



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

**RSA-978-2024 (O&M)
Date of decision : 19.01.2026**

Satnam Singh

....Appellant

Versus

Kanta & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Ms. Anju Arora, Advocate
for the appellant.

PANKAJ JAIN, J.(ORAL)

1 Plaintiff is in second appeal. 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 suit seeking declaration to the effect that he has become owner in possession of property as mentioned in the head note of the plaint. He further prayed for decree of permanent injunction restraining defendants from alienating the suit property. As per plaintiff, he along with one Ishwar Chand jointly purchased property in question. Late Ishwar Chand was residing in his adjoining house. He was estranged from his family. Ishwar Chand died on 20.04.2012 after ailment. Plaintiff is the one who took care of him in the hospital and performed his last rites. He and Ishwar Chand were jointly running business of Timber merchandise. Out of love and affection, Ishwar Chand executed registered WILL dated 28.12.2004 in his



favour. Defendants who are the family members of Ishwar Chand never tried to meet him during his lifetime. Upon his death, they got the property mutated in their favour on the basis of natural succession. Plaintiff claims estate left by Ishwar Chand on the basis of WILL dated 28.12.2004.

3 Suit was contested by defendants. As per defendants, their relations with Ishwar Chand were cordial. During his lifetime, Ishwar Chand performed all duties of a loving father. He got all his sons and daughters married and settled them as per their wishes. After his retirement from Haryana Police he was running joint business with plaintiff. WILL dated 28.12.2004 propounded by the plaintiff, is a false, forged and fabricated document. After death of Ishwar Chand, plaintiff sought inheritance on the basis of forged and fabricated WILL dated 28.12.2004. The mutation was contested by the defendants. Disbelieving the WILL, the Revenue Authorities granted mutation of inheritance in favour of defendants vide order dated 15.03.2013. Defendants claimed that entire expenditure *qua* treatment of Ishwar Chand at Fortis Hospital, Mohali was borne by them. Dead body of Ishwar Chand was received by defendants. His last rites were performed by defendants No.2 to 8. Plaintiff has not settled the accounts of partnership business and is threatening to usurp the same.

4 The defendants also filed counter claim claiming 1/2 share in the business run jointly by the plaintiff and Ishwar Chand in the name and style of 'Satnam Timber Merchants' and sought partition.

5 Suit filed by the plaintiff and the counter claim preferred by the defendants were put to trial by the Court of the First Instance framing



following issues:-

- 1 Whether there exists a valid registered Will executed by Ishwar Chand in favour of the plaintiff qua ½ share in the suit property? OPP*
- 2 Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 3. Whether the plaintiff is entitled to Permanent Injunction as prayed for? OPP*
- 4 Whether the counter claimants are entitled to separate possession of the suit property. If so, to what share? OPC*
- 5 whether the counter claimants are entitled to settlement of accounts? OPC*
- 6 Whether the counter claimants are entitled to Permanent Injunction as prayed for? OPC*
- 7 Whether the suit is not maintainable? OPD*
- 8 whether the plaintiff has no locus standi to file the present suit? OPD*
- 9 Relief.”*

6 Court of First Instance while recording findings on issues Nos. 1 to 3 found that the WILL Ex.P-1 propounded by the plaintiff was surrounded by suspicious circumstance. Plaintiff failed to dispel the same. In order to prove that that Ishwar Chand had strained relations with his family, plaintiff examined Nirmala Devi, PW4 who was working at the house of Ishwar Chand. To prove WILL, plaintiff examined Babu Ram, Lambardar as PW5- one of the attesting witnesses to the WILL. Nirmala Devi while appearing as PW4 though in her examination-in-chief stated that none of the family members of Ishwar Chand looked after him and nobody visited his house ever and that his last rites were performed by the plaintiff. However, in cross-examination she admitted that the last rites of Ishwar Chand were performed by his children and not by the plaintiff. Babu Ram, Lambardar who appeared as PW5 testified before the Court that he attested the WILL on the asking of



plaintiff-Satnam Singh. Regarding testimony of the attesting witness Babu Ram, Lambardar, Court of First Instance observed as under :-

“One of the attesting witness to the Will is Babu Ram who has been examined by the plaintiff. In his cross-examination, he has stated that he lives in a village at a distance of 4 km from Ambala: And that Ishwar Chand lives in Kartar Nagar. Ambala; He does not know the name of the children of Ishwar Chand; that he had never visited the house of Ishwar Chand; that he does not know as to when Ishwar Chand died; that he met Ishwar Chand in Tehsil by chance; that he had attested the Will as attesting witness on the asking of the plaintiff Satnam Singh; that he does not know Satnam Singh; that Satnam Singh has come to his house a couple of times. From the sole testimony of Babu Singh it can be seen that Satnam Singh had himself joined Ishwar Chand and had participated in the execution of the Will in his favour.”

7 Trial Court accordingly dismissed the suit filed by the plaintiff.

8 While adjudicating upon the counterclaim, the Court of First Instance found that the defendants proved on record ration card Ex.D2 which shows that Ishwar Chand was residing with his wife Kanta. Bills of Fortis Hospital, Mohali pertaining to treatment of Ishwar Chand Ex. D3 to Ex.D6 were proved by defendants. After his death, bill issued by the Indian Red Cross Society, Sector 11 Chandigarh regarding vehicle hired to transport dead body of Ishwar Chand from hospital shows that the same was paid by defendant No.3-Desh Bandhu, son of Ishwar Chand. Trial Court accordingly granted preliminary decree in favour of the defendants for rendition of accounts *qua* rent of six shops constructed in joint land owned by plaintiff and late Ishwar Chand. Trial Court however rejected counter claim in part



denying them decree of rendition of accounts *qua* joint business and also denied them decree of permanent injunction.

9 Both the parties preferred separate appeals. Civil appeal No.375 of 2016 was preferred by plaintiff. Civil appeal No.397 of 2016 was filed at the behest of the defendants. Lower Appellate Court affirmed the findings recorded by the Trial Court on issues No.1 to 3 and issues No.7 & 8. The findings on issues No.4 & 6 stand modified by the impugned judgment and decree. Lower Appellate Court accepted the appeal preferred by the counter claimants-defendants holding them entitled to the relief of separate possession by way of partition of suit property to the extent of 1/2 share and granted them decree of permanent injunction.

10 Learned counsel for the plaintiff has assailed the findings recorded by the Courts below. She contends that as per the evidence on record it stands proved that Ishwar Chand was living separately from his family and out of his own free consent and without any coercion executed registered WILL dated 28.12.2004 in favour of the plaintiff. The Courts below have wrongly discarded the WILL, which is a registered WILL and has presumption of truth attached thereto.

11 I have heard learned counsel for the plaintiff and have gone through the records of the case.

12 It is not in dispute that Ishwar Chand was owner to the extent of 1/2 share in the joint business. Plaintiff claims estate left by him on the basis of WILL Ex. P-1. In order to prove WILL, plaintiff examined Babu Ram, Lambardar, as PW5. Babu Ram in his cross examination admitted that he

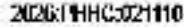


attested WILL on the asking of plaintiff-Satnam Singh and that Satnam Singh has visited his residence twice. Plaintiff claimed that Ishwar Chand had strained relations with his family and that during his ailment, Ishwar Chand was taken care of by the plaintiff and it is the plaintiff who performed his last rites. PW4 Nirmala Devi examined by plaintiff in her cross- examination admitted that last rites of Ishwar Chand were performed by his children and not by the plaintiff. Defendants proved the bills/invoices *qua* the treatment of Ishwar Chand issued by Fortis Hospital, Mohali. They proved that body of Ishwar Chand was transported by them from Mohali to the cremation ground. Bill regarding purchase of wood for the purpose of cremation was issued in the name of Sanjeev Kumar, defendant No.4. This all proves that the entire case projected by the plaintiff is based upon falsehood.

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.

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 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.”*

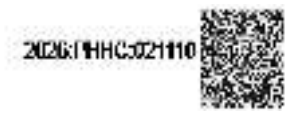
14 The said dictum was further elaborately echoed by three Judges Bench in *Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732* as under :-

“xxxx

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 Pure finding of facts have been recorded by the Courts below after analyzing the entire evidence threadbare. Counsel for the appellant has not been able to point out any perversity in the findings recorded by the Lower Appellate Court that can persuade this Court to interfere in the well-reasoned judgment recorded by the Lower Appellate Court.

16 In the absence of any material perversity or legal infirmity, pure findings of fact cannot be interfered in second appeal.

17 Resultantly finding no merit, the present appeal is dismissed.

19.01.2026
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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