



RSA-5207-2018 (O&M)
Date of decision : 01.08.2024

....Appellants

...Respondent

Present : Mr. G.S. Verma, Advocate for the appellants.

PANKAJ JAIN, J. (ORAL)

This is an application filed under Section 151 CPC seeking condonation of delay of 49 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants/appellants has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 49 days in filing the instant second appeal is hereby condoned.

Plaintiffs are in second appeal.

2. For convenience, the parties herein after are referred to by their



original position in the suit i.e. the appellants as plaintiffs and the respondent as defendant.

3. Plaintiffs filed suit seeking decree for declaration to the effect that they are owners in possession of the land measuring 15 kanals 7 marlas as detailed in the plaint and further that the sale deed bearing No.2379 dated 4th of July, 2014 executed by Sukhmander Singh son of Karnail Singh along with the Mutation sanctioned on the strength thereof is illegal, unjust, void being result of fraud and misrepresentation. Further prayer was for grant of permanent injunction.

4. Suit was contested by the defendant who pleaded that the plaintiffs who happen to be deserted wife and son of Sukhmander Singh were living separately for last more than 20 years. Sukhmander Singh executed sale deed in his favour while in control of all faculties of his mind and physique and the suit deserves to be dismissed.

5. Trial Court framed the following issues :

- “1) Whether plaintiffs are owners in possession of the suit property?OPP
- 2) Whether sale deed dated 04.07.2014 executed by Sukhmander Singh in favour of defendant is illegal, null and void, result of fraud and misrepresentation along with mutation NO.3122?OPP
- 3) Whether defendant is threatening to alienate the suit property and so liable to be restrained?OPP
- 4) Whether suit of plaintiff is bad for concealment of facts? OPD



- 5) Whether suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction?OPD
- 6) Relief.”

6. All the issues were answered in favour of the defendant and against the plaintiffs. Suit was ordered to be dismissed. In appeal preferred by the appellants findings recorded by the Trial Court stands affirmed.

7. Counsel for the appellants while assailing the findings recorded by the Courts below submits that the Courts below have recorded perverse finding on Issues No.2 and 3. The sale deed which is result of fraud and misrepresentation has been upheld.

8. On being asked as to what was the details of the fraud pleaded in the plaint, counsel for the appellants is at sea to answer.

9. With the able assistance of counsel for the appellants I have gone through the records of the case.

10. So far as the title of the Sukhmander Singh is concerned, the same is not in dispute rather both the parties claim tiled under the Sukhmander Singh only. It has come on record that the plaintiffs were living separately after plaintiff Lakhvir Kaur left her matrimonial house and was residing at her parental place. Sukhmander Singh during his lifetime executed sale deed in favour of the defendant which stands proved on record. Trite it is that the fraud when pleaded has to be pleaded with all the details and has to be proved beyond guilt. Mere bald assertion made by the



plaintiffs that the sale deed was result of fraud shorn of any particulars will not help the cause of the plaintiffs. In terms of Order 6 Rule 4 of Civil Procedure Code, 1908 it is the basic rule of pleadings that in order to make out a case of fraud an express allegation of fraud and all material facts in support of such allegations need to be pleaded with high degree of precision. Reference can be made to the following observations made by Supreme Court in the case of **Bishundeo Narain and anr. v. Seogeni Rai and ors.** **AIR 1951 Supreme Court 280 :**

“25. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Ct. ought to take notice, however, strong the language in which they are couched may be and the same applies to undue influence and coercion. See Order [6](#), Rule [4](#), Civil Procedure Code.”

11. Pure findings of facts have been recorded by the Courts below after appreciating the evidence on record. Trite it is that Second Appeal is not the forum to re-appreciate the evidence. In the absence of any legal infirmity, this Court is precluded from interfering in pure findings of fact recorded by the Courts below. Reliance can be placed upon law laid down



by the 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 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 an 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 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 others vs. Saroj and others, 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. In view of above, this Court does not find any merit in the instant Second Appeal. Resultantly, the same is dismissed.

August 01, 2024			(Pankaj Jain)
Dpr			Judge
	Whether speaking/reasoned	:	Yes
	Whether reportable	:	Yes