

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 6279 of 2015 (O&M)

Date of Decision: 11.04.2016

Baljeet and Others

... Appellant(s)

Versus

Ajmer 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. Sunil Kumar Bhardwaj, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present appeal is against the concurrent findings of facts having been recorded by both the Courts below in a suit for permanent injunction having been filed by the plaintiffs.

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 filed suit for permanent injunction on the ground that they are owners in possession of the suit land. Earlier, Balraj Singh had purchased the land vide sale deeds dated 8.6.1989 and 9.10.1989 from Jai Singh son of Raj Singh.

Jai Singh and Balraj Singh had already expired and their legal heirs have been arrayed in the suit. In the said sale deeds, Jai Singh was shown to be the transferor of that suit land and also delivered possession to the vendee, despite that the land in dispute is in cultivating possession of the plaintiffs. Plaintiffs were apprehending threats to their possession and as such necessity of the suit.

Defendants No. 6 & 8 to 11 failed to appear despite service and were proceeded against *ex parte*, whereas defendant No.7 appeared in person and sought adjournment for filing of written statement and later on absented himself from the proceedings of the Court and was proceeded against *ex parte* vide order dated 4.6.2010. Defendants No.1 to 5 failed to file written statement despite availing adjournments for the said purpose and as such their defence was struck off vide order dated 4.6.2010.

The Court of first instance, on these facts, settled the issues and parties were put to trial. The Court of first instance, after recording evidence of the parties and appreciating the material and evidence available on the file, returned the findings of fact that plaintiffs failed to prove their exclusive possession over the land in dispute and as such they are not entitled to possession. First Appellate Court dismissed the appeal and as such present regular second appeal before this Court.

Learned counsel for the appellants submitted that the Courts below failed to appreciate that there was ample evidence available on the file by way of report of Halqa Girdawar which established the exclusive possession of the appellants over the suit land

and as such both the judgments & decrees are liable to be set aside. More so, as per proposition of law, a co-sharer cannot sell specific number of land out of the joint holding and could not give specific number of the land to the vendee and the vendee of a co-sharer can claim possession of the land only after partition of the land.

Learned counsel for the appellants also submitted that the Courts below did not consider the application for additional evidence dated 26.11.2014 thereby making request for producing on record jamabandies for the years 1952-53, 1979-80 and khasra girdawaris since *Asadi* 1991 to *Asadi* 2001; as such present appeal be accepted; judgments & decrees, passed by both the Courts below be set aside and suit of the plaintiffs be decreed.

Having considered the submissions made by learned counsel for the appellants and appraisal of the record, this Court is of the considered view that present appeal is against concurrent findings of facts having been recorded by both the Courts below and there is no substantial question of law in the present appeal. The Courts below have already appreciated the entire oral and documentary evidence and returned the findings of the facts that plaintiffs have not been able to prove their exclusive possession over the suit land and as such, they are not entitled to injunction. The first Appellate Court affirmed the same.

As regard to plea taken by learned counsel for the appellants that application for additional evidence has not been decided by the Court below, the same is factually incorrect. As per paragraph No.18 of the judgment, the first Appellate Court has already taken into

consideration the documents relating to khasra girdawari for the years 1996-2001 by way of additional evidence and also produced the latest revenue record including latest jamabandi and returned the findings and it cannot be said that application for additional evidence was not considered by the Court below.

In view of above, present appeal is against the concurrent findings of the facts, recorded by both the Courts below and there is no substantial question of law involved therein.

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 appeals 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 11, 2016
"DK"