

**In the High Court of Punjab and Haryana, at Chandigarh**

**Regular Second Appeal No. 5807 of 2015 (O&M)**

**Date of Decision: 25.05.2016**

Sadik

... Appellant(s)

Versus

Dharmbir and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | <b>Yes</b> |
| 2  | To be referred to reporters or not?                                   |            |
| 3  | Whether the judgment should be reported in the Digest?                | <b>Yes</b> |

Present: Mr. Sant Lal Barwala, Advocate  
for the appellant(s).

**Shekher Dhawan, J.**

Present regular second appeal, filed by the plaintiff, against the concurrent findings of facts having been recorded by the Courts below in suit for possession, which was dismissed and 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 of the case as set up by the plaintiff that he had filed suit for possession on the ground that he had purchased plot in dispute about 20 years back from Molar son of Shri Ram and is owner in possession of the same. Adjoining plot No. 593 owned by the defendants and they

started construction work on the said plot. Plaintiff moved an application before Naib Tehsildar, Barwala for demarcation and on 2.3.2008, Girdawar Halqua visited the spot and demarcated the said plot and submitted the report that defendants have illegally occupied certain area of the suit property and raised wall over the same. Defendants initially promised to vacate the illegal possession but later on failed to do so. Requests made to the defendants were of no avail and as such necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that they have not encroached upon the plot of the petitioner in any manner. The demarcation report clearly shows that there is no encroachment over plot No. 592. The demarcation was got done by the competent person and the suit is without any merit and the same be dismissed.

On these facts, the following issues were settled by the Court of first instance:

- “1. *Whether the plaintiff is entitled to a decree for possession of suit property being owner? OPP*
2. *Whether the plaintiff is entitled to decree for permanent injunction restraining the defendants from raising construction over suit property? OPP*
3. *Whether the suit is not maintainable? OPD*
4. *Whether the plaintiff has no cause of action to file the suit? OPD*
5. *Whether the civil court has no jurisdiction to try the suit? OPD*
6. *Relief.”*

After leading of the evidence by the parties and appreciation thereof, the Court of first instance returned the findings that plaintiff has failed to prove that defendants had encroached upon the suit land and the suit was dismissed. First appeal was dismissed by the first Appellate Court and as such present regular second appeal before this Court.

At the time of arguments, learned counsel for the appellant submitted that the Courts below have recorded the findings of facts on the basis of demarcation report but author of the demarcation report was not examined in the Court. Plaintiff has been able to produce on the file sale deed (Ex.P1) and on the basis of that he has been able to prove his possession over plot No. 592, part of which has been encroached upon by the defendants. But the Courts below failed to appreciate the same. So, the said findings, having been recorded by the Courts below, be set aside and present appeal be accepted.

Having considered the submissions made by learned counsel for the appellant and appraisal of the record of the case and grounds of appeal, this Court is of the considered view that the Courts below have rightly recorded findings of fact that onus was lawfully upon the plaintiff to prove that defendants have encroached upon plot No. 592, which he has failed to prove on the file. More so, it has come on the file that demarcation was done on the spot, which has not been denied by either of the parties. The demarcation report never indicated any encroachment on plot No. 592 by the defendant. That was sufficient to rebut the contentions of the plaintiff. Primarily, it was the responsibility of the plaintiff to prove that infact defendants had made encroachment on plot No. 592, which he failed to do

so and both the Courts below recorded concurrent findings of facts on the point.

In *Deity Pattabhiramaswami v. S. Hanyamaya and Others AIR 1959 SC 57*, the Hon'ble Apex Court observed that the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of findings of fact. 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*, the Hon'ble Apex Court has taken a view that second appeal cannot be entertained if there is no substantial question of law involved therein.

Accordingly, 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**

**May 25, 2016**  
"DK"