IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-5560-2019 (O&M)
Date of decision : 18.03.2025

Balwinder Singh **..... Appellant**

versus

Bant Singh and another **..... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ramneek Vasudeva, Advocate
for the appellant.

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PANKAJ JAIN, J. (Oral)

1. Defendant is in appeal aggrieved of judgment and decree passed by Lower Appellate Court decreeing the suit filed by the plaintiffs setting aside findings recorded by the Court of the first instance.

2. Plaintiffs filed suit seeking declaration to the effect that agreement titled as 'Farokhatnama' dated 28.02.2011 is illegal, null and void and has no force on their legal rights. Further relief sought was in the nature of decree of perpetual injunction seeking restrain against the defendant from interfering in the suit land as detailed out in the head note of the plaint. Plaintiffs are real brothers. They claim that they are owner in possession of the suit property. They were persuaded by defendant to sell the same. They agreed to sell the same to defendant for a sum of Rs.4,20,000/-. Writing i.e. farokhatnama impugned in the suit was prepared. Defendant issued a cheque bearing No.307432 for an amount of Rs.4,20,000/- in favour of the plaintiffs. The cheque was

to be encashed on or before 24.05.2011. The cheque was presented, but the same was returned with the remarks 'Funds Insufficient'. It was thus, claimed by the plaintiffs that farokhatnama/agreement dated 28.02.2011 is invalid being without consideration. Plaintiffs claimed to be in possession of the suit property. It was further claimed that despite having approached defendant, he has refused to pay even a single penny and is rather threatening the plaintiffs with dispossession on the strength of farokhatnama.

3. Defendant contested the suit and claimed to be in possession of the suit property relying upon farokhatnama dated 28.02.2011. Defendant claimed that he spent an amount of Rs.4,50,000/- from his own pocket to get the suit property repaired and renovated. Defendant further claimed that at the time of execution of farokhatnama dated 28.02.2011, plaintiffs took blank cheque from him as a security qua sale consideration of Rs.4,20,000/-. Defendant paid an amount of Rs.3,60,000/- to the plaintiffs on 07.04.2011 and Rs.60,000/- on 20.04.2011. Thus, he having paid the entire sale consideration, is entitled to retain the possession of the suit property.

4. On the basis of the pleadings, following issues were framed:-

> *"(1) Whether the defendant has failed to ensure encashment of cheque bearing no.307432 drawn on Punjab & Sind Bank for sum of Rs.4,20,000/- issued in favour of the plaintiffs in pursuance to the agreement dated 28.02.2011? OPP*
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> *(2) In case issue no.1 is decided in favour of plaintiffs, whether plaintiffs are entitled to the relief of declaration as prayed for to the effect that Farokhatnama dated 28.02.2011 is illegal, null and void, if so its effect? OPP*

(3) Whether defendant has made the payment as per terms of agreement dated 28.02.2011 on dated 07.04.2011 and 22.04.2011 respectively? OPD

(4) Whether the suit filed by the plaintiffs is not maintainable in its present form, hence liable to be dismissed? OPD

(5) Whether the plaintiffs have not come to the Court with clean hands and have suppressed the material facts from the Court? OPD

(6) Relief."

5. Court of the first instance while deciding issue No.1 and 3 held that the plaintiffs have failed to bring on record original copy of farokhatnama dated 28.02.2011. After the cheque was dishonored, plaintiffs had a right to file complaint under Section 138 of the Negotiable Instruments Act, which they preferred. Plaintiffs claimed decree of declaration without seeking possession. All these circumstances show that the plaintiffs failed to discharge their burden and thus, failed to prove their case. Trial Court further held that since intention of the parties to farokhatnama dated 28.02.2011, was not to cancel the same in the case of non-encashment of cheque, the plaintiffs are not entitled for declaration. Court of first instance thus, dismissed the suit filed by the plaintiffs.

6. In appeal preferred by the plaintiffs, the Lower Appellate Court held that there is no dispute with respect to farokhatnama dated 28.02.2011 and terms thereof. Issuance of cheque towards sale consideration is also not disputed. It is also not disputed that not even a single penny was paid at the time of execution of farokhatnama and cheque was issued which was to be encashed upto 24.05.2011. The cheque got dishonored on presentation, which is admitted by the

defendant in his cross-examination. Thus, the Trial Court ought not have dismissed the suit filed by the plaintiffs for want of production of a document, execution and the contents of which are not in dispute. Lower Appellate Court further held that testimony of Sarabjit Singh DW2 regarding payment of Rs.3,60,000/- claimed by the defendant on 07.04.2011, cannot be believed, as he claims himself to be signatory to farokhatnama Ex.P2, whereas perusal of the same shows that he never signed the said document. Lower Appellate Court further held that even testimony of Pal Singh DW3, cannot be relied upon, as he failed to prove the factum of there being FDR as claimed by him. Lower Appellate Court further held that there being no evidence to prove defendant being in possession of the suit property, no fault can be found with the frame of the suit, wherein the plaintiffs sought decree of declaration against farokhatnama and permanent injunction to protect his possession.

7. Counsel for the appellant has assailed the findings recorded by the Lower Appellate Court. He submits that original copy of the farokhatnama was never brought before the Court and thus, Lower Appellate Court erred in relying upon the same to upset the findings recorded by the Court of the first instance. He further submits that defendant being in possession of the suit property, mere suit for declaration without seeking possession was not maintainable. Lower Appellate Court erred in holding that the defendant is not in possession of the suit property.

8. Having heard counsel for the appellant and after carefully perusing the records of the case, I am of the considered opinion that the

plea raised by the counsel for the appellant with respect to non-proof of farokhatnama dated 28.02.2011 sans merit and cannot be accepted. He admits that farokhatnama dated 28.02.2011 is not denied by the defendant. Rather defendant himself relies upon the said document to assert his right. The said farokhatnama is in shape of agreement to sell and is not a registered document. Thus, the same has no effect of investing appellant-defendant with the title of the suit property. Plaintiffs remain the owner of the suit property. Ex. PA is a judgment passed in a suit preferred by defendant seeking decree of permanent injunction against the plaintiffs. Admittedly, the said suit was dismissed holding that the plaintiff never sought decree of specific performance qua the farokhatnama. Plaintiffs claimed themselves to be in possession of the suit property. Not even a suggestion was put to plaintiffs that they are not in possession.

9. In view of above, this Court finds that the Lower Appellate Court rightly reversed the findings recorded by the Court of the first instance and decreed the suit filed by the plaintiffs.

10. 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.

11. 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 Suprems 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 inexecusable 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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> *xx xx xx*
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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."

12. 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.....…"

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

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

18.03.2025
Dinesh

Whether speaking/reasoned : Yes
Whether Reportable : No