

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 832 of 2015 (O&M)

Date of Decision: 17.05.2016

Nirmal Kaur and Others

... Appellant(s)

Versus

Raj Kumar

... 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. K.S.Kahlon, Advocate
for the appellant(s).

Shekher Dhawan, J.

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

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 had filed suit for permanent injunction, thereby restraining the defendant from alienating the suit property in any manner more than his share or making any material alteration in the suit property on the ground that plaintiffs are

in possession of the suit property. Repeated requests were made to the defendant but to no avail and as such necessity of the suit.

Defendant contested the suit *inter alia* taking the plea that he is owner in possession of the suit property on the basis of registered sale deed dated 24.12.2001. The possession of suit land is with the defendant and there is no ground for grant of relief sought for by the plaintiffs and prayed that suit be dismissed.

On these facts, the Court of first instance settled the issues and parties were asked to lead their respective evidence. After appreciating the evidence, the Court of first instance dismissed the suit on the ground that plaintiffs have failed to prove their possession over the suit land. Rather the defendant is in possession thereof. First Appellate Court affirmed the said findings and dismissed the appeal and as such present regular second appeal before this Court.

Learned counsel for the appellants submitted that the Courts below have not appreciated the evidence available on the file because it has come on record on the basis of oral evidence that suit property is owned and possessed by the plaintiffs and as such findings recorded by both the Courts below are liable to be set aside.

Having considered the submissions made by learned counsel for the appellants and appraisal of record of the case, this Court is of the considered view that the contention of appellants have already been discussed at length before the Courts below. After appreciating the entire oral and documentary evidence, available on the file, the Courts below have recorded concurrent findings of facts that plaintiffs

failed to prove their case that they are owners in possession of the suit property. Rather, it is otherwise. The said findings of facts do not call for any interference by this Court and there being no involvement of substantial question of law in the present appeal.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami v. S. Hanyamaya 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, 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 17, 2016
"DK"