

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3312 of 2015 (O&M)

Date of Decision: 03.05.2016

Gurbax Singh and Another

... Appellant(s)

Versus

Raghubir Singh and Another

... 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. U.K.Agnihotri, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the plaintiffs, against concurrent findings of facts having been recorded by both the Courts below in a suit for 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 set up by the plaintiffs that they are co-sharers in the suit land. They had purchased the land from one Jagmeet Singh on the basis of two registered sale deeds bearing document Nos. 1516 & 1517 which were duly registered and possession of the suit land was also taken from the vendors. As per plaintiffs, they are in exclusive possession of the suit land. Defendants are trying to

interfere into the peaceful possession of the suit land. As per plaintiffs, in the year 2000, defendant No.2 got thumb impressions of plaintiff No.1 on some blank papers. On 1.7.2009, defendants reached on the suit property and tried to take forcible possession thereof. Defendants also claimed to have purchased some portion of the land vide some sale deed which is a forged and fabricated document. The names of Tarlochan Singh, Charan Singh, Nirmal Singh and Sultan Singh sons of Chet Singh have been illegally shown in the khasra girdawari as being in possession of the said land comprised in khasra No. 557. Oral requests of the plaintiffs were of no avail and as such necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that defendant No.1 is owner in possession of the land bearing khasra No. 557 to the extent of ½ share. Defendant No.1 purchased the said land vide registered sale deed dated 23.11.2001 and document No. 1132. Even mutation No. 920 dated 1.2.2002 was also sanctioned in favour of defendant No.1. As per defendants, plaintiffs are neither owner nor in possession of the suit land. Rather the land comprised in khasra Nos. 533, 534, 573 & 558 are owned by the Central Government and plaintiffs have no concern with the same. The names of plaintiffs did not find mention in the column of cultivation with regard to khasra No. 557 and prayed that suit deserves dismissal.

On these facts, the Court of first instance settled the issues and recorded evidence of both the parties. After perusal of the entire record and evidence adduced by the parties, the Court of first instance dismissed the suit of the plaintiffs with the observation that they have

failed to show their possession over the land comprised in khasra No. 557. Plaintiffs preferred first appeal but remained unsuccessful and as such present regular second appeal before this Court.

Learned counsel for the appellants, while assailing the concurrent findings of facts recorded by both the Courts below, submitted that the other persons have been shown to be owners of the suit property and they have already submitted their affidavits in favour of the appellants on 13.7.2009 and on the basis of that, plaintiffs/appellants are in exclusive possession of the suit land but the Courts below have completely ignored these facts while recording the findings of facts, which are liable to be set aside and appeal be accepted.

Having considered the submissions made by learned counsel for the appellants and perusal of the record of the case, this Court is of the considered view that plaintiffs had filed suit for permanent injunction on the ground that they are owners having exclusive possession of the suit property, whereas defendants have got no right or title in the suit land. Defendants have asserted their claim that they had purchased the suit property bearing khasra No. 557 vide registered sale deed and mutation No. 920 has already been sanctioned in their favour. Both the Courts below have already appreciated the evidence including documentary evidence by way of revenue record showing joint possession of respondents as well on khasra No. 557 and on the basis of that, concurrent findings of facts have been recorded. Appellants have not been able to produce any documentary evidence

showing exclusive possession of khasra No. 557. Merely taking the plea that other persons who are in possession of the suit property had submitted affidavits in their favour on 13.7.2009 without there being any corresponding entry in the revenue record, does not make out the case of exclusive possession of the present appellants. The said concurrent findings of facts having been recorded by both the Courts below do not call for any interference and no substantial question of law arises 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, the appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stand dismissed.

(Shekher Dhawan)
Judge

May 03, 2016

"DK"