

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3835 of 2015 (O&M)

Date of Decision: 25.04.2016

Santosh Devi

... Appellant(s)

Versus

Ram Swarup 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. Sudhanshu Makkar, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present appeal, filed by defendant No.10-Santosh Devi, is against concurrent findings of facts having been recorded by both the Courts below, whereby the suit filed by plaintiffs for declaration and permanent injunction was decreed and the first Appellate Court dismissed the appeal.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts for the purpose of decision of the present appeal that plaintiffs had filed suit for declaration that they are owners in possession of the suit land in equal share and the defendants have got no right with the suit land. As per plaintiffs, they had acquired occupancy rights under Sections 5 & 8 of the Punjab Tenancy Act, 1887

(hereinafter referred to as "the Tenancy Act") by virtue of Section 2(F) read with Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as "the Occupancy Act") and they are entitled to incorporate their names in the revenue record as owners in possession. Plaintiffs also sought relief of permanent injunction, thereby restraining the defendants from taking forcible possession of the suit land. As per plaintiffs, suit land was owned by predecessors-in-interest of defendants No.1 to 7, who entered into an agreement of perpetual tenancy in favour of predecessor-in-interest of plaintiffs in respect of suit land from generation to generation on payment of nominal rent of 33 paise as lagan and with the assurance that plaintiffs would never be ejected from the suit land. Plaintiffs had been inducted as tenants about 50 years back and at that time, the suit land was barren, uncultivable, unproductive and full of thorny bushes. Plaintiffs made the suit land cultivable and they are cultivating the suit land continuously. Plaintiffs acquired occupancy rights in the suit land under Sections 5 & 8 of the Tenancy Act by virtue of by virtue of Section 2(F) read with Section 3 of the Occupancy Act.

Defendants had contested the suit *inter alia* taking the plea that the suit land was owned by defendants No.1 to 8 to the extent of 8/9 share. Defendants No. 4 to 8 sold their share to their brothers i.e. defendants No.2 & 3. Defendants No.9 and 10 are bonafide purchaser with consideration and without notice. Mutation No. 1105 dated 9.1.2008 has already been sanctioned on the basis of sale deed.

Defendants prayed for dismissal of the suit.

On these facts, the Court of first instance settled the issues and parties were asked to lead their respective evidence. The Court of first instance, after appreciating the entire evidence, returned the findings that plaintiffs are entitled to declaration to the effect that they have become owners of the suit land and also entitled to get their names incorporated in the revenue record and defendants are restrained from alienating the suit land. First Appellate Court affirmed the said findings. Hence, present regular second appeal, having been filed by defendant No.10-Santosh Devi, before this Court.

Learned counsel for the appellant submitted that both the Courts below have completely ignored the main facts because plaintiffs had taken the plea that their case is of Section 8 of the Tenancy Act and not under Section 5 *ibid*. Both the Courts below also completely ignored the fact that appellant i.e. defendant No.10 is the bonafide purchaser of the suit land with consideration and without notice. Even mutation No. 1105 dated 9.1.2008 was also sanctioned on the basis of registered sale deed. Prayer has been made that present appeal be accepted and judgments & decrees passed by both the Courts below be set aside.

Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that all these pleas were raised before both the Courts below, who have already recorded concurrent findings of facts that plaintiffs have been able to prove their case so as to seek declaration that they have acquired

occupancy rights under Sections 5 & 8 of the Tenancy Act. They were inducted as tenants on the basis of nominal rent of 33 paise and with the assurance that they would never be ejected from the suit land. The predecessor-in-interest of the plaintiffs and subsequently the plaintiffs are in possession of the suit land as tenant from the last 50 years and they have been cultivating the suit land continuously without any interference. 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 discussions made above, present appeals 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

April 25, 2016

"DK"