

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5508 of 2015 (O&M)

Date of Decision: 25.04.2016

Guljari Lal

... Appellant(s)

Versus

Jagdish Ram 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. Sumit Sangwan, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present appeal having been filed by the plaintiff/appellant, whereby civil suit filed by him was dismissed by the Court of first instance and the first appeal was dismissed by the first Appellate Court.

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 had filed a suit for permanent injunction on the ground that he is owner in possession of tube-well and was using the same peacefully, whereas defendants are strong headed persons and

they wanted to install another tube-well in order to fail the tube-well of the plaintiff and remove the water therefrom. As such, necessity of the suit before the Court of first instance.

Defendants contested the suit on the ground that tube-well was set up by father of defendant No.3, namely Hawa Singh and the electric connection is in the name of plaintiff. Defendant No.3 denied that he wanted to install and construct the other tube-well in the suit land forcibly. Defendants No.2 to 7 being owners of the suit land, were entitled to deal with the same in any manner as they liked and plaintiff was not entitled to raise any objection with regard to use of land as they are lawful owners. Defendants No.4 to 7 filed separate written statement that plaintiff had filed civil suit bearing No. 185 of 2001 and the same was decided on 12.9.2009, wherein it was held that plaintiff would use the tube-well for irrigation as the electric connection is in his name and the said tube-well has been installed in khasra No. 49//21/1. The defendants can use the land as per their own wish and prayed that suit be dismissed.

On these facts, issues were settled by the Court of first instance and parties were asked to lead their respective evidence. The Court of first instance, after appreciating the entire evidence, returned the findings that earlier, such a matter had been decided in Civil Suit No. 185 of 2001 and first appeal was dismissed by the first Appellate Court and the matter had attained finality and plaintiff has got no right to interfere into possession of the suit land measuring 1 kanal 10 marlas. The said findings were affirmed by the first Appellate Court.

Learned counsel for the appellant submitted that the Courts below ignored the fact that within the radius of 100 meters, second tube-well cannot be installed. More so, tube-well of the appellant is existing prior in time and infact the defendants wanted to install second tube-well which would cause irreparable loss to the appellant and the Courts below completely ignored these facts. The said findings are liable to be reversed by accepting the appeal and suit of the plaintiff be decreed.

Having considered the submissions made by learned counsel for the appellant and having gone through the record of the case, this Court is of the considered view that both the Courts below have already appreciated the material and evidence available on the file and concurrent findings of facts have been recorded. There is absolutely no substantial question of law involved in the present appeal. The Courts below have already returned the findings that matter in controversy has already been decided and principles of *res judicata* are applicable and as such, the suit, filed by the plaintiff/appellant, is not maintainable.

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 appeal 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"