

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

RSA-2313-1990 (O&M)

Date of decision: 30.10.2023

Tarsem Lal

....Plaintiff-Appellant

Versus

Nahar Singh and Ors.

...Defendant-Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sherry K. Singla, Advocate for the appellant

Mr. Rajesh Garg, Sr. Advocate with
Ms. Neha Matharoo, Advocate for respondents

AMAN CHAUDHARY. J.

1. Challenge in the present regular second appeal is to the judgment and decree dated 05.06.1990 passed by learned Additional District Judge, Sangrur setting aside the the judgment and decree dated 21.11.1986 passed by learned Sub Judge 1st Class, Malerkotla, whereby the suit for permanent injunction was decreed in favour of the plaintiff-appellant.
2. A suit for permanent injunction was filed by the plaintiff-appellant claiming himself to be in possession of two shops, after the demise of his father namely, Des Raj on 27.10.1977, who was carrying on the business of aerated water, betel leaves, match boxes, etc. and restraining the defendants from forcibly dispossessing him from the two shops, one situated in Pipal Wala Chowk, as shown in Ex.D1 and other one situated after leaving two shops to the first one, Ex.D2, as mentioned in the headnote of the plaint.
3. The defendant-respondents contested the suit by filing written

statement stating that Labh Kaur-mother of plaintiff-appellant was the real sister of defendants-Nahar Singh and Kehar Singh, who had taken the shop on rent from her vide rent deeds dated 03.05.1982, Ex.DX/1 and DX/2 and that when suit was filed, plaintiff was not in possession.

4. Considering the evidence adduced and the submissions advanced, the trial Court decreed the suit in favour of the plaintiff vide judgment and decree dated 21.11.1986, however, the appellate Court set aside the same holding that there was no evidence of physical possession of plaintiff over the suit property on 11.05.1983, the date of presentation of plaint and there was sufficient evidence to show possession of the defendants. However, the appellate Court set aside the judgment and decree of the trial Court on the ground that the rent notes were on stamp paper duly scribed a Deed Writer and receipt Ex.D7 also by a licenced deed writer, DW7, who proved the copy of entries of the same in his register Ex.D52 to D54 as well as stamp vendor DW5, who proved the endorsement on the rent notes and there was no evidence of the plaintiff being in possession of the disputed shops on 11.05.1983, the date of presentation of the plaint as also that he was dispossessed and the order of the learned Sessions Judge in proceedings under Section 145 CrPC Ex.D59 relied upon by the trial Court had already been set aside by the High Court, vide Ex.DX/3.

5. Against the reversal, plaintiff-appellant is in Regular Second Appeal.

6. Learned counsel submitted that the possession of the appellant over the demised premises was duly established by the production of voluminous record in the shape of the licenses issued in the name of his father for sale of aerated water, betel leaves, copies of assessment orders of sale tax from 1978 to 1982, electric licence issued to his name, receipt of payment of licence fee etc.;

application Ex.P-25/A filed by him his mother and sisters for being impleaded as LR's in civil suit filed by his father Desh Raj against Narain Singh, restraining him from interfering him into his right for setting up a bhatti in his shop, decreed on 27.01.1981; judgment dated 18.09.1981 (Ex. P-33), whereby the plaintiff-appellant, on a raid conducted by the Food and Supply Department, was involved under Section 16(1)(a) of Prevention of Food Adulteration Act, 1954 for selling aerated water seized from the shops in dispute, was acquitted; complaint lodged by him on 12.05.1983, Ex.P48 alleging him forcible dispossession by the defendants, FIR registered regarding dispossession, judgment of Additional Sessions Judge, Sangrur 13.09.1986, Ex.P59 in the proceedings initiated by him under Section 145 CrPC, in his favour by setting aside order of SDM and order to restore possession to him, income tax profit and loss accounts Ex.PX, PT, filed as proprietor of M/s Desh Raj Soda Water Factory. However, the lower Appellate Court has erred in discarding the documentary evidence led by the plaintiff, while reversing the well reasoned judgment of trial Court, by taking into consideration rent notes, Mark A and B produced by the defendants and wrongly drawing adverse inference due to non-production of neighbours or employees by the plaintiff-appellants. Reliance is placed on **Chaman Lal vs. Kamalwati** (2020) 11 SCC 693 and **Gurbachan Singh vs. Gurcharan Singh**, 2023 SCC OnLine SC 875.

7. On the other hand, learned Senior counsel contended that no interference on finding of facts can be made on the ground of being erroneous as has been held by Hon'ble the Supreme Court in **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar**, (1999) 3 SCC 722 and **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71 and that the scope of the regular second appeal is

limited in terms of Section 41 of the Punjab Courts Act, 1918 for determining and finding errors of procedures of law or custom or usage as has been held in **Pankajakshi vs. Chandrika**, (2016) 6 SCC 157. The Appellate Court having examined the matter in the right perspective based on proper appreciation of facts has set aside the judgment of the trial Court, thus, the appeal deserves to be dismissed.

8. Having heard the learned counsel on either side at length, perusing the record and in view of the peculiarity of the case, no interference is warranted at the hands of this Court.

9. Before proceedings further, it would be apposite to refer to the judgments in **Pankajakshi** (supra), wherein it has been observed by Hon'ble The Supreme Court that, in the second appeal, the finding of fact recorded cannot be interfered with even in terms of Section 41 of the Punjab Courts Act, 1918, as was also reiterated in **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026 holding that, "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". It was further followed in **Shivali Enterprises vs. Godawari**, 2022 SCC OnLine SC 1211. In **Randhir Kaur** (supra), it was observed that "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.” Further that, “In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view....” and in **Kondiba Dagadu Kadam** (supra), that, “It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

10. Notably, to prove possession, major emphasis was laid by referring to the fact that the plaintiff had been prosecuted under the Prevention of Food Adulteration Act, 1954, based on a raid having been conducted on the demised

premises wherefrom samples alleged to be adulterated were seized; FIR registered regarding dispossession, the order of Additional Sessions Judge, Sangrur, under Section 145 CrPC whereby the order of Sub-Divisional Magistrate was set aside, rent notes being marked documents but wrongly taken into consideration, in contrast to the evidence adduced by him in shape of exhibited documents showing renewal of licence, assessment of income and sales tax etc, ignoring that evidence led by the defendants was of the period after filing of the suit and undue importance given to the fact of not producing any neighbour or employee by him.

11. In view of the above, a pertinent reference is required to be made to the findings recorded by the lower appellate Court showing of rightly re-appreciating the true facts of the case as well as the evidence available on the record, the relevant, wherein the above issues were aptly dealt with and rejected, reads thus:

“DW-3 Labh Kaur testified to the fact that demised premises were owned by her and that she had purchased the same vide registered deed, copy whereof was Ex.D3... defendants Kehar Singh (since dead) and Nahar Singh in fact were brought up by her deceased husband Des Raj and that then they became able to do the job, they started assisting her husband. ...after the death of her husband Des Raj, she eventually let out both the shops to Kehar Singh, Nahar Singh separately vide rent note (marked as A and B). Statement of Labh Kaur qua possession received corroboration in all material particulars from the statements made by Teja Chand, Jagmohan Sood, Jugal Kishore, Rajiv Kumar, defendant Nahar Singh. ...There is documentary evidence too in favour of the defendants. Exs. DW11/1 to DW11/9 are the copies of relevant record maintained by authorities at Railway Station, Malerkotla, which have been duly proved by Shri Daulat Ram, Booking Supervisor, DW12. Entries therein go to show that goods received during the period 09.07.1982 to 27.11.1985, which in this case undoubtedly are betel leaves, were delivered to Rajiv Kumar on different dates. Further, Exs.DW9/1 to DW9/33, proved drafts representing the price of betel leaves. ...In consequence, documents marked A and B are thus exhibited as Exs. DX/1 and DX/2... which are on stamp papers and have

been duly scribed by a deed writer. Likewise Ex.D7 too has been scribed by a licensed Deed Writer, Ramesh Kumar DW7, who also proved copies of entries from his register as Exs. D52 to D54. Statement of Prem Chand, Stamp Vendor DW5 proved the endorsements over the stamp papers issued to the executants of documents Ex.DX/1 and DX/2 as Ex.D55 to Ex.D60 while copies of entries in his register qua sale as Ex.D61 and D62. ...Otherwise also, it ipso facto falls short of proving physical possession of the plaintiff over the suit property on 11.5.1983, date of presentation of plaint. ..Judgment dated 18.9.1982, Ex.P33 shows the sample in fact was taken on 30.5.1981 and respondent was challaned but was acquitted on 18.9.1982... It has very much come on record even in the statement of defendants and their witnesses that previously respondent had been working in the demised premises but he stopped doing work thereafter he set up factory for preparing almirahs. ...The respondent made an abortive bid to dispossess the defendants from the demised premises by manipulating the institution of suit for permanent injunction and exploiting thereafter the issuance of exparte temporary injunction by the Court which later on was vacated. Factum of lodging of the First Information Report cannot be said to be more than another unsuccessful attempt to create evidence of dispossession. Needless to say order copy of which is Ex.P59 relied upon by learned Sub Judge stands already set aside by Hon'ble the High Court vide judgment Ex.Dx/3."

12. To the mind of this Court, the case at hand, is one, which does not fall within the parameters for interference at the stage of second appeal in view of the dictum of law afore-referred and even as per **Gurcharan Singh** (supra) relied upon on behalf of appellant, wherein observations of **Nazir Mohamed vs. J. Kamala** (2020) 19 SCC 57, were followed that the findings of fact can be disturbed if (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. The judgment in **Chaman Lal** (supra), also does not lend support to the appellant, as the issue therein was regarding accuracy of translation and transliteration of the gift deed thus, the preliminary objection raised by the

appellant on the right of the High Court to look into the question on merits was not accepted.

13. Before arriving at a judicious conclusion, the lower appellate Court is found to have meticulously sifted through the evidence and recorded its own findings in the correct perspective.

14. From the above conspectus, it is evident that neither is any question of law involved nor the impugned judgement and decree suffers from any infirmity or illegality, as such, the present appeal fails and is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

October 30, 2023
M.Kamra

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No