

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5497 of 2014 (O&M)

Date of Decision: 18.05.2016

Rajal and Another

... Appellant(s)

Versus

Bakhtawari 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. Saurabh Dalal, Advocate
for the appellant(s).

Mr. Chanderhans Yadav, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by defendants No. 5 & 10, namely Rajal and Chand Ram, against the judgment & decree dated 7.4.2014, passed by learned District Judge, Jhajjar, whereby judgment & decree dated 5.11.2011, passed by learned Additional Civil Judge (Senior Division), Jhajjar was set aside.

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 on the ground that they are owners in possession of the land, as detailed in paras No. 1(a) & 1(b) of the plaint. Daula son of Naut Ram was recorded to be owner of the suit property. Defendants had put their fire wood and cow dung cakes in the suit land and by putting cow dung cakes, they were trying to interfere into the peaceful possession of the plaintiffs over the suit property.

Defendants were issued notice by the Court of first instance. But they failed to put in their appearance and were proceeded against *ex parte* and the Court of first instance passed *ex parte* decree and suit of the plaintiffs was dismissed mainly on the ground that Ex.P1 was silent to prove the ownership of the plaintiffs over the suit property. Plaintiffs preferred appeal and first Appellate Court accepted the same and reversed the findings recorded by the Court of first instance. Hence, present regular second appeal before this Court.

At the time of arguments, learned counsel for the defendant/appellants submitted that first Appellate Court has set aside the judgment & decree, passed by the Court of first instance, without any reasoning. The first Appellate Court erroneously held that the Court of first instance had not taken into consideration document Ex.P4/T, whereas the same was discussed in evidence and that evidence was found insufficient to establish the link.

Learned counsel for the respondents submitted that first Appellate Court has rightly observed that the Court of first instance has not considered the most important document Ex.P4/T, which established

the rights of the plaintiffs. More so, *ex parte* evidence, adduced by the plaintiffs, remained unrebutted and evidence of the defendants was not available on the file.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that civil suit filed by the plaintiffs was for permanent injunction on the ground that they were owners in possession of the land along with Khazani, Pyaree, Shanti, Sajjan Kaur and Smt. Krishana. The main dispute is regarding possession of "Gitwar" bearing No. 1978 situated in village Matanhail, Tehsil and District Jhajjar. Earlier, Daula son of Naut Ram was owner in possession of the suit property. Defendants had put cow dung cakes in the suit property about a year back without any right and for that purpose application was moved before the sub Divisional Magistrate, Jhajjar for demarcation of the suit land and the same was demarcated by the Local Commissioner on 28.5.2006 and 11.6.2006 and still there was threat to the possession of the plaintiffs over the suit property. In *ex parte* evidence, plaintiff No.1- Dayanand examined himself as PW.1 besides examining Suresh Kumar, Naib Sadar Kanungo (PW.3), who proved the demarcation report (Ex.P1) and memo of presence (Ex.P2). Kewal Singh, Draftsman (PW.4) has proved the site plan of the suit property. PW.5 Nagna supported the version of plaintiffs that they are in possession of the suit property, which was earlier owned and possessed by Daula. The defendants had put their firewood and cow dung cakes about one year back. For that purpose, plaintiffs had moved an application before the

Sub Divisional Magistrate, Jhajjar and demarcation was got done by the Local Commissioner on 28.5.2006 & 11.6.2006. The evidence adduced by the plaintiffs remained unrebutted and unchallenged. These facts certainly established the possession of plaintiffs over the suit property and there was no reason or justification for the Court of first instance to dismiss the suit of plaintiffs merely on the ground that there was no link evidence, though as per Ex.P4/T, Ramji Lal inherited the property through Daula and present plaintiffs are grandsons of Ramji Lal as per Ex.P4/T. Earlier, Daula was owner in possession of the suit property and there is no rebuttal to the said evidence. The first Appellate Court has rightly recorded the findings of facts, which do not call for any interference by this Court. There is no substantial question of law involved in the present appeal.

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.

Resultantly, 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 18, 2016

"DK"