

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5914 of 2014 (O&M)

Date of Decision: 29.03.2016

Mewa Lal

... Appellant(s)

Versus

Shyam Bihari

... 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. Vikas Singh, Advocate
for the appellant(s).

Ms. Ekta Thakur, Advocate
for respondent No.1.

Shekher Dhawan, J.

Present regular second appeal, filed by the defendant, against concurrent findings of facts having been recorded by both the Courts below in a suit for possession by way of specific performance of agreement dated 6.10.1998. The suit was decreed by the Court of first instance and the Court of first appeal dismissed the appeal and as such, present regular second appeal before this Court.

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 filed a suit for possession by way of specific performance of agreement of sale dated 6.10.1998 with respect to the suit property. Earnest money of ₹ 50,000/- was paid and balance amount of ₹ 10,000/- was to be paid at the time of execution of the sale deed. Defendant failed to perform his part of the agreement despite notice and as such necessity of the suit.

Defendant contested the suit *inter alia* taking the plea that this Court has no territorial jurisdiction as the defendant is a resident of Partapgarh, Uttar Pradesh and the alleged agreement was also executed at Partapgarh. Defendant denied the execution of agreement and prayed that suit be dismissed.

The Court of first instance settled the issues and the parties were asked to lead their respective evidence. The Court of first instance, after appreciating the oral and documentary evidence, returned the findings that plaintiff has been able to prove the due execution of the agreement and decreed the suit for possession by way of specific performance of agreement dated 6.10.1998. Defendant preferred an appeal before the Court of first appeal, which was dismissed and hence, present regular second appeal before this Court.

Learned counsel for the appellant submitted that the Courts below have not considered the correct facts of the case. As per learned counsel for the appellant, originally suit for permanent injunction was filed and later on the same was converted into suit for possession by way of specific performance of the agreement is not maintainable. Learned counsel for the appellant also submitted that even expert had

given his report that the agreement does not bear signatures of the defendant and the defendant has also denied his signatures on the document. An application for additional evidence was moved before the First Appellate Court and the same was dismissed. More so, the site was allotted for resettlement and the same could not be transferred. The oral evidence led by the plaintiff is not believable because the sole witness Ramesh Chander Tiwari was not sure whether agreement was of two pages or three pages. The witness examined by the plaintiff was not in a position to tell the denomination of currency and both the Courts below completely ignored this fact while returning the findings and prayed that the said finding, having been recorded by the Courts below, be set aside and appeal be accepted and suit of the plaintiff be dismissed.

While arguing on this point, learned counsel for the respondent submitted that agreement was executed at Partapgarh as defendant was residing there. They were neighbours in Chandigarh. Learned counsel for the respondent, while arguing regarding Clause 4 of the allotment letter, submitted that there is no such pleading or proof before the Court on that point. Application for leading additional evidence was declined by the Court of first appeal and no revision was filed against the said order. Otherwise, both the Courts below have already recorded concurrent findings of facts and there is no substantial question of law involved in the case and as such present appeal is liable to be dismissed.

Having considered the submissions made by learned

counsel for the parties and gone through the entire controversy and material and evidence available on the record, this Court is of the considered view that both the Courts below have already considered and appreciated the oral and documentary evidence and recorded concurrent finding of fact that plaintiff has been able to prove due execution of the agreement. Plea of the defendant regarding denial of execution of document was also taken into consideration by the Courts below and the same was rightly discarded by them because in this case, execution of the agreement Ex.P1/A was duly proved on the file on the basis of testimony of attesting witness. Merely the opinion of Handwriting Expert cannot disprove the entire version of the plaintiff on that point.

The Courts below have also taken note of the fact that the report of Sumit Arora, Handwriting Expert, who appeared as DW.1, has been proved to be doubtful as the defendant denied his signatures on the power of attorney given by him to his counsel and he denied his signatures on the affidavit 8.11.2000. He had also denied his signatures on the objection petition filed on the same date. That way, there was nothing special if he denied the execution of agreement Ex.P1/A and denied his signatures thereon but the Court cannot place reliance upon the testimony of such a witness and both the Courts below have already discarded his testimony.

In view of above, concurrent findings of facts having been recorded by both the Courts below do not call for any interference. There is absolutely no substantial question of law involved in this case.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramswami 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 29, 2016

"DK"