

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2531 of 2015 (O&M)

Bir Singh and Another

... Appellant(s)

Versus

Shri Krishan Goshala, Siwani and Another

... Respondent(s)

AND

2. Regular Second Appeal No. 3483 of 2015 (O&M)

M/s Bharti Infratel Limited

... Appellant(s)

Versus

Shri Krishan Goshala, Siwani and Others

... Respondent(s)

Date of Decision : 29.03.2016

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. Vivek Khatri, Advocate
for the appellants (In RSA-2531-2015) and
for respondents No.2 & 3 (In RSA-3483-2015).

Mr. Vivek Sheoran, Advocate
for respondent No. 1 (In RSA-2531-2015 and
RSA-3483-2015).

Mr. Vishal Gupta, Advocate
for respondent No.2 (In RSA-2531-2015) and
for the appellant (In RSA-3483-2015).

Shekher Dhawan, J.

This order of mine shall dispose of two regular second appeals i.e. Regular Second Appeal No. 2531 of 2015, filed by Bir Singh & Mahender Singh, defendants No.2 & 3 and Regular Second Appeal No. 3483 of 2015, filed by M/s Bharti Infratel Limited, defendant No.1 as both the appeals have arisen out of common judgment & decree dated 28.4.2015, passed by learned Additional District Judge, Bhiwani. For the purpose of adjudication, facts are being taken from Regular Second Appeal No. 2531 of 2015.

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-Shri Krishan Goshala, Siwani filed a suit for declaration to the effect that they are owner in possession of plot No. 360 Barka 1425 situated in the revenue estate Khera, Tehsil Siwani, District Bhiwani and defendant No.2-Bir Singh and defendant No.3-Mahender Singh have no concern with the same in any manner. Defendant No.1-M/s Bharti Infratel Limited entered into an agreement with defendants No.2 & 3 for installation of tower, though defendants No.2 & 3 have no right, title or interest in the suit property. As per plaintiff, Kishori Lal son of Ganga Ram was owner of the suit property and he had executed registered Will No. 60 dated 5.7.1960 in favour of plaintiff and as such plaintiff became owner in possession of the suit property after the death of Kishori Lal. Defendants No.2 & 3 have no right, title or interest in the suit property but they entered into an agreement with defendant No.1 for taking on

lease the suit property for installation of tower in the same, which is illegal, null and void and was not binding upon the plaintiff.

Defendant No.1 contested the suit *inter alia* taking the plea that defendants No.2 & 3 are the owners of the suit land where defendant No.1 had installed the tower. The installation of tower is within "lal dora" of village Khera Dhulkot. Defendant No.1 sought legal opinion from counsel, who clarified vide his legal opinion-cum-search report dated 3.11.2007 that defendants No.2 & 3 are owners in possession of the plot in question. Sarpanch of the village has also certified that defendants No.2 & 3 are owners in possession of the suit land. Tehsildar Siwani also certified on 29.10.2007 accordingly and prayed that suit be dismissed.

Defendants No.2 & 3 also filed written statement taking almost similar objections that they are owner in possession of the plot measuring 40x53 situated in the *abadi deh* of village Khera and they had leased out the suit property to defendant No.1 for installation of tower. The same was got verified from Gram Panchayat and Tehsildar Siwani. Defendant No.1 had already installed the tower. However, Sarpanch of the village was inimical against defendants No.2 & 3 and as such present suit was filed on the ground that tower is installed in khasra No. 361. Defendants No.2 & 3 also took the plea that Kishori Lal was never owner in possession of the suit property, rather the same is owned and possessed by defendants No.2 & 3. The Will allegedly executed by Kishori Lal is a forged and fabricated document and prayed that suit be dismissed.

On these facts, issues were framed by the Court of first instance. After recording of evidence led by both the parties and appreciation thereof, the Court of first instance decreed the suit with the finding that plaintiff is owner of the suit property and defendants have no right to install the tower in the suit property and they were directed to remove the tower within two months from the date of passing of decree.

Two separate appeals were filed, one by defendant No.2- Bir Singh & defendant No.3-Mahender Singh and another by defendant No.1-M/s Bharti Infratel Limited. The Court of first appeal dismissed both the appeals and as such present regular second appeals before this Court.

Learned counsel for the appellants (defendants No.2 & 3) submitted that both the Courts below have misappreciated the evidence, which resulted into erroneous findings because the suit property is not bearing any khasra number and defendants No.2 & 3 are the owners thereof and they had entered into an agreement of lease for 20 years for installation of tower by defendant No.1. Before proceeding in that direction, report was received from the Tehsildar and a positive report has come on the file that property in question was belonging to defendants No.2 & 3 and not owned by plaintiff. Learned counsel for defendants No.2 & 3 also submitted that as plaintiff is not in possession of the suit property and mere suit for declaration without seeking possession is not maintainable and the Courts below also ignored this

fact while returning the findings and prayed that both the appeals be accepted. On this point, reliance was placed upon the judgment rendered by Hon'ble the Apex Court in ***Mehar Chand Das v. Lal Babu Siddique and Others 2007(2) RCR (Civil) 628*** and view taken by this Court in cases ***Ballabgarh Co-op. Marketing Society v. Haryana Co-op. Supply & Marketing Federation 2011 (4) PLR 396***, ***Jeeto v. Santa Singh 2006(2) RCR(Civil) 547*** and ***Shinder Pal Singh and Another v. Karam Singh and Others 2009(3) PLR 307***.

Learned counsel for the appellant (defendant No.1) also took the same pleas and prayed that both the appeals be accepted and the findings recorded by the Courts below be set aside.

While arguing on these points, learned counsel for the plaintiff submitted that as per Ex.PW.1/A available on the file, which has been duly proved, plot No. 360 is owned by the plaintiff. The Courts below have already appreciated the evidence available on the file and returned the finding that plaintiff has been able to prove the ownership of the property in question and defendants No.2 & 3 have got no right to lease out the property to defendant No.1. For that purpose, reliance was placed upon the statement of defendant- Mahender Singh (DW.1), who had admitted in his cross-examination that they have no connection with plot No. 360 or 361. Defendant No.1 has also pleaded ignorance about the Will in respect of the suit land having been executed by Kishori Lal. There is no substantial question of law involved in this case and both the appeals are not maintainable and the same be

dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that present controversy involved appreciation of evidence and both the Courts below have already appreciated the entire evidence available on the file and recorded concurrent findings of facts that plaintiff has been able to prove that they are owner in possession of plot No. 360 Barka 1425 situated in the revenue estate Khera, Tehsil Siwani, District Bhiwani. More so, this fact was admitted by defendant-Mahender Singh as DW.1. For that purpose, the Courts below placed reliance upon Ex.PW.1/A i.e. extract of field book to establish that plot No. 360 is owned by Kishori Lal. The area of the plot exactly tallies with the area shown in the plaint i.e. 1425 square feet. The Courts below also returned the findings on the basis evidence available that Will No. 60 dated 5.7.1960 of Kishori Lal was duly executed in favour of the plaintiff and as per extract of field book Ex.PW.1/A, the suit property is owned and possessed by the plaintiff. The Courts below have rightly rejected the contention of the defendants that Sarpanch or Panch of the Gram Panchayat were not examined nor any Tehsildar was examined to prove the verification report submitted by them. Even Mr. Amit Kajla, Advocate was not examined to prove the defendants' version. The concurrent findings of facts having been recorded by both the Courts below do not call for any interference.

As regard to the judgment rendered by the Hon'ble the Apex Court in case ***Mehar Chand Das v. Lal Babu Siddique*** (*supra*)

and view taken by this Court in cases ***Ballabgarh Co-op. Marketing Society v. Haryana Co-op. Supply & Marketing Federation, Jeeto v. Santa Singh 2006 (supra)*** and ***Shinder Pal Singh and Another v. Karam Singh and Others (supra)***, upon which reliance was placed upon by learned counsel for the appellants (defendants No.2 & 3), the same are distinguishable on the facts because in this case plaintiff has been able to establish that they are owner in possession of the suit property. As such, suit for declaration is maintainable. 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, both the regular second appeals stand dismissed.

(Shekher Dhawan)
Judge

March 29, 2016
"DK"