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

RSA-1067-2020 (O&M)

Date of decision : 25.02.2025

Manohar Lal Mehta (since deceased) through his LR's

..... Appellant

versus

Krishna Devi & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Munish Gupta, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

1 Plaintiff is in second appeal aggrieved of part of judgment and decree dated 20.09.2019 passed by Additional District Judge, Hoshiarpur returned by the Lower Appellate Court allowing his suit in part to the extent that he has been entitled to 1/8th share in the suit property left by Raja Ram his father. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellant as plaintiff and the respondents as defendants.

2 Plaintiff filed a suit seeking decree of declaration to the effect that he is owner in possession of the land measuring 153 kanals 8 marlas as detailed out in the head note of the plaint. Plaintiff claimed that the suit land was purchased in the name of Raja Ram his father as *Benamidar*. After death of Raja Ram, the same has been wrongly mutated in favour of defendants No.1



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to 4. Plaintiff being exclusive owner in possession is entitled for decree of declaration to the said effect. Further prayer was that he being in exclusive possession of the suit land is entitled for decree of permanent injunction against the defendants. Defendants propounded unregistered WILL dated 08.03.1976 claiming to have been executed by Raja Ram. Suit filed by the plaintiff was put to trial by the Court at First instance framing following issues :-

- “1. Whether the sale deeds dated 4.7.68 and the two sale deeds dated 9.3.70 got executed by Raja Ram father of the plaintiff qua the suit properties were Benami purchases by the plaintiffs in the name of his father Raja Ram? OPP*
- 2. Whether Raja Ram father of the plaintiff died intestate ?OPP*
- 3. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP*
- 4. Whether the plaintiff is entitled to the consequential relief of permanent injunction as prayed for? OPP*
- 5. Whether the plaintiff is entitled to the alternative relief of declaration as prayed for? OPP*
- 6. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for by way of alternative relief? OPP*
- 7. Whether the site plan of the plaintiff is not correct? OPD*
- 8. Whether the plaintiff has not come to the court with clean hands and has suppressed material facts ? OPD*
- 9. Whether the plaintiff is barred from filing this suit on the basis of agreement dated 18.2.87? OPD*
- 10. Relief.”*

3 Trial Court returned findings on issue No.1 to 6 against the plaintiff and in favour of the defendants. WILL executed by Raja Ram was believed. Even agreement propounded by defendants dated 18.02.1987 Ex.D-4



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was held to have been proved and was relied upon to adjudicate collateral rights between the parties. Suit filed by the plaintiff was dismissed.

4 Dissatisfied plaintiff preferred appeal. The same has been partly allowed. Lower Appellate Court held that plaintiff having failed to prove that he contributed to the funds cannot be held to be real owner to dislodge Raja Ram as *Benamidar*. WILL propounded by the defendants has been disbelieved holding that original copy of WILL propounded by the defendants was neither produced before the Court nor was available in the summoned record. Thus the Lower Appellate Court held that estate left by Raja Ram has to follow natural succession and the plaintiff being one of the successors being his son was entitled to 1/8th share. The Appellate Court thus partly decreed the suit filed by the plaintiff to that extent.

5 Pure finding of fact has been recorded by the Lower Appellate Court. 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



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*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.*

xx xx xx

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



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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.”

6 Finding no merits in the present appeal, the same is dismissed.

25.02.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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