

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 6217 of 2015 (O&M)

Date of Decision: 25.02.2016

Giani Bai and Another

... Appellant(s)

Versus

Harish Kumar 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. A.G.S.Dhillon, Advocate
for the appellant(s)

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts recorded by both the Courts below in a suit for declaration and permanent injunction having been filed by the plaintiff/respondents.

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 plaintiffs Harish Kumar and others had filed suit for declaration that they are owner of house in question and also sought relief of permanent injunction for restraining the defendants from making any alteration or addition and raising any

construction, parting with possession of the house in question. Defendants contested the suit thereby admitting that house in question was allotted to Wadhwa Ram son of Pallu Ram, who has already died. After the death of Wadhwa Ram, his widow Jai Wanti got the conveyance deed in her own name. Defendants took the plea that on the one hand, plaintiffs had been claiming the decree dated 22.11.1991 in favour of Harish Kumar and at the same time, they are alleging that Gobind Ram was sole owner of the suit property as per succession, whereas plaintiffs have no right, title or interest with the suit property. As per defendants, they are tenants of Jai Wanti and plaintiffs were estopped from filing the suit by their act and conduct and as such present suit be dismissed.

On these facts, the Court of first instance settled the issues and parties were put to trial. The Court of first instance, after recording of evidence and appreciation thereof, returned the findings that plaintiffs were entitled to declaration and injunction and decreed the suit in their favour. Defendants preferred first appeal and remained unsuccessful and as such present regular second appeal before this Court.

Learned counsel for the appellants mainly submitted that plaintiffs had earlier filed an eviction petition in the year 1993, wherein it was held that there was no relationship of landlord and tenant between the parties. More so, Harish Kumar has also filed civil suit titled "Harish Kumar & Others v. Giani Bai" for possession of the suit property and the same was dismissed vide judgment dated 11.12.2007, wherein

it was held that Harish Kumar failed to prove his exclusive ownership over the suit property. That way issue of ownership of the suit property has already been decided against the plaintiffs in the said litigation and the said order was not challenged and the same attained finality. The Courts below completely ignored this fact while recording findings of facts and as such, same are liable to be set aside and present regular second appeal be accepted.

Having considered the submissions made by learned counsel for the appellants, this Court is of the considered view that the Courts below have rightly returned the findings that present appellants do not claim the title to the property in dispute. It is settled law that Rent Controller is not competent to decide the question of title of the property and can only decide the relationship of landlord and tenant and as such the said findings could not be operated as *res judicata*. The Court below has also taken the correct view that as far as plea of *res judicata* on the basis of judgment dated 11.12.2007, such a plea of *res judicata* was neither pleaded nor proved. While taking plea of *res judicata* such a fact has to be pleaded and proved by producing copy of pleadings of earlier litigation but that has not been done in the present case. More so, that dispute was not between the parties to the litigation and that way cannot operate as *res judicata* and the Court below has already taken the correct view. That being the case, concurrent findings of facts have been recorded by both the Courts below.

There is no substantial question of law involved in the present regular second appeal and as such the same is not maintainable

under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case ***Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs., JT 2001(2) SC 407.***

In view of the above, the present regular second appeal stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

February 25, 2016

"DK"