



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

**RSA No.4441 of 2019 (O&M)
Date of Decision : 05.03.2025**

Preetpal

.....Appellant

Versus

Babu Lal and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rohit Mittal, Advocate
for the appellant.

PANKAJ JAIN, J.(Oral)

CM Nos.12530 & 12531-C of 2019

Instant applications have been filed seeking condonation of delay of 49 days in filing and 97 days in re-filing the instant appeal.

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

Consequently, the present applications are allowed. The delay of 49 days in filing and 97 days in re-filing the instant appeal is hereby condoned.

RSA No.4441 of 2019

Plaintiff is in second appeal. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondent as the defendant.



2. Plaintiff filed suit for possession along with decree of declaration to the effect that the lease deed bearing Vasika No.628 dated 06.05.1986 and the mutation bearing No. 757 dated 10.11.1986 are illegal, null and void and inoperative. As per plaintiff, he is owner of the suit land measuring 33 Kanals 16 Marlas to the extent of 1/4 share. The land was leased out by plaintiff in favour of defendant vide registered lease deed bearing Vasika No.628 dated 06.05.1986 for a period of 80 years for an annual rent of Rs.250/- with the condition that if the rent is not paid by the defendant, he will be liable to be ejected. Plaintiff claims that the said lease deed was executed on the basis of General Power of Attorneys, dated 04.04.1984 and 03.07.1984. The said General Power of Attorneys are result of fraud. Plaintiff is only known by the name of Preetpal Singh and has no other name. Whereas, in the lease deed, he has been described as Prithi Pal Singh @ Raj Kapoor. Plaintiff further claimed that even lease money of Rs.250/- per year as per the lease deed, has not been paid by the defendant and is thus liable to be ejected. He claims that the entries in the revenue record came to his notice when he approached Patwari for *jamabandi*. After defendant failed to admit the case of plaintiff, he was constrained to file the suit.

3. Suit was contested by the defendant. Defendant denied ownership of the plaintiff. Defendant claimed that plaintiff has no right, title or interest in the land in question.



4. On the basis of the pleadings, Court of the First Instance framed the following issues:

- “1. Whether the plaintiff is entitled to a decree for possession as well as permanent injunction on the grounds as prayed for? OPP.
2. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD.
3. Whether the present suit is not maintainable, as per provisions of law? OPD.
4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
5. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from the court?
6. Whether the civil court has no jurisdiction to try and decide the present suit? OPD.
7. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
8. Relief.”

5. While deciding issue No.1, Trial Court came to the conclusion that the plaintiff failed to prove any fraud played upon him in execution of the lease deed. As per revenue record brought on record in the shape of *jamabandis* for the year 1988-1989, Exhibit P-2 and Exhibit P-3, defendant has been shown to be lessee in possession of the suit property. Lease deed has been tendered in evidence as Exhibit P-4. No expert was examined to dislodge the document wherein the father of the plaintiff signed as attesting witness. Likewise, no effort was made to prove forgery of General Power of Attorneys dated 04.04.1984 and 03.07.1984, as claimed. The plea raised by the plaintiff of being minor at the time of execution of the lease deed, also



could not be proved as he failed to bring on record birth certificate. Answering issue No.1 against the plaintiff, Court of the First Instance dismissed the suit filed by the plaintiff.

6. Dissatisfied, plaintiff preferred appeal.

7. The Lower Appellate Court affirmed the findings recorded by the Trial Court. Lower Appellate Court after re-appreciating the evidence, came to the conclusion that during appeal, plaintiff tendered copy of Power of Attorney (Exhibit P-6) with the consent of the defendant. Exhibit P-6 reveals that the same was attested by his father Ram Avtar. Power of Attorney mentions the name of plaintiff as Prithi Pal Singh @ Raj Kapoor. The same also bears signatures of the plaintiff. Plaintiff does not dispute his signatures on Power of Attorney. This fact falsifies the stand taken by the plaintiff that he is known only by the name of Preetpal Singh. Lower Appellate Court further found that though the plaintiff claimed to be minor at the time of execution of the lease deed, but he has failed to prove the said fact. Lease deed was executed on 01.08.1984. Plaintiff claims to be born on 08.01.1968. Even if the case of the plaintiff is taken on its face value, he became major on 08.01.1986, whereas the present suit was instituted on 02.07.2013. Plaintiff claims to have come to know of lease deed when he approached Patwari for getting the revenue record of the disputed land. But the averment is too vague. He does not mention any date, month or year in which he approached the Halka Patwari.



8. Counsel for the appellant has assailed the findings of the Courts below to submit that the Courts failed to appreciate that the lease deed is *void ab initio* as at the time of execution of the lease deed, plaintiff was minor. He refers to Section 11 of the Indian Contract Act, 1872. He thus submits that the Courts below erred in non-suiting the plaintiff despite the fact that the lease deed challenged by the plaintiff, is a document, which is *void ab initio*.

9. I have heard counsel for the appellant and have carefully gone through records of the case.

10. On being asked regarding the evidence led by the plaintiff to prove that he was minor at the time of execution of the lease deed, counsel for the plaintiff admits that no birth certificate was produced. Rather, the certificate has been produced from the office of Assistant Registrar, Birth & Death, certifying that record *qua* date of birth of the plaintiff in the name of Raj Kapoor, is not available in the years 1966-67-1968. In the absence of there being any cogent piece of evidence to prove that the plaintiff was minor at the time of execution of the lease deed, the plea raised by the counsel for the appellant cannot be sustained.

11. Pure findings of facts have been recorded by the Courts below. There being no question of law involved, re-appreciation of evidence and substitution of the opinion formulated by the Courts below, is beyond the scope of instant appeal.



12. 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 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.”

13. 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.....”

- 14. In view of above, finding no merit in the present second appeal, the same is ordered to be dismissed.
- 15. Pending application(s), if any, shall also stand disposed off.

March 05, 2025		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes/No
	Whether Reportable	: Yes/No