

2025:PHHC:025002



RSA-9765-2018 (O&M)

[109] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-9765-2018 (O&M)
Date of Decision : 20.02.2025

Jagga Singh and others ...Appellants

versus

Puran Singh and othersRespondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Umesh Kumar Kanwar, Advocate for the appellants.

PANKAJ JAIN, J. (ORAL)

CM-18947-C-2018

[1] For the reasons recorded in the application, this Court is satisfied that the applicants-appellants have made sufficient cause for condonation of delay of 49 days in re-filing of the appeal.

[2] Application stands **allowed** and delay of 49 days in re-filing of the appeal is condoned.

RSA-9765-2018

[3] Defendants are in regular second appeal.

[4] For the convenience, parties are hereinafter referred to by their original position(s) as in civil suit i.e. appellants as the defendants and the respondents as plaintiffs.

[5] Plaintiffs filed a suit, seeking decree of permanent injunction in a form of restraint against the defendants from interfering in the peaceful cultivating possession of the plaintiffs over the suit land as described in the

2025:PHHC:025002



RSA-9765-2018 (O&M)

head-note of the plaint.

[6] Plaintiffs claimed that they are in cultivating possession of the suit land as *gair marusi* tenants under Central Government since year 1986. Initially, their father-Thakar Singh was inducted by the Central Government over the suit land. The same was uncultivable initially. Huge amount was spent to make the land cultivable. After death of Thakar Singh, the plaintiffs being his LRs continued to be in cultivating possession over the suit land. Plaintiffs further claimed to be regularly paying rent in the name of Provincial Government.

[7] Suit was contested by the defendant-appellants, who denied the possession of the plaintiffs and claimed that its defendant Nos.1 to 3, who are in possession of the suit land and also relied upon pendency of an application, seeking correction of the *khasra girdawri* before AC 2nd Grade, Fazilka.

[8] Court of the first instance framed the following issues:-

- “1. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPPP*
2. *Whether the suit of the plaintiff is not maintainable? OPD.*
3. *Whether the suit is bad for non-service of notice u/s 80 CPC upon the defendants? OPD.*
4. *Relief. ”*

[9] While returning findings on Issue No.1, Court of the first instance after analyzing evidence threadbare came to the conclusion that as per documentary evidence placed on record by the plaintiffs in a form of Exhibits P-1 & P-2 i.e. *jamabandi* for the year 2004-2005, 1999-2000, name

2025:PHHC:025002



RSA-9765-2018 (O&M)

of father of the plaintiffs-Thakar Singh is reflected in the column of cultivation. Further they have two receipts of challans Exhibits P-4 and P-7 to prove payment of lease money. Thus, the possession of the plaintiffs having been proved on record and there being no evidence led by the defendants to breach the presumption attached to the record of rights, the plaintiffs are entitled for decree of permanent injunction.

[10] Dis-satisfied with the findings recorded by the learned Trial Court, defendants preferred appeal.

[11] Learned First Appellate Court, after re-appreciating the evidence came to the conclusion that the defendants in order to prove their possession have relied upon ocular evidence. All their witnesses have tried to prove that no crop was ever sown on the land in dispute. The said stand taken by the witnesses in their testimony is beyond pleadings and is against the revenue record.

[12] Counsel for the appellants though has tried to assail the findings of the learned Courts below, but has not been able to point out any evidence that can be read to hold that the presumption attached to record of right proved on record by the plaintiffs stands rebutted.

[13] 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*

2025:PHHC:025002



RSA-9765-2018 (O&M)

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

2025:PHHC:025002



RSA-9765-2018 (O&M)

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.”*

14. 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.....”*

[15] In view of above, this Court is of the considered view that pure findings of fact have been recorded by the learned Courts below. Under the garb of second appeal, this Court cannot re-appreciate the evidence. There

2025:PHHC:025002



RSA-9765-2018 (O&M)

being no perversity or misreading of evidence, this Court does not find any reason to interfere in the findings recorded by the learned Courts below.

[16] **Dismissed.**

[17] All pending miscellaneous application(s), if any, stands *disposed off*.

(PANKAJ JAIN)
JUDGE

20.02.2025
'R. Sharma'

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