

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5014 of 2014 (O&M)

Date of Decision: 31.03.2016

Jagdish Kumar

... Appellant(s)

Versus

Ramanjit Singh 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. Subhash Chand, Advocate
for the appellant(s).

Mr. Jasminder Singh Thind, Advocate
for caveator/respondent No.3.

Shekher Dhawan, J.

CM-11791-C-2014

For the reasons stated in the application, the same is allowed. Delay of 7 days in filing the appeal stands condoned.

RSA-5014-2014

Present regular second appeal has been filed against concurrent findings of facts having been recorded by both the Courts below in a suit for declaration, which was dismissed by the Court of first

instance and the first Appellate Court 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/appellant and his brother Hari Mohan filed a suit for mandatory injunction seeking directions to the defendants to deliver possession of the area of 600 square yards, other than the area of 1500 square yards, which was purchased by defendant No.3-Baldev Singh in auction, bearing khasra No. 2268/592 situated at Batala Road, Post Office Khanna Nagar, Amritsar as shown in the site plan. As per plaintiffs, possession of the suit land has been taken by defendant No.3 illegally in connivance with other defendants. Plaintiffs also sought consequential relief of permanent injunction for restraining the defendants not to demolish any part of building/structure on the area of 600 square yards. As per plaintiffs, they had taken loan from Bank of Baroda and mortgaged 3 kanals of property i.e. 1500 square yards out of 5 kanals of land bearing khasra No. 2268/592. The auction was conducted by defendant No.5 as Court Auctioneer. Defendant No.1 was tenant of the plaintiffs in remaining 2 kanals of property bearing khasra No. 2268/592 on payment of rent of ₹ 3,800/- per month each i.e. half share was taken from plaintiff No.1 and remaining half from plaintiff No.2 and rent notes were executed in that respect. The terms & conditions were reduced into writing vide rent note dated 28.12.1999. Similarly, defendant No.2 was tenant in remaining half portion of the said property on payment of

rent of ₹ 2,250/- per month under plaintiff No.2 and executed rent notes dated 5.10.1998. Defendant No.2 had been regularly making payment of rent, whereas defendant No.1 was making default in payment of rent.

As per plaintiffs, defendant No.5 had no right to auction the property more than 3 kanals which had not been mortgaged with defendant No.4-bank. Plaintiffs were in possession of the entire property including the property which was mortgaged with the bank. However, defendants No. 3 to 5, under the orders of Debt Recovery Tribunal, Jaipur and with the intention to grab the land more than 3 kanals of the property, threatened to dispossess the plaintiffs from the said portion for which they have got no right to do so. Defendant no.1 delivered possession of the portion/shed in his occupation as tenant during the pendency of suit to defendant No.3 through attorney Ranbir Singh.

Defendant No.1 contested the suit that plaintiffs had not come to the Court with clean hands. Defendant No.1 used to carry on business of manufacturing knitted fabrics and had taken on rent one shed measuring 85'x26' on the ground floor along with electric connection installed therein bearing khasra No. 2268/592 situated at Batala Road, Amritsar at the rate of ₹ 7,600/- from the plaintiffs and the same was on the basis of oral tenancy along with delivery of possession. The terms & conditions of tenancy were reduced into writing vide rent note dated 28.12.1999. Defendant No.1 also filed

counter claim that he was tenant in the portion shown as blue in the site plan on payment of rent at the rate of ₹ 3,800/- per month each i.e. half share and half share, in all ₹ 7,600/- per month vide two rent notes dated 28.12.1999 and defendants No.3 to 5 were trying to take forcible physical possession of the tenancy units.

Learned counsel for defendant No.2 made a statement that suit against defendant No.2 had become infructuous as possession of the suit property had already been taken by defendants No.4 & 5 on 19.8.2000.

Defendant No. 3 contested the suit on the ground that jurisdiction of the Civil Court is barred as per the provisions of Section 18 of the Debt Dues to Banks and Financial Institutions Act, 1993. As per defendant No.3, land measuring more than 3 kanals, owned by M/s Jagdish Dying & Printing Mills, was mortgaged with the Bank of Baroda for loan sanctioned. The entire property, owned by the said firm, was sold in open auction and the same was purchased by defendant No.3 in execution of warrant of possession and prayed that suit be dismissed.

Defendant No.4 also took the similar plea and prayed that suit be dismissed.

On these facts, issues were settled by the Court of first instance and the parties were put to trial. After recording of evidence and appreciation thereof, the Court of first instance dismissed the suit of the plaintiffs with the observation that they have failed to prove that possession of any area in excess of property owned and mortgaged by them and sold in open auction and possession was handed over to

defendant No.3. Hence, there was no question of issuance of any direction to the defendants to deliver possession of any area back to plaintiffs. First appeal, filed by plaintiff No.1-Jagdish Kumar was dismissed by the first Appellate Court and as such present regular second appeal before this Court.

Learned counsel for the appellant submitted that plaintiffs were owner in possession of property which was more than 3 kanals and out of that only 3 kanals of land was mortgaged with the bank and both the Courts below, without making any inquiry and without considering the admission of the defendants and report of the Local Commissioner, passed the impugned judgments, which are contrary to the record. In fact, the appellant was in possession of land measuring 5 kanals, out of which only 3 kanals was mortgaged with the bank.

Learned counsel for the appellant also submitted that both the Courts below have laid much stress on the point that the appellant had purchased only 3 kanals of land, but failed to appreciate that the person can be in possession of more land than that and the bank had got a right only to auction the land which was mortgaged with it. Both the Courts below failed to consider this aspect and the evidence on this point, resulting into erroneous findings; the said findings are liable to be set aside; appeal deserves acceptance, consequently, suit of the plaintiff be decreed.

Learned counsel for caveator/respondent No.3 submitted that both the Courts below have already appreciated the entire evidence and there is nothing to intervene in the concurrent findings of facts

having been recorded by both the Courts below and prayed that appeal be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the fact that both the Courts below, while appreciating jamabandies (Ex.P20 & P21) for the years 2000-01 & 2007-08, respectively, recorded concurrent findings of facts that khasra No. 2268/592 was measuring 3 kanals 4 marlas only and there was no revenue record suggesting that the said khasra number was having area of 5 kanals. More so, the said land was earlier purchased by the appellant from previous owner, namely Ram Sigh and other and they had also sold land measuring 3 kanals to M/s Jagdish Dyeing and Printing Mills. The Courts below has rightly appreciated that it is case of plaintiffs that he has mortgaged his 3 kanals of land, which he had purchased from previous owners i.e. Ram Singh and Others. Plaintiffs were required to prove that they were in possession of land measuring 2100 square yards but they have failed to do so.

The Courts below also discussed the evidentiary value of rent note in favour of the alleged tenant and rightly discarded the same because the rent notes came into existence after mortgage of the property. That way, the appellant remained unsuccessful to prove that fact.

In view of above, concurrent findings of facts simply suggests that present appeal is without any merit and there are no grounds to interfere in the said findings. There is no substantial

question of law involved in this case and as per provisions of Section 100 CPC, present regular second appeal is not maintainable.

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 above, present regular second appeal stands dismissed.

**(Shekher Dhawan)
Judge**

March 31, 2016
"DK"