

**RSA-571-2022****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Sr. No.125****RSA-571-2022 (O&M)****Date of Decision: 27.03.2025****Bikram Mehta****...Appellant****Versus****Yashpal Chaudhary and others****...Respondents****CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Kartik Gupta, Advocate
for the appellant.

Mr. Ishan Kaushal, AAG, Punjab

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1. The appellant was impleaded as defendant No.5 in the suit seeking declaration to the effect that the recovery order/notice dated 27.10.2009 passed by the Tehsildar, Hoshiarpur-defendant No.3 for recovery of Rs.3,00,000/- and the order of Collector, Hoshiarpur are illegal, void and arbitrary.

2. By filing the suit, the plaintiff-Yashpal Chaudhary, sought declaration restraining the defendants from effecting recovery of the aforesaid amount. In the suit, it was alleged that the plaintiff purchased land measuring 23 kanals 16 marlas, as detailed out in the first paragraph of the plaint. For the purpose of execution and registration of the sale deed, he was required to purchase stamp duty. Bikram Mehta, the appellant, licensed stamp vendor, sitting in the Tehsil Complex, Hoshiarpur, was paid a sum of Rs.4,08,165/- for purchasing the stamp papers. Lateron, it was found modus operandii of defendants No. 5 and 6, was a part of a bigger scam. Qua the same a criminal case stands registered against the appellant- Bikram Mehta and defendant No.6-Vicky Malhotra, respectively.



3. Plaintiff claimed that the stamps having purported under the rules of State officials and he having paid stamp duties, as per the rules, he was not liable to make deficiency good.

4. The suit was duly contested. Defendants No.1 to 3 by filing their written statement claimed that the stamp duty of Rs.1,08,165/- was purchased and the digit 1 was turned to 4 and, thus, there was deficiency of Rs.3,00,000/-.

5. Defendant No.5, the present appellant, also contested the suit claiming that he had no concern with the alleged sale deed dated 18.02.2009 and the stamp duty issued by the State Bank of India was for a sum of Rs.4,08,165/-.

Defendant No.6 also filed separate written statement, wherein he denied any relationship with defendant No.5.

6. The Court on first instance put plaintiff, filed by the plaintiff, to trial, framing the following issues:-

- “1. Whether the plaintiff is entitled to declaration as prayed for?OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for ?OPP
3. Whether the plaintiff is entitled to recover Rs.3 lacs as prayed for ?OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit of the plaintiff is under valued for the purpose of the Court fee and jurisdiction as alleged ?OPD
6. Whether the present suit is bad for non-compliance of the service of the Statutory notice under Section 80 of the CPC?OPD
7. Relief.”



7. While deciding issue No. 1 to 3, the Court at the first instance, found that the plaintiff successfully proved that he gave Rs.4,08,165/- to defendant No.5-the present appellant, who further handed over the same to defendant No.6-Vicky Malhotra and thus, the plaintiff had a right to recover the amount from defendant No.5 and 6. Accordingly, suit of the plaintiff was decreed for recovery of Rs.3,00,000/- against defendant No.5 and 6 and dismissed against the other defendants.

8. The aforesaid findings have been affirmed by the lower Appellate Court.

9. Learned counsel for the appellant, while assailing the impugned judgment and decree, refers to plaint, placed on record as Annexure A-1 to submit that in the prayer clause, no relief was claimed against the appellant. He further submits that categorical stand taken by defendant No.6 before the lower Court was that he had no relation with defendant No.5-the present appellant, yet the Courts below had held that the appellant is liable to pay an amount of Rs.3,00,000/-. Further reference is being made to judgment of acquittal, passed in FIR No. 123 dated 29.09.2009, registered for an offence under Sections 188, 177, 174 and 34 of the Indian Penal Code, read with Section 69 of the Court Fees Act. He submits that the appellant already stands exonerated as link between the appellant and Vicky Malhotra could not be established. Thus, the Court below ought not have decreed the suit, filed by the plaintiff against defendant No.5-the present appellant.

10. I have heard learned counsel for the parties and have gone through the record carefully.

11. So far as issue regarding acquittal of the appellant is concerned, trite it is, the findings recorded by learned trial Court are not binding on the



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Civil Court. Standard of proof in the criminal matters is ‘beyond reasonable doubt’, whereas in the Civil Court the same is ‘preponderance of probabilities’.

12. From the record it stands proved on record that the plaintiff approached the appellant-defendant No.5, a licensed stamp vendor for purchase of stamp duty of a sum of Rs.4,08,165/-. The stamp duty being more than Rs.50,000/- was to be purchased by depositing the amount with State Bank of India. It has come on record that the requisite voucher to purchase the same was signed by Vicky Malhotra. Thus, the obvious inference that can be drawn is the business/professional link between Vicky Malhotra and the present appellant. The stamp duty of Rs.1,08,165/- was forged to misrepresent the same as Rs.4,08,165/-.

13. In view of the above, this Court finds that the Courts below have rightly held defendant No.5 i.e. the present appellant as well as Vicky Malhotra liable to account for the money paid by the plaintiff to defendant No.5 for purchase of stamp duty.

14. Pure findings of fact have been recorded by the Lower Appellate Court. There being no question of law involved in the present appeal, this Court finds no reason to interfere in the second appeal.

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.

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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."

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 :-

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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. Resultantly finding no merit in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

27.03.2025

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Whether speaking/reasoned?

Yes*Whether reportable?***Yes/No**