2025:PHHC:063497

120 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA No.4377 of 2019 (O&M)
Date of decision : 30.04.2025

Hasan and others ....Appellants

Versus

Safi Mohammad and others ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Malkit Kaur, Advocate for the appellants.

Mr. V.K. Pandey, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

Defendants are in second appeal. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as defendants and the respondents as plaintiffs.

2. Plaintiffs filed suit for permanent injunction claiming that they are in actual physical and continuous cultivating possession of the land measuring 1 Kanal 14 Marlas as detailed out in the plaint. Plaintiffs claimed to be in cultivating possession of the suit land for more than 80 years through their father Chhota.

3. Suit was contested by the defendants denying the possession of the plaintiff. Defendants claimed to be in actual physical possession of the suit land for more than 60 years. Defendants claimed that they have constructed two *pucca* houses over portion of the land in question. They

have already filed application for correction of *Khasra Girdawari* before the Court of A.C. 2nd Grade, Ferozepur Jhirka.

4. Both the Courts below found that the plaintiffs proved their possession on the basis of record of titles in the form of *Jamabandis* for the year 1964-1965, 1999-2000, 2004-2005 and 2014-2015. The revenue record shows that father of the plaintiffs namely Chhota, has been recorded to be in possession of the suit property and thus decreed the suit filed by the plaintiffs.

5. Counsel for the appellants has assailed the findings recorded by the Courts below, asserting that specific stand was taken by the defendants of being in possession of the suit land which has been totally ignored by the Courts below.

6. Having heard counsel for the parties and after carefully going through records of the case, this Court finds that apart from the revenue record brought on record by the plaintiffs, there is an admission made by defendant Haroon, appearing as DW3. He admitted that there is no document regarding their possession over the suit land. As per the revenue record, it is the plaintiffs and their father, who have been shown to be in possession of the suit land.

7. The revenue record brought on record of the present case by the plaintiffs, is record of title i.e. *Jamabandi*. The same carries presumption of truth. Apart from the bald statement made by the defendants, no evidence was led to rebut the presumption attached to record of rights that proved case

of the plaintiffs..

8. In view of above, this Court finds no reason to interfere in the pure findings of facts recorded by the Courts below which are based upon proper appreciation of evidence. Re-appreciation of the evidence in the absence of any question of law is beyond scope of second appeal.

9. Scope of second appeal under Section 41 of the Punjab Courts Act, 1918 came up for consideration before Apex Court in **'Randhir Kaur Versus Prithvi Pal Singh & Ors.' 2019(17) SCC 71** wherein it was held as under :-

> "14. The Division Bench of Punjab and Haryana High Court in a judgment reported in ***Sadhu v. Mst. Kishni, 1980 AIR (Punjab) 85*** set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:
>
> > "12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya [AIR 1959 Supreme Court 57.], Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.], Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.] and Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142: AIR 1976 Supreme Court 163.].** These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexecusable the error may seem to be. Nor does the fact that the finding

of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

xx xx xx

14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

10. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732** as under:

"xxxx xxxx xxxx

> 17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....…"

11. Resultanly, finding no merit in the appeal, the same is ordered to be dismissed.

12. Pending application(s), if any, shall also stand disposed off.

April 30, 2025 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No