



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA-2758-2011(O&M)
Date of decision: 07.04.2026

Sajjan Singh

...Appellant(s)

Vs.

Gajjan Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Nandan Jindal, Advocate
Ms. Hashvi, Advocate
Ms. Jasmine Sahni, Advocate
Ms. Parneet Kaur, Advocate
for the appellant.

NIDHI GUPTA, J.
CM-9783-C-2011

Present application under Section 151 CPC has been filed by the applicant/appellant for raising additional ground to the effect that the learned Additional District Judge did not comply with the order of this Court vide which case was remanded.

Learned counsel for the applicant/appellant submits that in the previous RSA-1390-2006, this Court vide order dated 20.04.2009 had remanded the matter back to the learned District Judge on the ground that application filed by the present applicant/appellant under Order 41 Rule 27 CPC had not been decided by the learned District Judge while passing the



judgment dated 09.12.2005, whereby suit of the appellant had been dismissed. Learned counsel submits that again despite remand of the matter, the said application filed by the applicant/appellant under Order 41 Rule 27 CPC still remained undecided by the District Judge while passing the impugned judgment and decree dated 25.01.2011.

Heard.

There is no merit whatsoever to the aforesaid submissions raised on behalf of the applicant. A perusal of the record of the case would show that the application filed by the applicant under Order 41 Rule 27 CPC has been dismissed by the Addl. District Judge, Sangrur vide order dated 25.01.2011. This aspect of the matter shall be dealt with in greater detail hereinunder.

Thus, there is no merit whatsoever to the submissions of the applicant/appellant. Present application stands **dismissed**.

CM-7480-C-2011

This is an application under Order 41 Rule 27 read with Section 151 CPC for permission to lead additional evidence.

Ld. counsel for the applicant submits that permission may be granted to the applicant/appellant to place on record copy of Mutation dated 31.01.1987; and judgment and decree passed by Id. Additional Civil Judge (Senior Division), Dhuri dated 13.01.2005, which is necessary for the fair decision of the case.

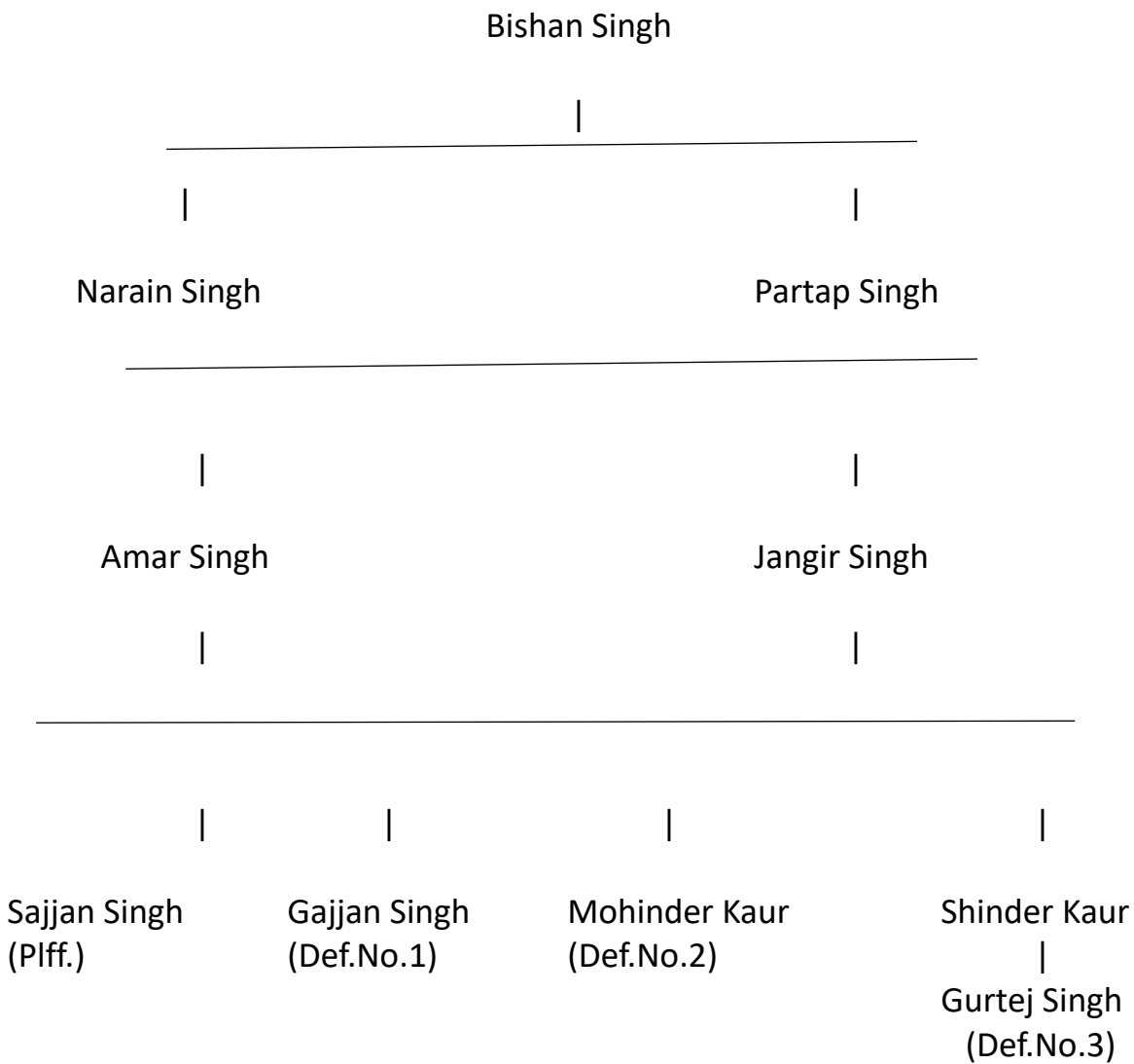
Present application stands **allowed**.

**MAIN CASE**

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned District Courts whereby suit filed by the appellant for declaration that appellant is co-owner and in joint possession of the suit property; **and** for declaration that Mutation No.5861 sanctioned in favour of the respondent Gajjan Singh, is illegal; **and** for declaration that the Will dated 25.01.1984 executed by Amar Singh in favour of Gajjan Singh is forged and fabricated; **and** consequential relief of permanent injunction, has been dismissed by both the Courts below.

2. At the very outset, it may first be pointed out that although present Second Appeal is of the year 2011, however, notice in the main appeal is yet to be issued as the order sheets reveal that the matter has been repeatedly adjourned ad infinitum at request of or due to non-appearance of learned counsel for the appellant on 06.07.2011, 08.08.2011, 25.08.2011, 14.02.2013, 07.08.2013, 18.02.2014, 22.07.2014, 27.04.2015, 12.10.2015, 29.03.2016, 11.10.2022 and 12.03.2024. Even today, a request for adjournment was made which was declined by this Court, whereupon Pass Over was sought, which was granted. Even in the second-round request for adjournment was made, which was again declined whereupon arguments have been addressed.

3. For proper appreciation of the dispute at hand, the following pedigree table is necessary: -



4. It was the pleaded case of the appellant that Bishan Singh was exclusive owner in possession of the suit property; and after his death, his property was inherited by his two sons being Narain Singh and Partap Singh. Narain Singh had expired and his property was inherited by Amar Singh and Jangir Singh. Amar Singh had also expired leaving behind the present parties namely Sajjan Singh and Gajan Singh. It was alleged that after the death of Amar Singh, Gajjan Singh/defendant No.1 had got entered Mutation No.5861 qua share of Amar Singh by producing forged and fictitious Will dated 25.01.1984. It was alleged that Amar Singh had never executed any such Will



in favour of Gajjan Singh nor had he any legal necessity to execute the same. It was contended that the plaintiff is also co-owner in joint possession of the property of Amar Singh.

5. It was further pleaded that Gajjan Singh defendant had previously filed a suit for declaration before Ld. Sub Judge Ist Class, Dhuri, titled as "Gajjan Singh Vs. Sajjan Singh and others" on the basis of alleged forged Will, but the same was dismissed as withdrawn on 4.12.1996. During the pendency of the suit in the Court of Ld. Sub Judge Ist Class, Dhuri, the District Collector, Sangrur decided the above said appeal on 17.01.1992 titled "Gajjan Singh Vs. Sajjan Singh and others" by accepting the same. The plaintiff preferred an appeal against the order of District Collector, Sangrur, before Commissioner, Patiala, who vide his order dated 31.03.1997, dismissed the appeal of plaintiff titled "Sajjan Singh Vs. Gajjan Singh and others". The said order of the commissioner is illegal, null and void qua the ownership rights of the plaintiff and mutation sanctioned on the basis of the illegal Will qua the ownership rights of the plaintiff has no binding effect upon the rights of plaintiff. Plaintiff and defendant no.1 are the only legal heirs of Amar Singh deceased and are entitled for his property. Amar Singh father of the parties never executed any Will in favour of Gajjan Singh, nor he had any legal necessity to execute the same. After the death of Amar Singh, the plaintiff as co-owner in joint possession to the extent of 5/48 share i.e. $\frac{1}{2}$ share of 5/24 share of Amar Singh deceased and the plaintiff is already co-owner in joint possession of 5/24 share



of Jangir Singh and mutation of that share was sanctioned in favour of plaintiff in the presence of Amar Singh. In this way, the plaintiff is co-owner in joint possession of 15/48 share i.e. 5/48 share out of Property of Amar Singh deceased and he is already owner in joint possession of 5/24 share of Jangir Singh, on the basis of mutation sanctioned in his favour. Defendant no.1 alone is not the owner in joint possession of the property of Amar Singh deceased. Defendant no.1 was requested many times to admit the claim of the plaintiff, to which he paid no heed forcing the plaintiff to come up with the present suit. Hence, present suit was filed on 18.09.1997.

6. Upon notice, the defendant No.1 had filed written statement resisting the suit of the plaintiff by taking formal pleas as also on merits. It was contended that suit of the plaintiff is barred by limitation. It was averred that Sajjan Singh is adopted son of Jangir Singh, who was real brother of Amar Singh. Jangir Singh Uncle of defendant no.1 was unmarried and issue-less and adopted the plaintiff. The plaintiff inherited his property and plaintiff has no concern with the suit property. It was further pleaded that after the death of Amar Singh defendant no.1 inherited his estate on the basis of valid Will and mutation has been sanctioned in his favour. The suit property is not Joint Hindu Coparcenery and ancestral property. The plaintiff is not co-owner in joint possession of 5/48 share i.e. 1/2 share of 5/24 share of Amar Singh deceased. The appeal preferred by plaintiff against the order dated 31.03.1997 was



dismissed. The Order of Commissioner, Patiala is legal and valid. On these averments, dismissal of suit was asked for.

7. Replication to the written statement was filed reiterating the contents of the plaint and denying those of the written statement.

8. On basis of pleadings of parties, following issues were framed: -

"1. Whether mutation No.5861 sanctioned on the basis of order of Commissioner Patiala passed on 31.03.1997 is illegal, null and void and is liable to be set aside OPP.

2. Whether the Will alleged to be executed by deceased Amar Singh in favour of Gajjan Singh on 25.11.1984 is also illegal, null and void and ineffective qua the ownership rights of the plaintiff? OPP.

3. Whether the plaintiff is entitled to injunction as prayed for? OPP.

4. Whether the plaintiff is entitled to declaration as prayed for?OPP.

5. Whether Amar Singh executed a legal and valid will on 25.11.1998 in favour of defendant Gajjan Singh, hence mutation on the basis of same is rightly entered in favour of defendant?OPD.

6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD

7. Whether the present suit is within limitation?OPP

8. Whether the plaintiff Sajjan Singh is the adopted son of Jangir Singh, real brother of Amar Singh deceased. If so, its effect? OPD

9. Whether the suit property is joint Hindu Family and ancestral property and plaintiff and defendant no.1 only are having right in suit property since their birth being coparceners?OPP

10. Relief."



9. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, issues No.1 to 6, 8 and 9 were decided in favour of the defendants and against the plaintiff. Issue No.7 was decided in favour of the plaintiff and against the defendants. Consequentially, vide judgment and decree dated 22.03.2004, suit of the plaintiff was dismissed with costs by the learned Civil Judge (Junior Division), Dhuri.

10. The Civil Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Sangrur vide judgment and decree dated 9.12.2005.

11. The plaintiff had previously challenged the abovesaid impugned judgments and decrees of the learned Courts below before this Court, by way of RSA-1390-2006. Vide order dated 20.04.2009 passed by this Court in the said RSA-1390-2006, the matter was remanded back to the learned District Judge on the ground that application filed by the appellant under Order 41 Rule 27 CPC had not been decided by the learned District Judge while passing the judgment dated 09.12.2005, whereby suit/Civil Appeal of the appellant had been dismissed.

12. Pursuant thereto, Civil Appeal filed by the plaintiff has again been dismissed by the learned Additional District Judge, Sangrur vide judgment and decree dated 25.01.2011. Hence, present Second Appeal by the plaintiff.

13. The primary ground on which learned counsel for the appellant is laying challenge to the impugned judgments and decrees is that despite remand of the matter, application filed by the appellant under Order 41 Rule



27 CPC has again not been decided by the learned District Judge while passing the impugned judgment and decree dated 25.01.2011. The said contention has been raised by the appellant even in aforementioned CM-9783-C-2011 filed under Section 151 CPC by the appellant for raising additional ground to the effect that the learned Additional District Judge did not comply with the order of this Court vide which case was remanded.

14. Ld. counsel for the appellant has also drawn the attention of this Court to the averments made in paras 4 and 5 of the present Grounds of Appeal at page 17 of the paper book, which read as follows: –

“4. That the appellant is also moved an application on 20.7.2005 before Ld.Appellate Court for additional evidence to place on record the Will executed by Jangir Singh in favour of his nephew Sajjan Singh son of Amar Singh. Notice was issued on that application. Reply was filed by the respondents but the Ld.Appellate Court has not passed any order on that application. The copy of the application for additional evidence is attached herewith as ANNEXURE A-2.

5. That the appellant also moved an application for framing the additional issue and to remand the case before the Ld.Trial court on dated 20.7.2005 issued a notice on that application Respondent has filed the reply on that application on dated 2.09.2005 but the Ld.Appellate Court has not passed any order that application also. True copy of the application is attached herewith as ANNEXURE A-3 and the copy of the reply is attached herewith as ANNEXURE A-4.”



15. It is submitted that, therefore, the impugned judgments and decrees are unsustainable on this short ground that even after remand, while passing the judgment dated 25.1.2011, the application of the appellant for additional evidence has not been decided. It is accordingly prayed that the impugned judgments and decrees be set aside.

16. On a Court query, regarding the merits of the matter, learned counsel for the appellant has submitted that the Ld. Trial Court has not given any finding upon issue No.8. The defendant/respondent did not produce particulars of the alleged adoption and only mentioned in his written statement that plaintiff is adopted son of Jagir Singh and said Jagir Singh is issueless and unmarried but regarding that no proof of adoption has been placed on record by the defendant. The defendant even does not place on record any evidence which shows that on which date, time, year and who is present at the time of giving and taking when the appellant was adopted. For a valid adoption the necessary requirements which is mentioned in Section 6 and Section 11 of Hindu adoption and Maintenance Act must be fulfilled.

17. It is further contended that both the Learned Courts below have not given any observation regarding the evidentiary value of PW1 which is statement of Amritpal Singh, clerk of SM Office, Malerkotla, who issued a.12 bore gun licence to Sajjan Singh S/o Amar Singh Village Mullowal. The licence was issued after the police verification. Even the voter card issued by the



Election Commission of India which is marked A clearly shows that appellant Sajjan Singh is son of Amar Singh.

18. It is argued that therefore, the respondents failed to prove that the appellant is the adopted son of Jangir Singh.

19. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the appellant.

20. The primary ground of challenge by the appellant to the impugned concurrent judgments and decrees is that while passing judgment dated 25.1.2011, the learned first Appellate Court has still not decided the application of the appellant under Order 41 Rule 27 CPC.

21. The said contention of the appellant is absolutely without merit. The record reveals that the application filed by the appellant for additional evidence has been dismissed by the learned District Judge vide order dated 25.01.2011, which reads as follows: -

“This order will dispose off an application to lead additional evidence so filed by appellant/applicant Sajjan Singh

2. It was averred in the application that the learned lower Court relied upon the document Ex. D6 while pronouncing the judgment and Ex.D6 is not a Will but power of attorney, The applicant wants to produce the Will executed by Jangir Singh in favour of the applicant. It was submitted that respondent Gajjan Singh filed a civil suit. on 22.7.2000 and had challenged the will executed by Jangir Singh but the suit of the respondent was dismissed on



13.1.2005. Thus, it was submitted that the Will and the judgment are very much necessary for the correct decision of the case, and as such it was submitted that the applicant should be allowed to lead additional evidence.

3. Notice of the application was given to the respondents who filed reply and had submitted that the applicant cannot be allowed to produce the Will as well as judgment. It was submitted that the application has been Palled simply to prolong the case.

4. I have heard Shri Chandal Advocate counsel for the applicant, Shri M.S. Dhaliwal Advocate on behalf of the respondent and have perused the record.

5. The record reveals that the present applicant Sajjan Singh had filed the suit before the learned Civil Judge (Junior Division) and had sought declaration that that he is the co-owner and in joint possession of the suit. property and had also sought declaration that that the mutation No.5861, so sanctioned in favour of the present respondent Gajjan Singh is illegal regarding the share of deceased Amar Singh and had also challenged the Will dated 25.01.1984 so executed by Amar Singh in favour of Gajjan Singh, being the same as a forged and fictitious document and had also sought relief of permanent injunction. The learned lower Court after appreciating the evidence had dismissed the suit of the present applicant vide judgment and decree dated 22.3.2004. Thereafter the present applicant filed the appeal before the learned Additional District Judge (Adhoc), Sangrur against the judgment and decree dated 22.3.2004 but the same was also dismissed on 9.12.2005. Further the record reveals that the present applicant filed Regular Second Appeal before the Hon'ble High Court thereby challenging the judgment and decree dated



9.12.2005 and Regular Second Appeal was allowed and it was directed by the Hon'ble High Court to decide the appeal afresh after disposing off the application moved under order 41 rule 27 C.P.C. In the present application it was submitted that the applicant simply wants to place on record the will executed by Jangir Singh in favour of the present applicant and also wants to place on record the judgment of the Civil suit, which was filed by the present respondent Gajjan Singh against the applicant i.e. judgment dated however, this Court is of the view that if the will so executed by Jangir Singh in favour of the present applicant was very much in the knowledge of the applicant during the pendency of the civil suit no. 413 dated 18.9.1997 so filed by the present applicant produced the Will so executed by Jangir Singh in, favour of the present applicant. So, since the applicant had simply challenged the Will so executed by Amar Singh in favour of. respondent Gajjan Singh before the learned lower Court and also challenged the mutation so sanctioned in favour of the respondent and had submitted that the suit property is Joint Hindu family property and the learned lower Court had decided the case of the present applicant as such this Court is of the view that there is no requirement before this Court that the application to lead additional evidence should be allowed, as the appeal, so filed by the present applicant can very well be decided on the basis of the already evidence led by the parties before the learned Civil Judge Junior Division). Resultantly the application being meritless and as such the same is hereby dismissed.”

22. Therefore, the primary ground of challenge by the appellant to the impugned judgments and decrees, is without merit. Consequentially, the



CM-9783-C-2011 stands dismissed; and even the present appeal deserves to be dismissed on this short ground itself.

23. It has further been contended on behalf of the appellant that the learned District Courts were in error in holding that the appellant is not the son of Amar Singh and that it has not been proved that appellant is the adopted son of Jangir Singh as alleged by the defendant No.1. However, there is no merit to even the said contention of the appellant as concurrent findings of fact have been returned by both the Courts below that Jangir Singh brother of Amar Singh had given his property to the plaintiff being his son by way of Will No.57 dated 27.09.1986 (Ex.D6).

24. From the said Will/GPA (Ex.D6) it was proved that Jangir Singh had given his property to the plaintiff being his son. The plaintiff also admitted that he had received the property from Jangir Singh. Therefore, besides oral evidence, there was also documentary evidence on record to prove that plaintiff is son of Jangir Singh and not Amar Singh.

25. Further, DW2 Ramesh Kumar, Registration Clerk had deposed that he had brought relevant record and as per registered No.41 Bahi No.4 dated 13.06.1986 to 10.09.1986 as per entry dated 29.07.1986, Jangir Singh had executed POA in favour of his son Sajjan Singh/plaintiff.

26. DW4 Surjit Singh has also deposed that Jangir Singh executed POA in favour of his son Sajjan Singh. DW4 Surjit Singh had also proved Power of Attorney (Ex.D6) executed by Jangir Singh in favour of the plaintiff; wherein it



is categorically mentioned that plaintiff Sajjan Singh is his only son. Ex.D6 is a registered document, therefore, there is presumption of truth attached to the same which has not been rebutted by the plaintiff.

27. DW5 Superintendent Accounts Office, Civil Surgeon, Sangrur had proved that he had brought certified Birth Certificate (Ex.D7) of "*Harpal Singh son of Sajjan Singh son of Jangir Singh*".

28. Further, DW6 Pawanjit, Clerk, District Election Office, Sangrur had proved the electoral roll (Ex.D9), as per which in 1995, the appellant has been shown as son of Jangir Singh. DW6 proved another electoral roll (Ex.D10) for the year 1988 in which also plaintiff has been shown as son of Jangir Singh.

29. DW7 Jaswinder Singh, Record Keeper at Gurdwara Sahib, Kiratpur Sahib had deposed that as per their record, on 13.12.1986, Jangir Singh son of Narain Singh had expired and on 15.12.1986, his last rites were performed by his son Sajjan Singh.

30. From the above evidence and concurrent findings of fact, it was irrevocably proved that plaintiff is the adopted son of Jangir Singh. Therefore, for the plaintiff to claim that he is son of Amar Singh, is incorrect. In any event, no credible evidence has been led by the appellant to prove that he is son of Amar Singh. The appellant has been unable to controvert the above, said evidence proving that he is son of Jagir Singh.

31. It was further proved on record that Amar Singh gave his property to his natural born son Gajjan Singh, which was corroborated from Voter List



(Ex.D9 and Ex.D10). Even as per the Will (Ex.D4) executed by Amar Singh in favour of Gajjan Singh, it was proved that Gajjan Singh is son of Amar Singh. The said Will (Ex.D4) was also proved from the evidence of DW3, who had deposed that Will was executed by Amar Singh in favour of Gajjan Singh after admitting its contents to be true. Accordingly, it was found that plaintiff had no interest in the estate of Amar Singh.

32. To prove his case, plaintiff has also sought to rely upon judgment dated 13.01.2005 passed by learned Additional Civil Judge (Senior Division), Dhuri in Civil Suit No.199 dated 22.07.2000 titled as "Gajjan Singh Vs. Sajjan Singh". The aforesaid suit was filed by the present respondent for declaration that he is owner of the estate of Jangir Singh. In the said suit, the learned Civil Judge has held as follows: -

"18. In view of the above discussion, I hold that the will executed by Jangir Singh in favour of defendant dated 2.11.1986 is legal and valid and mutation sanctioned in his favour is also legal and valid. As such, issue NO.3 is decided in favour of the defendant and against the plaintiff and issue NO. 4 and 5 are decided against the plaintiff and in favour of the defendant."

33. Consequentially, the suit filed by the respondent laying claim to estate of Jangir Singh was dismissed on the finding that present plaintiff Sajjan Singh is the adopted son of Jangir Singh. From the above-said facts, it is crystal clear that Jangir Singh had given his land to his adopted son Sajjan Singh at which time plaintiff had raised no objection. Now after getting the property of



Jangir Singh as his son, plaintiff is alleging himself to be son of Amar Singh, and not of Jangir Singh.

34. Last but not the least, it is no longer res Integra that this Court in second appeal has limited jurisdiction to interfere in the concurrent findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, wherein it is held as under:-

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"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. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would



also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”

35. Reliance may be placed upon judgment of Hon’ble Supreme Court in **Randhir Kaur v. Prithvi Pal Singh (SC) : Law Finder Doc ID # 1544810**, wherein it is held that:-

“16. 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.”

36. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings.

37. In view of the above noted, factual and legal position, present Regular Second Appeal stands **dismissed**.

38. Pending application(s) if any also stand(s) disposed of.

07.04.2026
Sunena

(Nidhi Gupta)
Judge

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