

(2003) 04 P&H CK 0072
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 250 of 2003

Mukesh Mutneja and another	Vs	APPELLANT
Chatterbhuj Lilawati Trust and others		RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Citation : (2003) 3 LJR 186 : (2003) 3 RCR(Civil) 577

Hon'ble Judges : M.M.Kumar, J

Advocate : Shri M.L. Saggarr, Advocate.Shri C.B. Goel, Advocate and Shri Ajai Saini, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.—This order would dispose of R.S.A. Nos. 250 and 251 of 2003 as common question of law and facts have been raised in both these appeals. For the purposes of this judgment, the facts are being taken from R.S.A. No. 250 of 2003.

2. This appeal has been filed by the defendantappellants under Section 100 of the Code of Civil Procedure, 1908 (for brevity `the Code") challenging the concurrent findings of facts recorded by both the Courts below holding that the plaintiffrespondent Trust is an exclusive owner in possession of the suit property described in the site plan Ex. P.9 as ABCD and it is using the aforesaid property as Rasta. It has further been held that the defendant appellants have no right, title or interest therein. The instant appeal has been preferred by the defendanttenants who are tenants under defendant respondent Nos. 2 to 4. In the suit it was alleged that plaintiffrespondent Trust is owner in possession of the suit property and no one else including the tenantappellants as well as defendant respondent Nos. 2 to 4 have any right to use the suit property as passage for ingress and outguess to the property owned by defendantrespondent Nos. 2 to 4 and rented to the tenant appellants. It is pertinent to mention at the outset that no appeal has been filed by the defendant respondent Nos. 2 to 4. The views of the learned Addl. District Judge holding that plaintiffrespondent No. 1 Trust is owner in possession of the suit property read as under :

"...the appellants also failed to show their door towards the suit property either in their pleading or in the site plan which has been filed by them in a suit titled Usha Rani v. Chattarbhuja etc. In case, there was a door, they could have pleaded the same because they have pleaded that towards the suit property, there are parnala, ventilators, windows of the property of Smt. Usha Rani. Ex. P.6 is the award which was prepared by Radhey Shyam with the concurrence of all the parties and in this award, the description of the property which has been purchased by Smt. Usha Rani from Gobind Krishan has been shown and then award was made rule of the Court vide judgment Ex. P.4 and the decree sheet of the same is Ex. P.5 and it also shows the description of the suit property clearly. Even the Will which was executed by Sher Singh has also given the description of this suit property and Ex. P.8 the sale deed vide which the suit property has been purchased by Smt. Usha Rani and Smt. Sangeeta Rani also tallies with the decree of the award and Will of Lala Sher Singh. Since the suit property is no more joint between the appellants and the respondent because on behalf of respondent Ex. P.11 has been placed on the file in rebuttal evidence which shows that the suit property has also been partitioned and the same fell to the share of the respondent and the appellants have no right, title or interest in the same. The appellants can open the aperture in their Will, but the same should not be detrimental to the property of others and the authority on which the reliance is being placed by the Ld. counsel for the appellants, the same is against the interest of the appellants and this authority has no help to the appellants. Similarly, the suit of the respondent is not hit by the provisions of Order 2 Rule 2 CPC because the authorities on which the reliance is being placed by the Ld. counsel for the appellants are not identical to the facts of the present case. Since it is admitted by the respondent himself as DW1 that he raised a parallel wall A B and then put shutter in it and fixed a shutter at point X; in the wall which was raised by him. It clearly shows that it has been done by the appellants for which they have no right to use the suit property. It is also admitted by the appellants that two shops of the respondent are already in existence in the suit property and the same are facing towards the Railway Road. In case, the suit property is joint in between appellants and respondent, then appellants would not allow the respondent to rise any construction in the suit property. The suit property is exclusively owned and possessed by the respondent and the appellants have no right, title or interest in the suit property. Therefore, these issues have rightly been decided by the Id. lower Court. Hence, I uphold the findings of the Id. lower Court on these issues."

3. Shri M.L. Sagar, learned counsel for the tenantappellants has argued that from the description and the details of the boundaries of the suit property given in the decree sheet Ex. P.5 dated 7.1.84 the eastern side does not mention that the property exclusively belonged to the plaintiffrespondent Trust. He has drawn my attention to paragraphs 35, 36 and 37 of the judgment of the Appellate Court where the description of the boundaries have been referred to. The learned counsel maintained that the aforesaid description would not lead to the

irresistible conclusion that the property is in exclusive possession and owned by plaintiffrespondent Trust. Learned counsel has also argued that the interpretation of a document is involved, which is a question of law and therefore, the appeal requires admission and the findings recorded by both the Courts below have to be set aside.

4. Shri C.B. Goel, learned counsel for the plaintiffrespondent Trust has submitted that the appeal is without any merit because defendant respondent Nos. 2 to 4 who are the landlord of tenantappellants have accepted the concurrent findings of the Courts below. In such a situation there is no right of the tenantappellants to dispute the concurrent findings of facts with regard to the title of their landlord. The learned counsel has further pointed out that apart from the descriptions given in paras 35 to 37 of the judgment of the lower Appellate Court, there is ample evidence to conclude that the plaintiffrespondent No. 1 is exclusive owner in possession of the suit land. In this regard, the learned counsel has referred to the discussion wherein documents Ex. P.4 to P.8 which are copies of the judgments and decree dated 7.1.1984 passed on an award of the Arbitrator. He also refers to Ex. P.10 a copy of the Will dated 18.1.1979 and the site plan Ex. P9 which have been discussed by the trial Court to conclude that the suit property is being used as rasta for the trust property and the defendantrespondent Nos. 2 to 4 or the defendanttenants have no right, title or interest over it. Therefore, according to the learned counsel the description of the boundaries showing rasta to the kothi of Chaterbhuj on the eastern side would not lead to the conclusion that the afore mentioned property is joint with defendant respondent Nos. 2 to 4. Learned counsel has stressed that the findings recorded by both the Courts below are based on cogent evidence and in exercise of its appellate jurisdiction this Court under Section 100 of the Code should be very slow in interfering with such findings of facts.

5. After hearing learned counsel for the parties, I am of the considered view that this appeal is devoid of any merit and is thus liable to be dismissed because concurrent findings recorded by both the courts below holding that plaintiffrespondent Trust is owner in possession of the suit land are well based. Ex. P.4 to P.8 and P.10 have been relied upon for reaching the afore mentioned conclusion because the Arbitrator has announced the award with regard to the partition of the property between Sher Singh and Budh Sain on 31.1.1983 which was made the rule of the Court vide Ex. P.4 and Ex. P.5 judgment and decree dated 7.1.1984. There are other pieces of documentary evidence which also lend huge support to the acceptance of findings recorded by both the Courts below. Moreover, no appeal has been preferred by defendant respondent Nos. 2 to 4 who were parties to the partition proceedings which ended in the award and the rule of the Court. The interest of tenant appellants although is understandable but it loses its significance in the absence of an appeal by the tenantrespondent Nos. 2 to 4. Therefore, I do not feel persuaded to take a view different than the one taken by the Courts below. Thus, the findings could not be assailed by the tenantappellants in this appeal unless it is shown that the findings are without

any evidence or perverse. In a catena of judgments, the Supreme Court has held that in the absence of any material to show that the findings arrived at could not be reached by taking into consideration the evidence left out or by omitting the evidence which has been taken into consideration, such findings cannot be interfered with by the High Court in a second appeal. The Apex Court has laid down and reiterated this proposition of law in the cases of *Tirumala Tirupati Devasthanams v. K.M. Krishnaiah*, (1998) 3 SCC 331 : 1998(3) RCR(Civil) 6 (SC); *Satya Gupta v. Brijesh Kumar*, (1998) 6 SCC 423 : 1998(4) RCR(Civil) 37 (SC); *Chandrabhagabai v. Ramakrishna and others*, (1998) 6 SCC 207 : 1998(3) RCR(Civil) 391 (SC); *Ram Prasad Rajak v. Nand Kumar and Bros. and another*, 1998(2) RCR(Rent) 249 (SC) : (1998) 6 SCC 748; *M.G. Hegde and others v. Vasudev*, (2000) 2 SCC 213; *State of Rajasthan v. Harphool Singh (dead) through L.Rs.*, (2000) 5 SCC 652 : 2000(3) RCR(Civil) 191 (SC); *M. Nadar Kesavan Nadar v. Narayanan Nadar Kunjan Nadar*, (2000) 10 SCC 244; *Baidyanath Bhattacharya v. S. Karmakar*, (2000) 9 SCC 505; *Manorama Thampuratti v. C.K. Sujatha Thampuratti*, (2000) 9 SCC 233; *Chandragouda and another v. Shekharagouda S. Pittangagoudar*, (2000) 10 SCC 617; *Thimmaiah and others v. Ningamma and another*, 2000(4) RCR(Civil) 609 (SC) : (2000) 7 SCC 409; *Mohd. Abdul Muqtadar v. Sk. Fakruddin*, (2000) 9 SCC 384; *G. Thankamma Amma v. N. Raghava Kurup*, (2000) 9 SCC 517; *Ananta Kalappa Jaratakhane v. Krishtappa*, (2000) 9 SCC 735; *Kempaiah v. Doddanaraiah*, (2000) 9 SCC 60; *Mohd. Hadi Hussain v. Abdul Hamid Choudhary*, (2000) 10 SCC 248 and *Ajit Chopra v. Sadhu Ram*, (2000) 1 SCC 114 : 1999(4) RCR(Civil) 635 (SC). Their Lordships of the Supreme Court have also held that for the exercise of jurisdiction by the Supreme Court under Section 100 of the Code the existence of substantial question of law is a sine qua non. It has further been held that where the findings of fact of the lower appellate court are based on evidence, the High Court in second appeal cannot substitute its own finding on reappraisal of evidence merely on the ground that another view was possible. Even in the cases concerning title and ownership, the findings of fact as recorded by the courts below are considered by their Lordships to be the final. The same view has been reiterated in the recent judgment rendered in the case reported as *Kulwant Kaur v. Gurdial Singh*, (2001) 4 SCC 262 : 2001(2) RCR(Civil) 277 (SC), wherein Section 41 of the Punjab Courts Act, 1918 has been declared ultra vires of Section 100 of the Code.

6. The argument that appeal deserves detailed consideration because of interpretation of a document has not impressed me because the boundaries mentioned in the document had to take its colour from the other documents and the statements made by the witnesses. In order to succeed in getting an appeal admitted under Section 100 of the Code it is required to be established that a substantive question of law is involved as such question is likely to arise in a number of cases or has not been settled either way by the Federal Court or by the Privy Council or by the Supreme Court. In this regard the views of the Constitution Bench of the Supreme Court in *Chuni Lal B. Mehta v. Century*

Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314 deserve to be noticed. Their Lordships in para 6 observed as under :

"The proper test for determining whether a question of law raised in the case is substantial would in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

7. The aforementioned view has also been followed in the cases of Pankaj Bhargwa v. Mohinder Nath (1991) 1 SCC 556 and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, (1999) 3 CC 722 : 1999(2) RCR(Civil) 587 (SC).

8. If the argument raised by the learned counsel is examined in the light of the principles laid down by the Supreme Court in the aforementioned cases, it becomes evident that there is no question of law much less substantial question of law raised in the instant appeal. The findings of facts have been recorded by both the Courts below showing that plaintiffrespondent No. 1. Chatterbhuji Lila Wati Trust is owner in possession of the suit land. Therefore, the appeal is without any merit and is thus liable to be dismissed.

For the reasons recorded above, both the appeals fail and the same are dismissed.

Appeals dismissed.