

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

**RSA No.461 of 2011 (O&M)
Date of Order:28.02.2020**

Om Parkash

..Appellant

Versus

**Rajinder Parshad (since deceased) through LRs
and others**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manoj Kaushik, Advocate,
for the appellant.

Mr. Jai Vir Yadav, Advocate
for respondents NO.1, 5 to 7 and 9 to 14.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-appellant has filed the present regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit filed by the plaintiffs for grant of a decree of declaration that the revenue entry in the jamabandi for the year 1965-66 recording defendant no.1-appellant to be owner of ½ share instead of 1/4th share, is illegal.

Defendants contested the suit.

Both the courts on appreciation of the evidence have found that previously the share of Om Parkash was recorded as 1/4th in the jamabandi and without any basis, the same was changed to one half. Thus, both the courts have decreed the suit filed by the plaintiffs.

This court has heard learned counsels for the parties at length and with their able assistance, gone through the judgments and decrees passed by the Courts below and the record.

Learned counsel for the appellant, although, made sincere attempt, however, failed to draw attention of the court to any substantive error in reading or misreading of the evidence. Learned counsel also failed to draw attention of the court to any substantive error of law.

Jurisdiction of this court while examining regular second appeal is regulated by Section 41 of the Punjab Courts Act, 1918 which is extracted as under:-

41. Second appeals—(1) *An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :*

(a) the decision being contrary to law or to some custom or usage having the force of law :

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law :

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits. ”

Keeping in view the aforesaid phraseology used in Section 41 of the Punjab Courts Act, 1918, this court can interfere only, if the attention of this Court is drawn to substantive misreading or non-reading of the evidence.

Since, learned counsel for the appellant failed to draw attention of the court to any fact which may fall within the parameters of Section 41, this court does not find any good ground to interfere.

Dismissed.

February 28, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No