



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

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**Regular Second Appeal No.968 of 2023 (O & M)**

**Date of decision :-25.09.2025**

**Daryao Singh**

**.....Appellant**

**Versus**

**Risal Singh (deceased) through LRs and others**

**.....Respondents**

**CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. N.K. Malhotra, Advocate  
for the appellant.

**NIDHI GUPTA J. (Oral)**

The plaintiff has filed the present second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the appellant for declaration and permanent injunction, has been dismissed by both the Courts below.

Order sheets reveal that till date notice of motion has not been issued in the matter, and it has been adjourned either on request of learned arguing counsel or learned proxy counsel for the appellant on 18.4.2023, 18.8.2023, 22.9.2023, 28.11.2023, 01.2.2024, 09.4.2024, 14.8.2024 and 18.2.2025. Today again request for adjournment is made by ld. counsel for the appellant. However, keeping in view the above facts, this Court is not inclined to accede to the request of the appellant.



Perusal of the record reveals that the plaintiff/appellant had filed suit for declaration and permanent injunction. The plaintiff is the son of defendant No.1 and brother of defendants No.2 and 3. It was the pleaded case of the appellant that the plaintiff and the defendants have joint rights in the several ancestral properties as mentioned in para 1 of the plaint; as all the properties are ancestral in nature; and the plaintiff alongwith defendants No.2 and 3 have right in them since birth. It was alleged that the parties are in joint possession of agricultural land as described in the plaint, which they cultivate. About one week prior to filing of the suit, the plaintiff had come to know that defendant No.1 had executed a Release Deed dated 7.2.2006 in favour of defendants No.2 and 3, in pursuance to which a mutation dated 29.4.2006 had been sanctioned. It was the case of the plaintiff that defendant No.1 had only 1/4<sup>th</sup> share in the suit land and could therefore not have relinquished the plaintiff's share in favour of the said defendants No.2 and 3. Accordingly, plaintiff had alleged fraud and collusion between the defendants asserting that the Release Deed was a mere paper transaction, which was never acted upon and therefore is illegal, null and void. With these pleadings the present suit was filed on 5.10.2007 by the appellant seeking a declaration that: **the** Release Deed/Dastbardinama No.2218/1 dated 07.2.2006 and subsequent mutation No.5225 dated 29.4.2006 and subsequent revenue entries, on the basis of the said Release Deed/Dastbardinama are illegal, null and void and not binding upon the rights and interest of the plaintiff; **and** a further declaration that



plaintiff be declared as owner in possession of 1/4<sup>th</sup> share of property in question; **and** further a decree for permanent injunction restraining the defendant No.1 from alienating or transferring the properties in question in favour of defendants No.2 and 3 or any other person; **and** from restraining the defendants from interfering in the peaceful possession of the plaintiff over the properties in question.

Vide judgment and decree dated 07.7.2015, the learned Civil Judge (Jr. Divn.), Rohtak had dismissed the suit of the plaintiff. The appeal filed by the plaintiff was dismissed by the learned Additional District & Sessions Judge vide judgment and decree dated 30.11.2022. Hence, present second appeal by the plaintiff.

It is *inter alia* submitted by learned counsel for the plaintiff that the learned Courts below were in patent error in non-suiting the appellant as judgments of both the Courts below are against the facts and law involved in the present suit; as also contrary to the evidence led by the parties. The learned Courts below have failed to appreciate the case in the right perspective as, they have ignored that the respondents in their written statement had admitted the nature of the suit property to be ancestral in nature; and have also admitted the share of the appellant, however, as 1/9<sup>th</sup> instead of 1/4<sup>th</sup>. This fact has also been admitted by the defendant No.2 as DW2 during his cross-examination. It is argued that this amounts to judicial admission on the part of the respondents; and therefore, the suit of the appellant was liable to be decreed. Thus, in non-suiting the appellant, learned Courts below have ignored material evidence on record.



Moreover, plaintiff had proved his case by leading cogent and convincing evidence in the shape of oral as well as documentary evidence, which has been altogether ignored by both the Courts below. Thus, the judgments and decrees of both the Courts below are based on conjectures and surmises. Even, one of the sisters of the appellant and defendants No.2 and 3, who has been examined by the respondents, has stated in cross-examination that all sisters do not want any share in the suit property. Learned counsel accordingly prays that the judgments and decrees of both the Courts below suffer from material error and deserve to be set aside.

No other argument is raised by learned counsel for the appellant. I have heard learned counsel and find no merit in the submissions advanced on behalf of the appellant.

The pleaded case of the appellant is that the suit land was ancestral in nature; and therefore, Risal Singh could not have executed the Release deed of the suit land in favour of the defendants no.2 and 3. However, it has been concurrently found by both the Courts below that the plaintiff has miserably failed to establish this fact. The plaintiff has failed to produce any evidence on record to show that Risal Singh/defendant No.1/father of the plaintiff, had inherited the property in dispute from his father Ranjeet Singh, who had further inherited the same from his father. Plaintiff failed to show that the land in dispute was inherited by father of plaintiff Risal Singh through his male ancestor upto three degrees. Thus, in the absence of evidence, it cannot in any manner be said that the property in dispute



was joint Hindu Family ancestral property in the hands of defendant No.1.

By way of additional evidence, the plaintiff had produced mutation from 1904 (Ex.P7, P8, P9) with translation, and Ex.P10 to show that the property was ancestral. However, the same is not of any help to the plaintiff as the core issue in the present case is the validity of the Release Deed dated 07.2.2006, which was executed by defendant No.1 in favour of his sons i.e. defendants No.2 and 3. The burden was upon the plaintiff to prove that the property was ancestral and must travel through three linear generations. Even as per the additional evidence produced by the plaintiff, nature of suit property as ancestral is not established as, in the ownership column in the said Jamabandis Ex.P7 to P10 ownership of *thola* has been shown, whereas in the column of possession Goverdhan, Neki, Jaikaran sons of Harnam and Goverdhan son of Pira son of Hanu; and Hasan, Harnam sons of Leta have been shown. The name of the father and grand-father of Risal Singh is not mentioned in the column of ownership or in the column of possession. Neki and Harnam are mentioned in the column of cultivating possession. Thus, the learned first Appellate Court had correctly held that as the plaintiff was unable to prove the ancestral nature of the suit property, the same would be taken as self-acquired property in the hands of Risal Singh - defendant No.1; and therefore, he was competent to execute the Release Deed dated 07.2.2006.



Even otherwise, present second appeal is liable to be rejected on the ground that this Court in Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the Id. Courts below. The Hon'ble Supreme Court in *M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*; has held as under: -

*“14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

*"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."*

*15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."*

(Emphasis added)



In the present case, no such error or defect in law or procedure has been brought to the notice of this Court.

The Hon'ble Supreme Court in the judgment of "*Mst. Sugani vs. Rameshwar Das and another*" *Law Finder Doc Id# 123580*, has gone on to further hold that "*the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers in second appeal*". Again, in *Avtar Singh Vs. Bimla Devi and others, 2021(4) RCR (Civil) 402* Hon'ble Apex Court has held that finding of fact cannot be interfered with in exercise of second Appellate jurisdiction.

Learned counsel for the plaintiff is unable to dispute or controvert the above said concurrent findings of both the Courts below; or even the legal position as recorded above.

As such, I found no ground to interfere in the judgments and decrees of the learned Courts below. Hence, the present appeal stands **dismissed**.

Pending application(s), if any, shall stand(s) disposed of.

September 25, 2025  
Vijay Asija

( **NIDHI GUPTA** )  
**JUDGE**

Whether speaking/reasoned Yes / No  
Whether Reportable Yes / No