



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

205

**RSA-1918-2013 (O&M)
Date of decision : 14.05.2025**

Jarnail Singh and others

..... Appellants

versus

Nikki

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Simranjit Kaur, Advocate
for the appellants.

Mr. P.S. Jammu, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendants are in appeal.
2. Plaintiff filed suit for permanent injunction to restrain defendants from alienating 1/8 share of the land as described in the headnote of the plaint and interfering in her peaceful possession over the same.
3. As per the plaintiff, mother of the parties to the *lis* namely, Surjit Kaur wife of late Shri Mal Singh, was absolute owner of the suit property. Surjit Kaur gave suit land to the plaintiff in a family settlement. In recognition of the family settlement, judgment and decree dated 14.05.2002 was passed in civil suit No.211 of 14.02.2002 by the Court of competent jurisdiction. Plaintiff claimed to be owner in possession of the



suit property on the strength of the said judgment and decree. She claimed that even though defendants have no right, title or interest vested qua the suit property, yet they are bent upon interfering in the peaceful possession of the plaintiff and alienating the suit property.

4. Suit was contested by the defendants. Even though defendants admitted ownership of Surjit Kaur wife of late Mal Singh qua the suit land, however, it was pleaded that the property in the hands of Surjit Kaur was HUF, ancestral and coparcenary property. It was denied that any family settlement ever was effected between the plaintiff and deceased Surjit Kaur. Defendants also preferred counter claim raising challenge to the judgment and decree dated 14.05.2002 suffered by Surjit Kaur in favour of the plaintiff claiming that they came to know of the judgment and decree only on 23.04.2007 after death of Surjit Kaur on 22.06.2006.

5. On the basis of the pleadings, Court of the first instance framed following issues:-

- “1. Whether the plaintiff is owner and in possession of the suit land on the basis of a judgment and decree dated 14.05.2002 passed in civil suit bearing no. 211 of 14.02.2002? OPP
2. If issue no.1 is proved in affirmative, whether the plaintiff is entitled to the relief of injunction as prayed for? OPP
3. Whether the defendants are owners and in possession of 1/10 shares of land, fully detailed and described in the head note of the counter claim by way of mutation of inheritance of deceased Surjit Kaur? OPD
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the judgment and decree dated 14.05.2002 passed in civil suit no.211 of 14.02.2002 is wrong, against law and



facts, result of fraud and the same is liable to be set aside? OPD

6. If issue no. 3 & 5 are decided in favour of the defendants whether the defendants are entitled to a decree for declaration and injunction as prayed for in the counter claim? OPD

7. Relief.”

6. While deciding material issues, the Courts below found that Mal Singh transferred land in the name of Surjit Kaur by way of Will. Thus, the Trial Court found that by virtue of Section 14 of the Hindu Succession Act, 1956 Surjit Kaur became absolute owner of the property by way of succession and not by way of survivorship. The source of the property in hands of Surjit Kaur remained unchallenged. Trial Court thus, found that the challenge raised by the counter claimants-defendants to the right of Surjit Kaur to transfer the property in favour of plaintiff cannot be accepted. Resultantly, the Trial Court dismissed the counter claim preferred by the claimants-defendants and decreed the suit filed by the plaintiff. The aforesaid findings stand affirmed by the Lower Appellate Court.

7. Learned senior counsel appearing for appellants while assailing the findings recorded by the Courts below submits that the presence of Surjit Kaur before the Court could not be proved and thus, the possibility of decree having been suffered by way of impersonation cannot be ruled out.

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

9. So far as the competence of Surjit Kaur to transfer the property in question in favour of the plaintiff is concerned, the same stands



established. Learned senior counsel is not in a position to dispute that Surjit Kaur became owner in possession of the suit land on the strength of Will. The Will always remained unchallenged. Thus, Surjit Kaur having become owner of the suit property by way of testamentary document, the property in her hands cannot be held to be ancestral property.

10. So far as issue with respect to impersonation is concerned, plaintiff examined Rajesh Yadav, Advocate as PW-3. He deposed that he appeared on behalf of deceased Surjit Kaur in the civil suit No.211 of 14.02.2002. He filed written statement on behalf of Surjit Kaur. Contents of written statement were read to Surjit Kaur, who after finding it to be correct, affixed her thumb impression upon the same. Mr. J.C. Gupta, Advocate was also examined. Jagtar Singh PW-5 lamberdar of the village appeared and testified that it is he, who identified Surjit Kaur in the Court.

11. In view thereof, this Court finds that the Courts below rightly rejected the contention of the defendants regarding decree passed in favour of the plaintiff being result of misrepresentation and impersonation.

12. Pure finding of facts have been recorded by the Courts below. No evidence could be pointed out by senior counsel representing the appellants which can be said to have been ignored or misread.

13. 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 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.”

14. 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.....”

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



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

(PANKAJ JAIN)
JUDGE

14.05.2025
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No