

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2196 of 2015

Date of Decision: 25.02.2016

Raj Pal

... Appellant(s)

Versus

Jain 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. Rajesh Lamba, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts of both the Courts below in a suit for possession filed by the plaintiff.

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 appellant/plaintiff had filed suit for possession on the ground that he was in peaceful possession of the suit property and his possession was continuous and uninterrupted over it. He was using the suit land for tethering of cattle, storing

firewood and manure etc., whereas defendants have no right, title or interest in the suit property. They forcibly took away the possession of the suit property from him in the last week of September 2006. Requests made were of no use and as such necessity of the suit. Defendants contested the suit by taking plea that in fact defendant No.1 is owner in possession of the suit property. He has purchased the same from its previous owner for the sale consideration of ₹ 2,40,000/- on 24.11.2006 and was put into possession on the same day. Plaintiff was never in possession of the suit property and suit is liable to the dismissed.

On these facts, the Court of first instance settled the issues and parties were put to trial. After recording of evidence led by both the parties and appreciation thereof, the Court of first instance returned the finding that plaintiff is not in possession of the suit property and dismissed the suit. First appeal filed by the plaintiff was also dismissed and as such present regular second appeal before this Court.

Learned counsel for the appellant submitted that both the Courts below have not appreciated the evidence available on the file. The Courts below have also not appreciated that on the basis of Ex.P1, Ex.P2 & Ex.PA, present appellant as well as Rajinder and one Babu were in possession of the suit property and the said findings recorded by both the Courts below are liable to be reversed and present appeal be accepted.

Having considered the submissions made by learned counsel for the appellant and appraisal of the record, this Court is of the

considered view that the Courts below have already taken a reasonable view that it was for the plaintiff to prove that suit property was owned by him. No document or title qua the suit property was produced by the plaintiff. The Courts below have rightly viewed that even for the sake of arguments, if it is presumed that plaintiff remained in possession of the suit property for some time and at the time of filing of the suit, he being not a person in possession, he is not entitled to get back the possession of the suit property as he is not owner thereof. The said concurrent findings of fact do not call for any interference. There is no substantial question of law involved in the present regular second appeal and hence, the same stands dismissed.

(Shekher Dhawan)
Judge

February 25, 2016

"DK"