

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

**RSA No.4457-2012 (O&M)**

**Date of Order:17.02.2020**

**Hari Pal and another**

**..Appellants**

**Versus**

**Ranjit Singh and others**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Saransh Sabharwal, Advocate,  
for the appellants.  
Ms. Avinash Mandla, Advocate,  
for respondent nos.1, 10, 12 to 14.

**ANIL KSHETARPAL, J(Oral)**

Plaintiffs-appellants have filed the present regular second appeal against the concurrent findings of fact arrived at by the courts below while dismissing the suit filed by the plaintiffs for declaration claiming that they are owners in possession of 1/9<sup>th</sup> share in the property left out by a common ancestor late Sh. Shiv Parshad, who died in the year 1979. The suit was filed on 30.03.2001.

Defendants claimed that late Sh. Shiv Parshad had left behind a testamentary disposition dated 10.03.1965.

Both the courts on appreciation of the evidence found the following reasons to dismiss the suit:-

- (1) the suit filed by the plaintiffs is barred by time;
- (2) the plaintiffs did not appear in evidence and, therefore, plaintiffs failed to prove the date/time when he gained knowledge which is basis of cause of action to bring the suit within limitation.

Still further, both the courts have noticed that the will

Ex.DW7/B has been proved through examination of DW1 Rakesh Kumar, grand son of the scribe, DW2 Vijay Kumar, who also identified signature of his grand father, DW3 Dr. Raj Gopal, who identified the signature of his father and Sh. Satish Walia as DW4, who also identified the signature of his father.

Learned counsel for the appellants has made sincere efforts however, failed to draw attention of the court to any substantive misreading or non-reading of evidence.

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 substantive misreading or non-reading of the evidence is pointed out.

Hence, no ground to interfere.

Dismissed.

February 17, 2020  
nt

(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned  
Whether reportable

: Yes/No  
: Yes/No