



RSA-2152-1994 (O&M)

Sr.No.142

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

RSA No.2152 of 1994 (O&M)

Reserved on : 05.05.2025

Pronounced on : 02.07.2025

Joginder Singh and others

....Appellants

Versus

Ghulla Singh (Deceased) Through LRs and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Gaurav Chopra, Sr. Advocate with
Ms. Devanshi Sharma, Advocate
for the appellants.

Mr. Sandeep Punchhi, Advocate
for the respondents.

Mr. Ishan Kaushal, A.A.G., Punjab.

PANKAJ JAIN, J.

Defendants are in appeal. For convenience, the parties are being referred to by their original position in the suit before the Court of First Instance i.e. the appellants as defendants and the respondents as plaintiffs.

2. Plaintiff filed suit seeking decree of declaration to the effect that sale deed dated 11.07.1991 executed by defendant No.4 in favour of defendants No.1 to 3 *qua* the entire land measuring 8 Kanals, despite being

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owner only to the extent of 1/3rd share, is illegal, null and void. Further prayer was for grant of decree of permanent injunction restraining defendants No.1 to 3 from interfering and forcibly dispossessing the plaintiffs from the suit land. The suit was contested by defendants. Defendants denied that plaintiffs and defendant No.4 are joint owners of land in dispute. As per defendant No.4, the land in dispute had fallen to his share in an oral partition of joint land of plaintiffs and defendant No.4. He being in exclusive possession of the suit land sold it to defendants No.1 to 3 vide registered sale deed dated 11.07.1991.

2.1. Defendant No.4 in a separate written statement also pleaded oral partition and supported the sale deed executed by him in favour of defendants No.1 to 3.

2.2. Suit filed by plaintiffs was put to trial by the Court of First Instance, framing following issues:

1. *Whether the plaintiffs are co-sharers and also in possession of the land in dispute? OPP.*
2. *Whether the defendant No.4 was not competent to sell the land in dispute to defendants No.1 to 3? If so, its effect? OPP.*
3. *Whether the suit is not maintainable? OPD.*
4. *Relief.*

2.3. While deciding issues No.1 & 2, the Court of the First Instance found that Ghulla Singh was owner in possession of the suit land. He gave 1/3rd share to plaintiff No.2 and defendant No.4 out of 1/2 share owned by him. Thus, plaintiff No.2 and defendant No.4 became owners to the extent

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of 1/6th share each in the suit land. The Trial Court found that apart from bald assertion made by defendant No.4, there was no evidence to prove partition as claimed by defendant No.4. Defendant No.4 being co-owner only to the extent of 1/6th share was not competent to alienate the entire suit land. The Court of the First Instance has thus held that sale deed executed by defendant No.4 in favour of defendants No.1 to 3 is valid only to the extent of 1/6th share vested in defendant No.4 and partly decreed the suit filed by plaintiffs. The aforesaid finding stands affirmed by the Lower Appellate Court.

3. Learned Senior Counsel for the appellants has not been able to show any perversity in the findings recorded by the Courts below. Regarding family partition as claimed by defendant No.4, he admits that as per the revenue record the parties still remain co-sharers and are recorded to be in joint possession of the land comprised in Khewat No.96/88.

4. Apart from that, since pure findings of fact have been recorded by the Courts below and no question of law is involved, this Court does not find any reason to interfere in the findings recorded by the Courts below, guided by ratio of law laid down by Supreme Court in **Randhir Kaur Versus Prithvi Pal Singh & Ors. 2019(17) SCC 71**, wherein it was held as under :-

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*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



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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.”

5. 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-



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appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

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

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

**(PANKAJ JAIN)
JUDGE**

July 02, 2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No