

2026:PHHC:067839



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

RSA-1954-2023 (O&M)  
Date of Decision: 29.04.2026

Vidya Devi and another

...Appellants

Versus

Kishan Singh and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Gaurav Tyagi, Advocate,  
for the appellants.

**VIKRAM AGGARWAL, J (Oral)**

This is plaintiffs' appeal against the judgment and decree dated 19.12.2018, passed by the Court of Additional District Judge, Faridabad, dismissing the appeal against the judgment and decree dated 16.02.2018 passed by the Court of Civil Judge (Junior Division), Faridabad, vide which the suit filed by the plaintiffs, was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiffs (Smt. Vidhya Devi and Smt. Azad Wati Devi) filed a suit for declaration to the effect that the judgment and decree dated 16.01.1985 passed by the Court of Sub Judge, First Class, Faridabad in Civil Suit No.477/1984 and mutation No.3305 dated 24.07.1988, were null and void and that the

plaintiffs were owners in possession of the suit property as described in para No.1 of the plaint. Consequential relief of permanent injunction restraining the defendants from alienating the suit property, was also sought.

3.1 It was claimed that Smt. Sukhdhei, mother of the plaintiffs, Sh. Sukhdev, father of defendants No.1 and 2 and grandfather of defendants No.3 to 8 and Sh. Ramphool, father of defendant Nos. 10 to 12 and husband of defendant No.13 and father-in-law of defendant No.9, were recorded as owners in possession to the extent of 1/3<sup>rd</sup> share each of agricultural land (fully described in the plaint) total measuring 69 Kanals 2 Marlas, situated within the revenue estate of village Jawan, Tehsil Balabgarh, District Faridabad (hereinafter referred to as the 'suit property'), as per jamabandi for the years 1982-1983.

3.2 It was further claimed that after the death of Smt. Sukhdei, the plaintiffs became owners in possession to the extent of their shares in the suit property. The suit property was claimed to be ancestral in nature, as the same was previously owned by the maternal grandfather of the plaintiffs and after his death, it had devolved upon the mother of the plaintiffs and mutation No.1980 was also duly sanctioned.

3.3. It was further the case of the plaintiffs that defendants No.1 and 2, in collusion with one Ramphool, instituted Civil Suit No.477/1984 for declaration. In the said suit, defendants No.1 and 2 produced a lady before the Court, projecting herself to be Smt. Sukhdei and obtained the judgment and decree dated 16.01.1985 in their favour.

3.4 On the basis of the said judgment and decree, defendants No.1 and 2 got the suit property mutated in their favour vide mutation No.3305 dated 24.07.1988. It was further claimed that the plaintiffs came to know about the said decree in March, 2014.

3.5 It was asserted by the plaintiffs that the judgment and decree dated 16.01.1985 and mutation No.3305 dated 24.07.1988 were illegal, unlawful and non-est in the eyes of law as the mother of the plaintiffs was an illiterate lady and she had never appeared in the Court of Sub-Judge Ist Class, Faridabad. Moreover, the mother of the plaintiffs had no intention to transfer the suit property in favour of defendants No.1 and 2 and that she used to remain sick and was not in a sound disposing mind. It was also claimed that no summons or notice of the Civil Suit No.477/1984 had ever been received by the mother of the plaintiffs nor had she ever appointed Ms. Durgesh Bakshi as her counsel. The factum of the mother of the plaintiffs having put her thumb impressions upon the written statement was also disputed.

4. Defendants No.1 and 2 contested the suit by filing a written statement taking certain preliminary objections as regards maintainability, estoppel, *locus-standi*, the suit being barred by limitation, Court fee and the plaintiffs having not approached the Court with clean hands.

4.1 On merits, it was asserted that during her life time, the said Sukhdei, had relinquished all her ownership and possessory rights in favour of defendant Nos.1 and 2 as well as

Ramphool (grandfather of defendants No.3 to 8, father-in-law of defendant No.9, father of defendants No.10 to 12 and husband of defendant No.13) vide decree dated 16.01.1985 and the said decree was never challenged by the said Sukhdei till her death.

4.2 It was further averred that defendant No.2-Smt. Sukhbiri had also relinquished her rights in favour of defendant No.1 by way of relinquishment deed No.1931 dated 04.07.2000 and on the basis thereof, mutation No.1007 dated 01.12.2000 had been sanctioned in favour of defendant No.1.

4.3 Despite service, none appeared on behalf of defendants No.3 to 13 and accordingly, they were proceeded against *ex-parte*.

5. From the pleadings of the parties, the following issues were framed:-

1. **Whether the plaintiff is entitled to a decree for declaration, as prayed for? OPP**
2. **Whether the suit of the plaintiff is not maintainable? OPD**
3. **Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD**
4. **Whether the suit of the plaintiff is barred by limitation? OPD**
5. **Whether the plaintiff has not come to the Court with clean hands? OPD**
6. **Whether the suit is bad for want of proper Court fee? OPD**
7. **Relief.**

6. Parties led their respective evidence.

7. The trial Court, vide judgment and decree dated 16.02.2018, dismissed the suit filed by the plaintiffs. The appeal

filed by the plaintiffs against the said decision was also dismissed by the first Appellate Court vide judgment and decree dated 19.12.2018. Still aggrieved, the plaintiffs have preferred the instant appeal.

8. I have heard learned counsel for the appellants and have also perused the record.

9. Learned counsel appearing for the appellants argues that both Courts failed to take into consideration that the judgment and decree dated 16.01.1985 was obtained by fraud inasmuch as the mother of the appellants had never appeared in any Court nor had she engaged any counsel. It is further argued that the mother of the plaintiffs was old and sick and was not in a position to appear before any Court and as a matter of fact, the decree dated 16.01.1985 had been obtained by impersonation. It is further argued that the judgments and decrees passed by the Courts below are based on conjectures and surmises and the same are liable to be set aside.

10. I have considered the submissions made by learned counsel for the appellants, but find the same to be devoid of merit.

11. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the cases of **Kirodi (since deceased) through his LR V/s Ram Parkash and**

**others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

12. Both Courts returned a finding that the plaintiffs had failed to prove that their mother (Smt. Sukhdei) was not alive and that the death of a person cannot be presumed except in case of the presumption under Section 107 of the Indian Evidence Act. Still further, it was found that the said Sukhdei had never challenged the decree dated 16.01.1985. Accordingly, it was held that the plaintiffs were not entitled to the decree sought for.

13. It was further held that the suit filed by the plaintiffs was barred by limitation inasmuch as the impugned decree was passed on 16.01.1985 and the suit was filed by the plaintiffs on 05.08.2014. It was held that though the plaintiffs had pleaded that the said decree had been obtained by fraud and there was no limitation to challenge any decree obtained by fraud, yet having failed to establish the factum of fraud and further having failed to explain the delay in filing the civil suit in the year 2014, the suit filed by the plaintiffs was hopelessly barred by time.

14. It was further found that the plaintiffs had filed a simplicitor suit for declaration without seeking possession and as such the same was not maintainable.

15. This Court is of the considered opinion that the findings recorded by both Courts are based on evidence on record. Though the plaintiffs had pleaded that the judgment and decree dated 16.01.1985 had been obtained by fraud and

impersonation, yet no evidence to that effect was led. As has rightly been observed by both Courts, no evidence was led to prove that the judgment and decree dated 16.01.1985 had been obtained by fraud or impersonation. It was rightly held that not even a single witness deposed about the proceedings of the case in which the decree dated 16.01.1985 had been passed. The counsel representing Ms. Sukhdei was not examined. No evidence was led to prove that her signatures/thumb impressions did not appear on her written statement and statement in Court. No evidence was led to prove that no statement had been given by Sukhdei in Court. It has to be borne in mind that fraud has to be specifically pleaded along with its ingredients and has to be proved by leading cogent evidence. The plaintiffs miserably failed to do so as a result of which their suit was rightly dismissed. It was also rightly held that statements made before a Court of law having certain level of sanctity, cannot be said to be fraudulent on the mere asking of a party. Reference in this regard can be made to the judgment of a Co-ordinate Bench in **Lichhami Devi Vs. Bharpai, 2012 (5) RCR (Civil) 628**.

16. In view of the above, the concurrent findings of facts recorded by both Courts cannot be said to be suffering from any illegality warranting interference by this Court in the instant Regular Second Appeal. It could not be shown that any evidence has been misread or taken into consideration.

17. For the reasons aforementioned, I do not find any merit in the present appeal and the same is, accordingly, dismissed.

18. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)  
JUDGE

29.04.2026  
ds

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