



Sandeep Singh (deceased) thr. his LRs.

..... Appellant

versus

Phool Singh & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Man Mohan, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

1 LRs. of the plaintiff are in second appeal aggrieved of judgment and decree passed by the Courts below whereby his suit filed for possession by way of specific performance has been dismissed and alternate relief of recovery of an amount of Rs.1,76,000/- has been awarded. For convenience, parties hereinafter are referred to by their original position in the suit i.e. appellant as plaintiff and respondents as defendants.

2 Plaintiff filed suit seeking possession by way of specific performance of agreement to sell dated 27.08.2010 executed by defendant No.1 in his favour *qua* the suit property as detailed out in the head note of the plaint. Plaintiff claimed that defendant No.1 agreed to sell his property in his favour by way of said agreement to sell for a consideration of Rs.1,76,000/-. The entire consideration was paid by the plaintiff. The agreement was open-ended as no time limit was prescribed to get the sale



deed executed. Plaintiff always remained ready and willing to get the sale deed executed. He served notice upon defendant No.1 on 14.06.2013 asking defendant No.1 to execute sale deed in his favour on 28.06.2013. On 28.06.2013 plaintiff remained present in the office of Executive Magistrate and got his attendance marked by way of an affidavit. Defendant No.1 executed sale deed in favour of defendant No.2 on 14.06.2013. The said sale deed is result of fraud, misrepresentation and is illegal.

3 On notice defendant No.1 appeared, admitted execution of agreement to sell in favour of the plaintiff and claimed that he could not get the sale deed registered in favour of the plaintiff due to some important work. It was claimed that defendant No.2 was in the knowledge of agreement to sell executed by defendant No.1 in favour of the plaintiff but he got sale deed executed in his favour from defendant No.1 under the influence of alcohol.

4 In a separate written statement filed, defendant No.2 claimed that he was a bonafide purchaser of the suit property vide sale deed dated 14.06.2013 for valuable consideration. Defendant No.1 entered into agreement to sell dated 27.12.2007 regarding suit property in his favour for a valuable consideration of Rs.1,84,440/- which led to execution of sale deed dated 14.06.2013 in his favour.

5 Since agreement to sell in favour of plaintiff is admitted by defendant No.1 the issue in substance remained between plaintiff and defendant No.2. Both the Courts below concurrently found that defendant No.2 was a bonafide purchaser for valuable consideration. Trial Court



dismissed the suit filed by the plaintiff whereas the Appellate Court has decreed the suit filed by the plaintiff for alternate relief.

6 I have heard learned counsel for the appellant and have gone through records of the case.

7 Agreement to sell pleaded by the plaintiff dated 27.08.2010 is an open-ended agreement. Plaintiff remained inert till 14.06.2013 when as per him he issued legal notice to defendant No.1 asking him to execute sale deed in his favour. Coincidentally sale deed in favour of defendant No.2 was executed by defendant No.1 *qua* the suit property on the said date. Plaintiff filed instant suit on 05.08.2013 claiming readiness and willingness. Plaintiff also claimed that he was put in possession of the suit property on 27.08.2010 i.e. at the time the agreement to sell was executed in his favour. It has come on record that defendant No.2 after purchasing the suit property on 14.06.2013 constructed building there upon which was leased out by him to Haryana Gramin Bank. Thus the plea taken by the appellant with respect to being in possession of the suit property stands falsified.

8 Defendant No.2 in order to prove that he is a bonafide purchaser examined DW-3. The fact that he was put in possession by defendant No.1 on purchase of the suit property without there being any objection by the plaintiff itself, shows that the plea raised by defendant No.2 of being bonafide purchaser stands proved. The written statement filed by vendor-defendant No.1 admitting claim of the plaintiff raises doubt about agreement to sell propounded by the plaintiff. Issuance of legal notice by the plaintiff to defendant No.1 on the date he returned sale deed in favour of defendant No.2 leads to the inference that the present suit was filed by the



plaintiff in collusion with defendant No.1 to defeat the right of defendant No.2 who purchased the suit property for valuable consideration.

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 inexcusable 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 Pure findings of fact have been recorded by the Courts below.

12 Finding no merits in the present appeal, the same is ordered to be dismissed.

24.03.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No