

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 6056 of 2014 (O&M)

Date of Decision: 31.03.2016

Ranjha Ram and Others

... Appellant (s)

Versus

Smt. Sukhwinder Kaur 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. R.S.Mamli, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts having been recorded by both 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 by way of exchange sanctioned on the basis of mutation No. 13822 dated 29.11.2011, plaintiff is owner in possession of land measuring 32 kanals 19 marlas comprised in khasra No. 625//2/4, 9, 12, 18/2 and 19 situated in the

revenue estate of village Bhuna, Tehsil & District Faridabad. She is also using the sanctioned passage comprised in khasra No. 625//1/2(0-8) for approaching the above mentioned land. Earlier, the previous owner was using that passage for ingress and outgress. Defendants No. 4 to 6 are also owners in possession of land comprised in khasra No. 625//1/1(7-12). As per plaintiff, defendants were creating obstruction in the use of passage without any right, title or interest. As such, necessity of the suit.

Contesting defendants took the plea that the suit property was not sanctioned passage. They also took the plea that plaintiff had purchased the land from Laxman Dass & others and she should claim the passage only from them and not from the defendants.

Defendant No.4 took the plea that defendant No.5 had sold ½ marla of land to the plaintiff comprised in khasra No. 625//1/2 vide sale deed dated 19.4.2012 in exchange of this land and no objection was raised for the usage of passage.

On these facts, issues were framed by the Court of first instance and parties were put to trial. After recording of evidence and appreciation thereof, the Court of first instance decreed the suit of the plaintiff, thereby restraining the defendants from blocking the passage of the plaintiff. The first Appellate Court affirmed the said findings and dismissed the appeal. Hence, the present regular second appeal before this Court.

Learned counsel for the appellants submitted that there is no public passage, rather the same is a private passage of the

appellants, which was left by them while mutually partitioning the land. More so, plaintiff had concealed the fact that there was a passage in the land comprising khasra No. 625//1/2. But the Courts below completely ignored this fact while recording the findings. In fact, there was a "kotha" in existence and there was no question of public passage. Plaintiff is not co-sharer in the above said land on the date of filing of suit and as such she cannot claim the suit property to be public passage and the findings recorded by both the Courts below are liable to be reversed by accepting the appeal.

Having considered the submissions made by learned counsel for the appellants and appraisal of the case file, this Court is of the considered view that both the Courts below have already appreciated the entire material and evidence available on the file and recorded concurrent findings of facts that plaintiff has been able to prove that land in question belongs to the passage and she is co-sharer on the basis of purchase of her share from vendors. Earlier, the vendors were co-sharer and now plaintiff is entitled to use the same as passage. The said findings recorded by both the Courts below do not call for any interference.

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.

Hence, in view of the above, the 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

March 31, 2016
"DK"