

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2245 of 2015 (O&M)

Date of Decision: 16.03.2016

The Nawanshahr Co-operative Sugar Mill Limited

... Appellant(s)

Versus

Parmatma Devi

... 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. Vikas Singh, Advocate
for the appellant(s).

Mr. Amandeep Singh Gill, Advocate
for the caveator/respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the defendant, against the concurrent findings of facts having been recorded by both the Courts below in a suit for permanent injunction, 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 plaintiff had filed a suit for permanent injunction for restraining the defendant from

removing/cutting the trees planted in the land comprised in khata No 1510/1784, 1511/1785, 1517/1797, khasra No. 3286/2591, 2592 (8-0), 3287/2591, 2592, (7-18), 98(17-7) as entered in the copy of jamabandi for the year 2003-04 and as shown in colour "RED" in the site plan, situated in the area of Nawanshahr.

Defendant contested the suit *inter alia* taking the plea that the trees were planted about 20 years back and defendant is in possession of the land comprised in khasra No. 72 from November, 1966 exclusively. Plaintiff has filed the present suit with malafide intention just to confuse the identity of the land.

On these facts, the Court of first instance has settled the issues and the parties were put to trial. The Court of first instance, after appreciating the oral as well as documentary evidence and demarcation report submitted by Malkiat Ram, Kanungo, returned the findings that plaintiff is entitled to seek injunction and decreed the suit. First Appellate Court affirmed the said findings and dismissed the appeal.

Learned counsel for the appellant mainly submitted that demarcation report (Ex.P4) is not in accordance with law as no pucca points were taken by the Local Commissioner so as to demarcate the land and the objections having been raised by the present appellant were not considered by the Courts below and the same resulted into erroneous findings.

While arguing on this point, learned counsel for the respondent submitted that demarcation was done in the presence of both the parties and as per rules. There is no dispute about

demarcation of the land and the trees were found to be on the land belonging to the plaintiff and the Courts below have rightly appreciated the evidence and the present regular second appeal is legally not maintainable and the same is liable to be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of record of the case, this Court is of the considered view that the only point involved in this case was whether the trees in question were on the land belonging to the plaintiff or the defendant. As per demarcation report (Ex.P4), it was prepared and submitted by Malkiat Ram, Kanungo, after visiting the spot in the presence of both the parties. The trees were found to be on the land belonging to the plaintiff. As per report of the Local Commissioner, there was no dispute about location of the property and existence of the trees on the suit property. That way, the Court of first instance has rightly decreed the suit of the plaintiff and first Appellate Court dismissed the appeal. The said concurrent findings of the facts do not call for interference. There is absolutely no substantial question of law involved in this case.

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 above, present regular second appeal stands dismissed.

**(Shekher Dhawan)
Judge**

March 16, 2016
"DK"