

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5292 of 2015 (O&M)

Date of Decision: 15.03.2016

Saroj Bala

... Appellant(s)

Versus

Gopal Dass

... 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. Harkesh Manuja, Advocate
for the appellant(s).

Mr. Chand Ram Olla, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the appellant/defendant, is against concurrent findings of facts having been recorded by both the Courts below in a suit for possession, filed by the respondent/plaintiff. The civil suit was decreed by the Court of first instance and appeal filed before the first Appellate Court was dismissed.

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 plaintiff-Gopal Dass had filed civil suit against his daughter Saroj Bala, who is appellant before this Court. As per plaintiff, he is owner of House No. 169, which is the property in dispute. As per

plaintiff, defendant was not the owner of said house. But defendant used to reside therein. Later on, plaintiff was thrown out of the house in question. Although defendant has no locus standi to do so and as such, suit for possession.

Defendant contested the suit *inter alia* taking the plea that the plot was purchased by plaintiff out of the funds of the defendant and she had constructed a *kuchha* house thereon. Subsequently, in the year 2010, defendant spent a sum of ₹ 4,00,000/- and constructed a *pucca* house on the plot in question and she was the owner of the same. However, in the month of January, 2013, brother of the defendant, namely Mahinder by playing fraud upon the plaintiff and by taking undue benefit of his mental condition, took him away to his house with malafide intentions to grab the plot in dispute and the house constructed thereon. There was no question of ejectment of the plaintiff from the house in question and prayed that suit be dismissed.

The Court of first instance settled the issues on the basis pleadings and the parties were asked to lead their respective evidence. The Court of first instance, after appreciating the entire material and evidence, available on the file, returned the findings that plaintiff has been able to prove that he has purchased the plot from Gopi Ram on 7.4.1993 for a sale consideration of ₹ 16,000/- and the construction of house was raised by plaintiff himself as defendant was student of Class 10 in the year 1993. It was not possible for a child studying in Class 10 to arrange a hefty amount of ₹ 16,000/- and decreed the suit of plaintiff, whereas possession of the defendant was found to be

unauthorized. First appeal filed by the defendant was dismissed by the First Appellate Court and as such present regular second appeal before this Court.

Learned counsel for the appellant mainly submitted that it has come in the cross-examination of PW.1-Gopal Dass (plaintiff) himself that he had neither performed marriage of Saroj Bala nor had spent any amount on her marriage. He was not in a position to tell when Saroj Bala (appellant) purchased the plot and the said fact could be disclosed by her. More so, Gopal Dass admitted that he was accompanied by his son Mahinder on that day and he had filed a suit and even executed Will dated 11.5.1992 on the asking of his son. But the Courts below completely ignored this fact. The entire cross-examination of PW.1 Gopal Dass itself established that plot in question was purchased by present appellant Saroj Bala and construction was raised thereon by her and later on present litigation was at the instance of Mahinder, son of respondent. But the Courts below completely ignored this fact and as such findings returned by both the Courts below be set aside and present appeal be accepted.

Learned counsel for the respondents submitted that during pendency of the present regular second appeal, possession has already been taken by the respondent in the month of January, 2016 and as such present appeal has already become infructuous. More so, the property in question was purchased by the respondent and he was its owner. Concurrent findings of facts on the basis of evidence available on file that appellant-Saroj Bala was student of Class 10 and she was

not in a position to purchase the plot for a hefty amount of ₹ 16,000/- in the year 1993. There is nothing on the file that the construction of house was raised by the present appellant. The said concurrent findings of facts do not call for any interference and present appeal be dismissed.

Having considered the submissions made by learned counsel for the parties and having gone through the material and evidence available on the file, this Court is of the considered view that the entire material and evidence has already been looked into and appreciated by both the Courts below and returned concurrent findings of facts. The same do not call for any interference. More so, if the entire statement of PW.1 Gopal Dass is taken into consideration, he has clearly mentioned that the plot was purchased by him and construction of the house was raised by him. The Courts below have correctly recorded the findings that appellant Saroj Bala was not having sufficient amount at the time of purchase of plot in question and construction of house as she was just 16 years of age. Relations between the parties were cordial at that time but later on the relation between father and daughter became strained. Otherwise, the ownership of plaintiff is proved on the basis of sale deed Ex.P1.

In view of above, present regular second appeal is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

March 15, 2016

"DK"