

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1849 of 2015 (O&M)

Date of Decision: 13.05.2016

Pat Ram and Another

... Appellant(s)

Versus

Subhash 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. B.R.Rana, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by plaintiffs, against concurrent findings of facts having been recorded by both the Courts below in a suit for declaration and permanent injunction.

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 filed suit for declaration and permanent injunction of suit land measuring 7 kanals 18 marlas wherein residential house has been constructed and a tubewell is also installed. The said construction is ten years old and plaintiffs are

having 3/4th share i.e. 5 kanals 14 marlas. Plaintiffs raised constructions even in the lesser portion of the land. However, defendants, in collusion with each other, filed an application for partition. On 2.9.2005 & 12.9.2005, *Naksha Be* and *Naksha Jeem* were sanctioned by the Assistant Collector. But, on the basis of that, no possession has been transferred and no proceedings had taken place regarding delivery of possession. The proceedings with regard to partition are illegal and are liable to be set aside. Plaintiffs are entitled to share of the land.

Defendants contested the suit *inter alia* taking the plea that jurisdiction of the Civil Court is barred under Section 153(2) of the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the Act"). In pursuance of the order of Assistant Collector, *Naksha Be* has been prepared. The order passed by the Assistant Collector IIInd Grade, Rewari is legal and valid and appeal of the plaintiffs was also dismissed. So, suit of the plaintiffs is without any merit and same be dismissed.

On these facts, the Court of first instance settled the issues and parties were asked to lead their respective evidence. After leading of respective evidence by the parties and appreciation thereof, the Court of first instance dismissed the suit of the plaintiffs on the ground that they have failed to show that all the orders, having been passed by the revenue authorities, are illegal. More so, plaintiffs preferred appeal before this Court and the orders passed by the Commissioner and Financial Commissioner, Haryana were upheld. The Court of first instance has observed that plaintiffs themselves admitted that partition

proceedings are legal and are binding upon the parties and at the same time they are challenging the partition proceedings. In such like cases, there is a complete bar of jurisdiction under Section 158 of the Act and resultantly, dismissed the suit. First appeal was also dismissed by the first Appellate Court.

Learned counsel for the appellants mainly submitted that the Courts below have not appreciated the material and evidence correctly. There is a complete bar of jurisdiction because the statutory authorities acted in excess of their jurisdiction and the orders passed by the authorities be set aside.

Having considered the submissions made by learned counsel for the appellants and appraisal of the record of the case, this Court is of the considered view that the Courts below have already appreciated the oral and documentary evidence and recorded concurrent findings of facts that suit of the plaintiffs is without any merit because they themselves admitted the partition proceedings to be legal. Plaintiffs have already availed the remedy of appeal and revision against the said order but remained unsuccessful. Undisputedly, Civil Court has got jurisdiction to decide the matter if there is any illegality in the orders passed by the revenue authorities under the Act on the ground of exceeding their jurisdiction. But that is not the case before this Court and the Courts below have already decided the case against the plaintiffs. 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, 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

May 13, 2016

"DK"