

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 6003 of 2015

Date of Decision: 01.04.2016

Chanan Singh

... Appellant(s)

Versus

Pritam Singh

... 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. Atul Jain, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts having been recorded by both the Courts below, whereby suit filed by the plaintiff for issuance of decree of permanent injunction for restraining the defendant from interfering into peaceful and lawful possession of the plaintiff over the land measuring 5 kanals 2 marlas was decreed and the Court of first appeal 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 that plaintiff had filed a suit for

permanent injunction for restraining the defendant from interfering into peaceful possession of the plaintiff over the suit land. As per plaintiff, he is in cultivating possession of the suit land but the defendant started interfering into his possession without any right. As such, necessity of the suit.

Defendant contested the suit *inter alia* taking the plea that in fact possession over the suit land is of the defendant from the last more than 25 years and plaintiff never remained in possession of the suit land and prayed that suit be dismissed.

On these facts, the Court of first instance settled the issues and parties were put to trial. After recording evidence of the parties and appreciation thereof, the Court of first instance returned the finding that plaintiff has been able to prove his possession and as such suit of plaintiff was decreed. The first appeal, filed by defendant/appellant, was dismissed by the first Appellate Court and as such present appeal before this Court.

Learned counsel for the appellant submitted that both the Courts below have not appreciated the correct facts, whereas in fact the land in dispute measuring 5 kanals 4 malras is out of the total land purchased by Amar Singh, Nand Singh and Pritam Singh. No partition had taken place between the share holders who are relatives. More so, sale deed dated 8.1.1973 (Ex.D9) has been completely ignored by the Court of first instance, which is a registered document. The possession of Nand Singh, who is father of the defendant/appellant, was duly recorded in jamabandi (Ex.P1) for the year 2006-07 and in khasra

girdawari (Ex.P2) for the years 2007 to 2009. More so, the earlier judgment & decree (Ex.D7 & Ex.D8) operate *res judicata* against the plaintiff. But the Court below has not considered this aspect and recorded erroneous findings and the same are liable to be set aside; appeal be accepted and suit of the plaintiff be dismissed.

Having considered the submissions made by learned counsel for the appellant and having gone through the case file, this Court is of the considered view that both the Courts below have already appreciated the entire oral and documentary evidence and returned the findings of facts that plaintiff has been able to prove his ownership and possession over the suit land. The Court below considered jamabandi for the year 2006-07 (Ex.P1) and khasra girdawari (Ex.P2) showing that Pritam Singh and Nand Singh are joint owners in possession of the disputed property. However, Nand Singh, who is father of present appellant, sold his $\frac{1}{2}$ share comprising of area measuring 2 kanals 11 marlas, out of total land measuring 5 kanals 2 marlas of khasra No. 19//21/2, 24/1/3, 1/4 to Gurwinder Singh. The said Gurwinder Singh exchanged $\frac{1}{3}^{\text{rd}}$ share with Pritam Singh, plaintiff. In view of that, plaintiff transferred his property situated in Aliwal village in favour of Gurwinder Singh by way of exchange and copy of exchange deed dated 17.3.2008 is Ex.P3. The entire revenue record and oral evidence available on the file certainly reflects that plaintiff is owner in possession of the suit property. The said findings were affirmed by the first Appellate Court and the concurrent findings of facts having been

recorded by both the courts below do not call for any interference. Thus, as per the provisions of Section 100 CPC, present appeal is not maintainable. There is absolutely no substantial question of law involved in the present case.

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 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 1, 2016

"DK"