



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

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RSA-898-2023 (O&M)
Date of decision : 12.05.2025

Smt. Sunita and another

..... Appellants

versus

Smt. Renu Bala

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Abhimanyu Singh, Advocate
for the appellants.

Mr. Ashwani Bhardwaj, Advocate and
Mr. Sumit Sharma, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendants are in appeal.
2. Plaintiff filed suit for declaration to the effect that the plaintiff is owner in possession of the plot in question. Plaintiff further sought decree of permanent injunction restraining defendants from interfering in her peaceful possession.
3. As per case of the plaintiff, she was gifted 190 sq. yds. of land marked as ABCD in the site plan attached to the plaint vide gift deed bearing document No.191 dated 08.04.2010 by her paternal aunt Sheela Devi. She claimed that she is in possession of the suit property on the spot. Defendants despite having no concern with the suit property are adamant to dispossess the plaintiff illegally.
4. Suit was contested by the defendants. Defendants filed joint written statement claiming that land falling in khwat No.82/79, khatoni



No.107, Khasra No.837 total measuring 11 kanal 8 marlas was in the name of Satish Kumar and others. About 25 years ago, land was converted into residential area. Satish Kumar and others alienated the land by dividing the same into plots for residential purposes. Anand Parkash and Raj Kumar purchased one plot measuring 1 kanal 3 marlas from Satish Kumar vide sale deed dated 05.04.1989. Defendant No.1 purchased plot measuring 8½ marlas from Raj Kumar vide sale deed dated 30.07.2007 and possession of the plot in question was delivered to her. Defendants claim that immediately after taking possession, defendant No.1 raised boundary wall and since then is in possession of the suit property. According to defendant No.1, her husband mortgaged the plot with Punjab and Sindh Bank Branch, Bhiwani in the year 2009 availing loan of Rs.7 lacs.

5. On the basis of the pleadings, following issues were framed:-

“1) Whether the plaintiff is entitled to the relief of declaration as well as injunction as prayed for by her with respect to the disputed plot on the grounds so mentioned in the plaint? OPP.

2) Whether the plaintiff has no locus-standi as well as cause of action to file the present suit? OPD.

3) Whether the suit is not maintainable? OPD.

4) Relief.”

6. The Courts below after evaluating the evidence on record, came to the conclusion that plaintiff proved her ownership and possession over the suit property and decreed the suit filed by her.

7. Counsel for the appellants has assailed the findings recorded by the Courts below. He submits that the plaintiff has to stand on his own



legs. Plaintiff having failed to prove ownership over the plot in question on the strength of gift deed propounded by her, suit filed by the plaintiff cannot be decreed.

8. *Per contra*, counsel for the respondent submits that the precise case of the defendant is that the suit property was mortgaged by defendant with the bank to avail the loan facility. After evaluating the documentary evidence regarding mortgage of the plot in question, the Courts below found that the defendant having mortgaged different plot to the Bank, cannot claim possession over the plot in question and rightly decreed the suit filed by the plaintiff.

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

10. Admittedly, the documentary evidence of ownership brought on record by both the parties does not identify their respective properties by boundaries, but by khewat and khasra numbers. Admittedly, both have become owners of the share of the joint land. It is common case of both the parties that separate plots have been carved out and both claimed to be in possession of their respective plots. Precise case of the plaintiff is that she is in actual physical possession of her 6 marlas of plot and defendant is interfering in her peaceful possession. Defendant claims to be in possession of 8 marlas of land and as per her, same plot was mortgaged by her with the bank authorities. On pointing query, counsel for the appellants-defendants admits that it is the same plot in question which was mortgaged with the Punjab and Sindh Bank to avail loan of Rs.7 lacs.



11. On being asked whether the boundaries mentioned in the documents whereby loan was availed and the boundaries in the site plan attached to the plant are same, counsel for the appellants fairly admits that the boundaries are not the same.

12. In view thereof, this Court does not find any reason to interfere in the well reasoned judgment passed by the Courts below, whereby pure finding of facts have been recorded after analyzing the evidence on record.

13. Needless to say under Section 41 of the Punjab Courts Act, even though this Court is not required to frame substantial question of law, yet question of law is *sine qua non* to entertain the second appeal.

14. 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. Hanyamaya*** [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 a 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.”

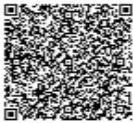
15. The said dictum was further elaborately echoed by three Judges Bench in *Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732* as under :-

“XXXX

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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.....”

16. Resultantly, finding no merits in the present appeal, the same is ordered to be dismissed.

17. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

12.05.2025
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No