues and parties led their respective evidence. The Court of first instance, after appreciating oral and documentary evidence, returned the findings that the plaintiff failed to prove possession over the suit property and as such dismissed the suit. First Appellate Court also dismissed the appeal.

Learned counsel for the appellant submitted that present suit was simplicitor suit for possession based on established possession of the plaintiff over the suit property. Plaintiff has been able to prove his case by leading oral evidence and the Court below has not appreciated the evidence, which gives rise to the erroneous finding and present appeal be accepted.

Having considered the submissions made by learned

counsel for the appellant, this Court is of the considered view that both the Courts below have already appreciated the facts and oral evidence adduced by both the parties. The Courts below have rightly come to the conclusion that onus was lawfully upon the plaintiff to prove his established possession over the suit land and he has failed to do so. To the contrary, defendant has been able to prove his possession over the suit land and for that purpose he has been able to prove his case on the basis of documents Ex.D2 to Ex.D10. At any rate, concurrent findings of facts having been recorded on the basis of oral evidence and the same having been appreciated by both the Courts below, the present appeal is not maintainable as there is no substantial question of law involved in this case. Hence, present regular second appeal is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

February 25, 2016

"DK"