

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3347 of 2014 (O&M)

Date of Decision: 05.04.2016

Raj Kaur alias Raju and Another

... Appellant(s)

Versus

Jagdish Lal and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

- | | | |
|----|---|------------|
| 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. Baldev Raj Mahajan, Senior Advocate
with Mr. Akhilesh Vyas, Advocate
for the appellant(s).

Shekher Dhawan, J.

CR-3679-C-2016

Civil Misc. Application is allowed.

Documents (Annexures A1 & A2) are taken on record.

RSA-3347-2014

Present regular second appeal against concurrent findings of facts having been recorded by both the Courts below, whereby suit for declaration, filed by the appellants/plaintiffs No.4 & 6 along with other proforma respondents No.10 to 13 herein that they became

owners in possession of the suit land and consequential relief for permanent injunction, was dismissed and first appeal, filed by plaintiffs No.4 & 6 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 plaintiffs had filed a suit for declaration that they had become owners of the suit property. As per plaintiffs, Harbans Kaur wife of Wassan Singh and Anant Kaur wife of Munsha Singh were the owners in possession of land measuring 13 kanals 10 marlas. They had mortgaged the suit property in favour of Labh Kaur for a sum of ₹ 700/- for a period of four years vide mortgage deed dated 16.1.1955. Lateron Harbans Kaur sold the entire share in the property to Sukhdev Singh, Jatinder Singh and Jitto vide registered sale deed dated 8.7.2012. Anant Kaur did not sell her share and sale deed executed by Harbans Kaur was illegal, null and void qua the rights of the plaintiffs. The suit property was to be redeemed within four years, which expired on 5.1.1959 but the same was not redeemed even after the period of 30 years.

Defendants contested the suit *inter alia* taking the plea that in fact Harbans Kaur had sold the suit property along with some other land vide registered sale deed dated 8.7.1972 in favour of Sukhdev Singh, Jatinder Singh and Jitto and thereafter suit property came to the share of the defendants in family partition. The property was got redeemed from Labh Kaur in the year 1985. The original mortgage

documents were destroyed and mutation No. 33575 was also sanctioned regarding the redemption of the suit property from Labh Kaur and she has no right, title or interest in the suit property.

On these facts, the Court of first instance settled the issues and parties were put to trial. The Court of first instance, as per the statements suffered by plaintiffs No.1 to 5, dismissed the suit as withdrawn qua them. However, plaintiff No.6, namely Raj Kaur alias Raju, was claiming her title over the suit property on the basis of agreement dated 23.4.2007. The Court of first instance also observed that plaintiff No.6 could not produce any original document on record and she had neither produced even the original mortgage deed dated 16.1.1955 nor any agreement dated 23.4.2007 and dismissed the suit. The first Appellate Court dismissed the appeal being without any merit.

Learned senior counsel, representing the appellants, submitted that it has been proved on the file that the property, which was mortgaged with Labh Kaur on 16.1.1955, was not legally redeemed. Even the deed of redemption is not a legal and valid document. Learned counsel for the appellants also submitted that mere statement of plaintiffs No.1 to 5 could not be considered as correct because the land ought to have been redeemed by legal implications i.e. the receipt should have been got registered and the Courts below have not considered these facts.

Having considered the submissions made by learned senior counsel for the appellants and the facts of the case, this Court is of the considered view that both the Courts below have already recorded

concurrent findings of facts after appreciating the entire oral and documentary evidence available on the file. The said concurrent findings of facts do not call for any interference by this Court. 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 stand dismissed.

(Shekher Dhawan)
Judge

April 5, 2016
"DK"