



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

128

**RSA-4345-2017 (O&M) and
XOBJJS-14-2019
Date of decision: 17.04.2026**

Sonu Sood

...Appellant(s)

Vs.

Madalsa Sood and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sandeep Bansal, Ms. Nishitha,
Ms. Anju, Advocates
for the appellant.

Mr. Hitesh Sood, Advocate for respondent No.1.

Mr. Piyush Khanna, Advocate
for respondent No.2/cross-objector.

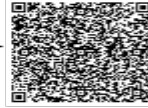
NIDHI GUPTA, J.

RSA-4345-2017 (O&M)

Defendant No.2 is in Second Appeal against the judgment of reversal; whereby suit filed by the plaintiff/respondent No.1 for declaration and permanent injunction although dismissed by the learned Trial Court, has been allowed in Civil Appeal by the learned First Appellate Court.

CM-7517-C-2019 in XOBJJS-14-2019

Prayer in this application filed under Section 151 CPC is for condonation of delay of 22 days in refiling the cross-objections.



2. Heard.

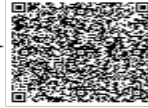
3. For the reasons mentioned in the application, the same is allowed and delay of 22 days in refiling the cross-objections is condoned.

XOBS-14-2019

Cross objections have been filed by defendant No.1/respondent No.2 herein laying challenge to the impugned judgment and decree dated 12.12.2016 passed by the District Judge, Hoshiarpur; whereby suit of the plaintiff/respondent No.1 herein, has been decreed.

2. Both, the above said appeal as well as the Cross objections are being decided by this common order as both emanate from the impugned judgment dated 12.12.2016 passed by the District Judge, Hoshiarpur; both proceedings are between the same parties; both pertain to same Civil Suit No. 171 dated 03.02.2010 filed by respondent No.1/plaintiff; and facts and issues involved in the appeal and cross-objections are identical. For the sake of brevity, facts are being drawn from, and parties are referred to as per their status in **RSA-4345-2017**.

3. Brief facts of the case are that the plaintiff/respondent No.1 had filed the instant civil suit for declaration that the plaintiff is joint owner in possession of 1/7th share in the suit properties as described in the headnote of the plaint; **and** further declaration that the alleged Will dated 21.1.1999 allegedly executed by late Shri Puran Chand son of Shri Heera Mal in favour of defendants No. 2, 4 and 5, **and** the Gift Deed dated 29.1.1999 allegedly executed by late Shri Puran Chand in favour of



defendant No. 1 are result of fraud, misrepresentation and are illegal and not binding upon the rights of the plaintiff in the suit properties; **and** for separate possession of 1/7th share of these properties by partition; **and** for permanent injunction restraining defendants No. 1 to 5 from alienating the suit properties detailed below:-

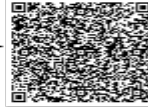
Detail of Properties

(A) A triple storeyed house situated in mohalla Garhi Bahadarpur, Hoshiarpur shown red and marked ABCDEFGH in the site plan No. 1 attached with the plaint.

(B) Building comprising of 2 shops consisting of 3 rooms each (Tin-andari) shown red and marked ABCD in the site plan No. 2 attached with the plaint situated in Bazar Kalan, Bahadurpur, Hoshiarpur.

(C) Plot of land (khola) shown red and marked ABCD in the site plan No. 3 attached with plaint situated in Mohalla Garhi Bahadarpur, Hoshiarpur.

4. It was the pleaded case of the plaintiff that her grandfather, namely, Puran Chand was owner of the properties as described in plaint. His wife had predeceased him on 06.12.1979. Puran Chand had died on 11.05.1999. Puran Chand had 3 sons, namely, Naresh Kumar/defendant No.1; Aditya Parkash/ defendant No.3; and Madhu Sudan, the predeceased father of the plaintiff. Puran Chand also had 4 daughters, namely, Saroj Sood/defendant No.6; Parmodh Sood/defendant No.7; Jeewan Lata Sood /defendant No.8; and Bindu Sood/defendant No.9. Defendant No. 2 is the son of defendant No.1; and defendants No.4 and 5



are the sons of defendant No.3. It was pleaded that Madhu Sudan, father of the plaintiff had died on 07.08.1998; whereas Puran Chand had died on 11.05.1999. Accordingly, plaintiff had filed instant suit for declaring her joint ownership of 1/7th share of the properties previously owned by Puran Chand. It was contended that the Will dated 21.01.1999 and Gift Deed dated 29.01.1999 allegedly executed by late Puran Chand in favour of his grandsons/the defendants no.1, 2, 4 and 5 are the result of fraud and misrepresentation. It was contended that deceased Puran Chand was 90 years old at the time of execution of said documents and by his own admission, has stated in the Gift Deed that he had lost eyesight 3 years prior to his death. It was further alleged that he was not having sound disposing mind to execute the said documents. Hence, present suit was filed on 03.02.2010.

5. The defendants had filed written statement, resisting the suit of the plaintiff.

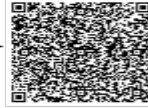
6. On the basis of the pleadings of the parties, following issues were framed on 23.12.2010: -

“1. Whether plaintiff is joint owner in possession of 1/7 share in the properties as mentioned in the head note of plaint?

OPP

2. Whether Will dated 21.1.1999 allegedly executed by Puran Chand in favour of defendants No. 2,4 and 5 and gift deed dated 29.1.1999 executed in favour of defendant No. 1 is result of fraud and not binding upon the rights of plaintiff?

OPP

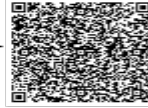


- 3. Whether plaintiff is entitled to separate possession? OPP*
- 4. Whether suit is not maintainable? OPD*
- 5. Whether plaintiff has concealed material facts from the court? If so its effect? OPD*
- 6. Whether plaintiff is estopped to file the suit for her acts, conducts, admission and acquiescence? OPD*
- 7. Whether suit is within limitation? OPP*
- 8. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 9. Whether site plan is not correct as per spot? OPD*
- 10. Relief.”*

7. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Hoshiarpur had dismissed the suit of the plaintiff vide judgment and decree dated 16.09.2014. However, the Civil Appeal filed by the plaintiff was accepted by the learned District Judge, Hoshiarpur vide impugned judgment and decree dated 12.12.2016 as follows: -

“49. Sequelly, the present appeal stands allowed. Judgment and decree passed by the learned trial court are set aside. The appellant is declared to be owner of 1/7th share in the properties owned by deceased Puran Chand. She is also entitled for separate possession of her share.

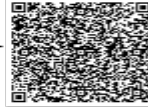
50. Accordingly, preliminary decree to this effect is ordered to be passed in favour of the appellant leaving the parties to bear their own costs. Decree sheet be prepared accordingly. The record of the learned trial court be sent back alongwith copy of this judgment and that of appeal be consigned to record room.”



8. Hence, the present Second Appeal by the defendant No.2; and Cross objections by the defendant No.1.

9. It is *inter alia* submitted by learned counsel for the appellant/defendant No.2 that Puran Chand had executed Will dated 21.01.1999 in favour of defendants No.2, 4 and 5 out of his own free will and with sound disposing mind. Appellant had duly proven the execution of the said Will by examining DW7 Nasib Dass, Lamberdar in place of deceased Wattan Singh, Lamberdar, who was attesting/marginal witness of the said Will. Appellant had also examined the Scribe of the Will as DW6. Will was a registered document; and registration thereof was duly proved from the evidence of DW5, Registration Clerk. Thus, the appellant had succeeded in proving the Will by way of comprehensive and cogent evidence. Yet, the appellant has been non-suited by the learned First Appellate Court on utterly contradictory findings *in as much* as although First Appellate Court has decided the issue No.2 in favour of the appellant yet contradictorily issues No.1 and 3 have been decided in favour of the plaintiff. Ld. counsel contends that once issue No. 2 is decided in favour of the appellant and Will is held to be proven then issues No.1 and 3 could not have been decided in favour of the plaintiff in as much as the plaintiff could not be held to be joint owner in possession of 1/7th share in suit properties.

10. It is further submitted that in decreeing the suit of the plaintiff, learned First Appellate Court has totally failed to deal with the



issue No. 7 i.e. issue of limitation. It is submitted that the Will dated 21.01.1999 and the Gift Deed dated 29.01.1999 have been challenged by the plaintiff by way of suit instituted on 03.02.2010. No explanation is forthcoming from the record to explain the said inordinate delay for filing civil suit. However, the First Appellate Court has again given contradictory findings in respect of limitation in para 48 of the impugned judgment dated 12.12.2016.

11. Ld. counsel for the appellant further submits that learned First Appellate Court has also erred in rejecting evidence of DW5 Registration Clerk by holding that Sub Registrar himself ought to have been produced.

12. It is further submitted by learned counsel for the appellant that strangely and shockingly the Ld. Lower Appellate Court has observed that since the Sub Registrar in whose presence the Will was registered has not stepped into the witness box and any other officials who was present at the time of registration of the Will Ex.D2 has not been examined, therefore, no reliance can be placed on the evidence of the Registration Clerk who has been examined as DW5. This totally de hors the provision of Indian Evidence Act. It is submitted that as per settled law, once a competent person from registering authority has produced a document from official records, it is presumed that the said document was duly executed and has been so preserved in the official records. Moreover, the respondent No.1 never raised any objection as per provision of Section

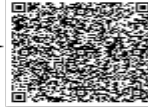


162 of the Evidence Act on the production of Will from the official records. The certified copy of the said Will is a public document as the same was a registered document and as per provision of Section 74 to 80 of Indian Evidence Act, there is a presumption of its due execution etc. Therefore, the findings of the Ld. Court below are liable to be set aside.

13. Learned counsel for the appellant further submits that the Ld. 1st Appellate Court has failed to give any independent findings on issue No.4 that is maintainability of the suit and issue no.7 regarding the suit being barred by limitation and issue No.6 regarding estoppel. The Ld. first Appellate Court has not given any findings on these issues; and thus the findings given by the Ld. Trial court on these issues has been affirmed and thus the suit itself should have been dismissed for want of maintainability, barred by limitation and estoppel of the respondent no.1 who has filed the instant suit. Ignoring the findings on these issues, still the appeal has been allowed, and the suit has been decreed which is wholly illegal.

14. It is further submitted that the Ld. Lower Appellate Court has ignored the complete evidence led by the appellant in this case. Most of the evidence has not been touched or discussed. To the contrary the evidence of respondents has been discussed in detail. Thus, non reading and misreading as also misappreciation of oral and documentary evidence has caused material injustice and prejudice to the appellant.

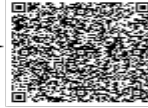
15. It is accordingly prayed that the impugned judgment dated 12.12.2016 passed by learned District Judge, Hoshiarpur being based



upon conjectures and surmises without considering the relevant evidence on record, deserves to be set aside.

16. Learned counsel for cross-objector/respondent No. 2 adopts in entirety the submissions advanced on behalf of the appellant/defendant No.2 and takes this Court through similar findings returned by the District Courts in respect of Gift Deed dated 29.01.1999 executed by Puran Chand in favour of defendant No.1. A similar prayer is made that the cross objections be allowed and the impugned judgment and decree dated 12.12.2016 be set aside.

17. *Per contra*, learned counsel for respondent No.1/plaintiff vehemently opposes submissions advanced on behalf of the appellant and cross-objector and submits that the learned First Appellate Court has given cogent findings to set aside the judgment of the learned Trial Court. It is submitted that no doubt, the defendants have examined DW7 in place of original attesting/marginal witness Wattan Singh, who is stated to have expired. DW7 has proved the Will dated 21.01.1999. It is however contended that there is no proof that Wattan Singh had actually expired. Even no Death Certificate of Wattan Singh had been brought on record by the defendants to prove that marginal witness had expired. Even further DW7 Nasib Dass, Lamberdar had nowhere stated in his evidence that Wattan Singh had expired that is why he is appearing in place of Wattan Singh. In any event, second attesting/marginal witness Vijay Kumar Sood was admittedly alive. No reasons have been given by the defendants for

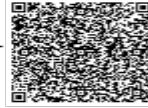


not examining the second attesting witness. Vijay Kumar Sood was marginal witness in both, the impugned Will as well as the impugned Gift Deed. Thus, defendants have failed to lead the best evidence available to them.

18. It is further submitted that it is also admitted fact that Puran Chand was 90 years old at the time of executing the said documents. Puran Chand has himself admitted in the Gift Deed that his eyesight is very weak. Clearly therefore, Puran Chand of being such an advanced age and weak faculties, was not of sound mind. Furthermore, the fact that the Will is executed on 21.01.1999 and barely one week later, Gift Deed is executed on 29.01.1999 also shrouds the said documents in suspicious circumstances. It is submitted that it has also come on record that the deceased Puran Chand was being taken care of by the plaintiff during his lifetime. Therefore, no reasons have been given for excluding the plaintiff from the Will and/or the Gift Deed. Even the Sub Registrar has not been examined to prove that the Will was registered in accordance with law.

19. In support, learned counsel for respondent No.1 relies upon judgment of Hon'ble Supreme Court in **K. Laxmanan v. Thekkayil Padmini, (SC) : Law Finder Doc Id # 177860**; wherein it is held as under: -

"A. Transfer of Property Act, Section 123 - Evidence Act, Sections 68 and 69 - Proof of Gift deed - Gift deed duly registered - Specific denial of execution of gift deed by opposite party - In such a case propounder has to prove the gift deed by producing at least one of the attesting witnesses



as required under Section 68 of Evidence Act - In the instant case one of the attesting witness died - The other witness not examined nor any reason for non examination assigned - Gift deed not proved - Gift deed was required to be proved like any other document. 2000(4) RCR (Civil) 247 (SC) relied."

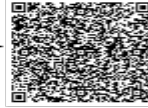
20. Learned counsel for respondent No.1 further relies upon judgment of Hon'ble Supreme Court in **Dhani Ram v. Shiv Singh (SC) : Law Finder Doc Id # 2340275**; wherein it is held as under:-

"Execution of Will - Mere registration of Will not sufficient to prove its validity, as its lawful execution necessarily had to be proved in accordance with Section 68 of Evidence Act and section 63 of Succession Act, 1925."

21. It is accordingly prayed that the present Appeal as well as the Cross objections be dismissed.

22. No other argument is raised on behalf of learned counsel for the parties. I have heard Id. Counsel and perused the case file in great detail. I have given my thoughtful consideration to the rival submissions advanced on behalf of both the parties. I find merit in the submissions advanced on behalf of the appellant and cross objector.

23. A perusal of the record of the case shows that the appellant has proved the Will dated 21.01.1999 Ex.D2 by examining DW7 Nasib Dass, Lamberdar in place of deceased attesting witness Wattan Singh. It has come on record that Wattan Singh had expired on 29.12.2002. Contention of the appellant and finding of the first Appellate Court to the

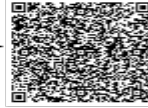


effect that DW7 has nowhere mentioned in his evidence that Wattan Singh had expired is factually incorrect. The record reveals that the First Appellate Court has rejected the evidence of DW7 for the reasons as contained in para 25 of the impugned judgment dated 12.12.2016, which read as under: -

“25. Sequelly, in this case the respondents no.1 and 2 were required to prove due execution of the Will Ex.D2 in the manner as provided by the Indian Evidence Act. The will was attested by Lamberdar Wattan Singh and one Vijay Kumar Sood. None of these witnesses have stepped into the witness box so as to prove the execution of the will as mandated by section 68 of the Indian Evidence Act. The respondents no. 1 and 2 have examined DW7 Nasib Dass Lamberdar who has identified the signatures of Wattan Singh appearing on Ex.D2. This witness however did not depose even a single word if Wattan Singh has since died. So much so, death certificate of Wattan Singh has not been placed on record to prove his death. There is otherwise no evidence on record if Wattan Singh cannot be found or his service cannot be procured through process of the court. It will not be out of place to mention here that DW7 Nasib Dass otherwise in his deposition has not identified or proved the signatures of deceased Puran Chand appearing on the Will Ex.D2.”

(Emphasis mine)

24. However, as stated above, the said observation of the learned First Appellate Court is on the face of it incorrect as DW7 has categorically deposed as follows: -

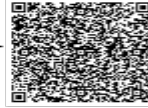


“I, Nasib Dass Lambardar of Village Bahadarpur Hoshiarpur, do hereby solemnly affirm and declare as under:-

- 1. That deceased Wattan Singh was Lambardar of Bahadarpur Hoshiarpur. At present I am Lambardar of Bahadarpur Hoshiarpur. I have seen the original registered will dated 21.1.1999/ Ex.D2 and the same bears the signature of Wattan Singh as attesting witness and I identify the signature of Lambardar Wattan Singh on the same as I used to see him signing on various documents during his life time.”* (Emphasis mine)

25. A bare reading of the above amply establishes that Nasib Dass DW7 has categorically stated that Wattan Singh, marginal witness was deceased. The first line itself of the deposition of DW7 bears the categoric assertion that Wattan Singh, marginal witness of the Will has died. The record reveals that there is no cross-examination of DW7 on this point by the plaintiff as to whether Wattan Singh has died or has not died or is still alive. The plaintiff did not cross-examine DW7 that Wattan Singh is not dead. Plaintiff has also not raised any suggestion that Wattan Singh is alive or not. Plaintiff has not put any suggestion that Wattan Singh had signed the document/Will. Clearly therefore, the ground on which First Appellate Court has discarded the evidence of attesting witness is based on a misreading of the evidence on record; and can therefore, not be sustained.

26. The Impugned judgment reveals that entire discussion on Will by the learned First Appellate Court from para 25 to para 30 of the

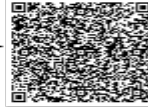


impugned judgment dated 12.12.2016 is that the Will has been discarded only on account of the fact that it has not been proved that marginal witness has died; and therefore, evidence given by DW7 cannot be relied upon. However, as demonstrated above, the said findings of the learned First Appellate Court are based on a patent misreading of the evidence of DW7 and can therefore not be sustained. In holding as above, the learned First Appellate Court has also ignored that DW7 has categorically identified the signatures of Wattan Singh on the original registered Will dated 21.1.1999. Even no contrary evidence has been pleaded or proved on record by the plaintiff.

27. Further, while rejecting the Will the learned First Appellate Court has also drawn adverse inference against the defendant for not producing the second attesting witness to the Will and Gift Deed, namely Vijay Kumar Sood. The relevant observations of the First Appellate Court are in para 26 of the impugned judgment dated 12.12.2016, as under: -

“26. So far as other witness Vijay Kumar Sood is concerned, again the respondents no.1 and 2 have failed to lead any evidence if other witness Vijay Kumar Sood is dead or he cannot be found and his service otherwise cannot be procured through process of the court. Not even a single word has been narrated by DW8 Naresh Kumar Sood respondent no.1 qua these facts.”

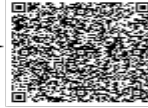
28. The above said observation of the First Appellate Court is also not in consonance with the law. Section 68 of Indian Evidence Act stipulates



that to prove a testamentary document, only one attesting witness is to be examined. In the present case, appellant has examined one attesting witness in the form of DW7. As such, there was no necessity to examine another attesting/marginal witness i.e. Vijay Kumar Sood. Even otherwise, no adverse inference could have been drawn against the defendant in this regard as, as observed by learned First Appellate Court, if the First Appellate Court was so sanguine then why the presence of witness Vijay Kumar Sood was not procured through process of Court? No reason is given for that.

29. The genuineness and authenticity of the Will is further proved by the appellant by also examining DW3 Jagdish Kumar, Scribe of the Will, who has duly proved the Will dated 21.01.1999 Ex.D2 in his Register Ex.D3.

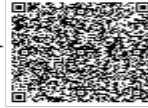
30. Similarly, execution of Gift Deed dated 29.01.1999 Ex.D1 has been proved by the cross-objector/defendant No.1 by examining DW1 Raghbir Kumar, Lamberdar who had identified signature of his father Balbir Raj, Lamberdar, who was one of the attesting witnesses of the Gift Deed Ex.D1. Cross objector had also examined DW6 Dharminder Kumar, Deed Writer, who had deposed with regard to scribing of the Gift Deed and of making the entry of the said document in his Register Ex.D6. DW6 Deed Writer proved the entry regarding Gift Deed Ex.D1 in his Register Ex.D6 at page 17/20 dated 29.01.1999. Registration of Gift Deed has also been proven by DW5 Sudesh Kumar, Registry Clerk, from the office of Sub Registrar, Hoshiarpur, who had brought the summoned record pertaining to the Gift Deed No. 5697 dated 29.01.1999 borne at page 68. Defendant No.1



himself has appeared as DW8 and proved execution of Gift Deed. However, all of the above said evidence has been rejected by the learned First Appellate Court on the frivolous reasoning that Gift Deed is liable to be rejected as the same “*Was executed just after 8 days*” of execution of the Will dated 21.01.1999. Needless to say, Puran Chand in his wisdom thought it fit to dispose of his properties/estate vide 2 different testamentary dispositions. Just because Gift Deed was executed 8 days after execution of the Will, would not in any manner render the same suspicious.

31. Furthermore, the Will and Gift Deed are registered documents. As such, they carry presumption of truth. The appellant and cross objector have proved the registration of the said documents by examining DW5 Sudesh Kumar, Registry Clerk, from the office of Sub Registrar, Hoshiarpur who has deposed with regard to registration of the Will and the Gift Deed. However, even evidence of DW5 has been discarded by learned First Appellate Court for the following reasoning: -

“30. So far as registration of the Will Ex.D2 is concerned, DW5 Sudesh Kumar produced in the court record of Ex.D2 Will, but in his cross examination he has categorically admitted that Ex.D2 was not registered in his presence and further he has no personal knowledge of this document. The Sub Registrar in whose presence the will was registered has not stepped into the witness box. Otherwise, also official apart from the Sub Registrar present at the time of registration of the Will Ex.D2 has also not been examined by the respondent no.1 and 2. In that eventuality mere certificate of registration of the Will does

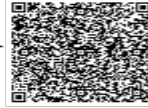


not entitle the respondents no.1 and 2 to claim presumption of truth over the Will.”

32. I am not at all in agreement with the aforesaid reasoning of the learned First Appellate Court. As noted above in para 30 itself, DW5 had produced in Court the entire record of the Will Ex.D2 and had proved the same in accordance with law. Merely because the Will was not registered in presence of DW5 Sudesh Kumar, or merely because the Sub Registrar, was not examined, would constitute no ground for discarding evidence of DW5. Admittedly, the documents bear the endorsement of the Sub Registrar Hoshiarpur. As such, the above said reasoning of the first Appellate Court cannot be sustained. In support, I rely upon judgment passed by this Court in **Smt. Giano v. Puran, (P&H) : Law Finder Doc Id # 85841**, wherein, in similar circumstances, documents were held to be proven from the evidence of the registration clerk, while holding as under:-

“19. The fact of registration has been proved by PW-3 Kuldeep Singh Registry Clerk. Under Section 60 of the Registration Act a presumption would arise that the gift-deed Ex. PW3/1 dated 3.9.1974 was duly registered. A reference must be made to the statement of the scribe Shri Jagdish Chander PW-4, who has categorically stated in his statement that he had scribed the document Ex. PW-3/1 on the asking of the donor Shri Mai Dhan.

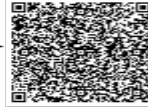
*20. However, this Court in **Lila Dhar's case (supra)** has categorically held that contents of the endorsement made by the Sub Registrar are admissible in evidence under Section 60 of the Registration Act and such contents shall be taken as true. It is further required to be presumed that the*



*endorsement was executed in accordance with law and all the persons had taken their signatures thereunder. Similar view has been expressed in the case of **Kartar Kaur's case (supra)**. Apart from the above circumstances, the plaintiff-appellant filed an application under Section 65 of the Evidence Act for adducing secondary evidence, which was opposed. However, by a detailed order dated 20.7.1993, the trial Court granted permission to the plaintiff-appellant to adduce secondary evidence. As a consequence, a certified copy of the registered gift-deed was produced by the Registry Clerk Shri Kuldeep Singh PW-3, which was exhibited as PW-3/1. It is further evident from the statement of PW-3 that the gift-deed was duly registered.”*

33. Therefore, in my view, the Will and the Gift deed stood duly proved in accordance with law and the findings of the learned First Appellate Court in this regard are based on misreading of the evidence on record.

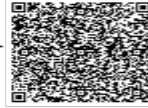
34. Argument of learned counsel for the plaintiff and the findings of learned First Appellate Court in respect of discarding of evidence of DW5 Registry Clerk are also liable to be rejected on account of provision of Section 162 of Evidence Act, as per which it is stipulated that witnesses are permitted to produce documents in Court despite objections regarding admissibility. In the present case, admittedly, no objection whatsoever has been raised by the plaintiff on the production of Will from the official records, or that Registry Clerk was not competent witness and Sub Registrar ought to have been produced. In the absence of any such objection by the



plaintiff, learned First Appellate Court could not have rejected evidence of DW5 on this ground.

35. Further, possession of the appellant and cross-objector over the suit property is proved from the evidence of DW4 Ashwani Kumar, Sub Divisional Clerk from the office of PSPCL, Sub Division, Hoshiarpur, who had brought the summoned record of the connection borne in the name of the defendants in respect of the suit property; thereby establishing their possession over the suit property.

36. Although it has been contended on behalf of the plaintiff that Puran Chand was not in sound disposing mind however, there is not even one smidgen of evidence brought on record by the plaintiff to remotely, indicate anything to this effect. Much hue and cry has been made by the plaintiff of the recital made in the Gift Deed by Puran Chand in respect of his eyesight. However, a perusal of the Gift Deed Ex.D1 shows that all that Puran Chand has stated therein is that *“Being old my eyesight has decreased.”* It is my clear view that in holding that Puran Chand was not of disposing mind merely on the basis of the above said recital in the Gift Deed is reading more than what is stated. There is no medical evidence whatsoever on record to substantiate the said allegation of the plaintiff. Being old, would not, in any manner automatically imply that Puran Chand was not of sound mind.



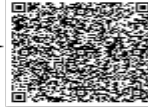
37. Findings of learned Civil Judge in respect of alleged unsound mind of Puran Chand contained para 33 of the judgment dated 16.09.2014 read as follows: -

“33. As far as concerned, the weak eyesight of Puran Chand is concerned, it is not disputed fact and moreover, from the bare reading of the Will dated 22.1.1999 Ex. D2, executed by late Puran Chand, it has been specifically mentioned by him regarding his weak eyesight. The plaintiff has miserably failed to prove any fraud or misrepresentation committed by the defendants and false procurement of the documents i.e. gift deed Ex. D1 and Will Ex. D2. The plaintiff has miserably failed to prove that Puran Chand was not competent to execute the said documents as he was not in sound disposing mind.”

38. The above said findings of the learned trial court have not been dealt with at all by the first Appellate Court. It needs no gainsaying that the first appellate Court being the Court of first appeal, is required to examine the material on record threadbare. However, none of the findings of the trial court or the evidence on record have been considered by the first Appellate Court. Rather, in respect of the mental state of Puran Chand, frivolous and immaterial and unconnected observations have been made by the learned First Appellate Court in para 41 of the impugned judgment that:

“If Puran Chand was in senses and was having sound mind and had executed Will on 21.1.1999 with his free will and consent, he cannot be expected to have executed gift deed on 29.1.1999 for the property which is subject matter of both these documents i.e. properties BI-870 and BI-87.”

Needless to say, the said observation is totally impertinent and purely



conjectural. It is for the testator to dispose of his estate as he deems fit, and by whatever instruments he deems fit. Merely because Puran Chand has chosen to dispose of his estate by way of two instruments would in no manner imply that he was of unsound mind. As noted above, no medical evidence is present on record to remotely indicate any unsoundness of mind of Puran Chand. In the absence of such evidence, the above observation of the first Appellate Court is conjectural and without basis.

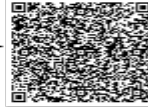
39. It is also to be seen that the impugned judgement is littered with numerous anomalies, contradictions, and irreconcilable findings. The learned First Appellate Court in paras 46 and 47 of the impugned judgment dated 12.12.2016 has held as follows: -

“46. The appellant claims herself to be daughter of Madhu Sudan who predeceased his father Puran Chand. Other respondents are also admittedly legal heirs of deceased Puran Chand. The respondent has not adduced any evidence that apart from appellant Madhu Sudan had left any other legal heirs and in that eventuality the appellant is entitled for 1/7th share of the properties owned by deceased Puran Chand being daughter of his predeceased son.

47. She as such is also entitled for separate possession of her share. Resultantly although finding of issue no.2 are decided in favour of the respondents but finding of the learned trial court on issues no.1 and 3 are reversed and these issues are decided in favour of the appellant and against the respondents.”

(Emphasis mine)

As noted above, issue No.2 reads as follows:-



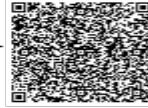
“2. Whether Will dated 21.1.1999 allegedly executed by Puran Chand in favour of defendants No. 2,4 and 5 and gift deed dated 29.1.1999 executed in favour of defendant No. 1 is result of fraud and not binding upon the rights of plaintiff? OPP”

40. Therefore, once issue No.2 in regard to the Will is decided in favour of the appellant and cross-objector, then deciding issues No.1 and 3 in favour of the plaintiff, leads to anomalous situation as the said findings are completely contradictory. Judgment of the learned First Appellate Court can therefore not be upheld for this reason as well.

41. Even in respect of other issues, including issue of limitation, learned First Appellate Court has held in para 48 as follows: -

“48. So far as other issues are concerned, these issues decided against the respondents and during the course of arguments, counsel for the respondents have not agitated the findings of the learned trial court. Thus, finding of these issues are affirmed.”

42. At this stage, it is necessary to point out that in respect of the Will dated 21.01.1999 and Gift Deed dated 29.01.1999 plaintiff had filed Civil Suit only on 03.02.2010. On a Court query, learned counsel for the plaintiff has stated that plaintiff has find the civil suit as soon as she “gained knowledge” of the said documents. However, there is nothing whatsoever on record to indicate the date, month or year in which the plaintiff gained knowledge; or even the manner in which the plaintiff got knowledge of the

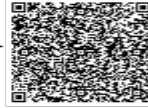


impugned documents. Even otherwise, the said documents being registered documents, are therefore, public documents. The certified copy of the said Will and Gift Deed is a public document as the same was a registered document and as per provision of Section 74 to 80 of Indian Evidence Act, there is a presumption of its due execution etc. Clearly therefore, the suit of the plaintiff is barred by limitation.

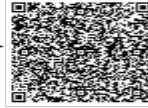
43. However, the learned First Appellate Court in the afore-reproduced para 48 of the impugned judgment has held that findings of the learned Trial Court on the remaining issues, including issue No.7 regarding limitation, have been affirmed. One of the grounds on which learned Trial Court had dismissed the suit of the plaintiff was that the same was barred by limitation. Once the First Appellate Court has upheld the said findings of the Trial Court, suit of the plaintiff could not have been decreed. Therefore, impugned judgment cannot be sustained for this reason as well.

44. The relevant findings of Trial Court in this regard as contained in para 45 and para 49 of its judgment dated 16.09.2014, are as under: -

“45. As far as concerned, the execution of the Will dated 22.1.1999 Ex. D2 as well as gift deed dated 29.1.1999. Ex. D1 was within the knowledge of the plaintiff and this fact has duly been admitted by PW2 Joginder Mohan Sood, who has admitted in his cross-examination that after the execution of the registered gift deed defendant No. 1 is in peaceful and lawful possession over the property in dispute and he has been paying bills to municipal committee since the last more than 10 years. Whereas PW3 Madalsa Sood has deposed in her cross-



examination that he does not if Puran Chand executed gift deed in favour of defendant No. 1. She is not in possession any document showing record in the name of Puran Chand at present. The plaintiff has miserably failed to prove that the documents i.e. gift deed dated 29.1.1999 Ex. D1 as well as Will dated 22.1.1999 Ex. D2 have been procured by the defendants by misrepresentation or fraud or by any other means. As already discussed above, I am of the considered view that Sh. Puran Chand has executed the gift deed dated 29.1.1999 Ex. D1 in favour of defendant No. 1 and Will dated 21.1.1999, Ex. D2 in favour of defendants No. 2, 4 and 5, out of his free will and with sound disposing mind. The documents i.e. alleged Will as well as gift deed are registered one. Once the document is registered it is open to public and this fact has come on record that the alleged Will as well as gift deed was well within the knowledge of the plaintiff. This fact has also come on record that the defendant No. 1 Naresh Kumar is owner in possession of the disputed property in question since the last more than 10 years. The present suit has been filed by the plaintiff on 3.2.2010 and the said suit is barred by the period of limitation. The plaintiff has also miserably failed to prove that deceased Puran Chand was confined to bed before his death. On the other hand, the defendants have very well proved that Puran Chand was in sound disposing mind and quite active prior to his death and was not confined to bed. From the perusal of the documents i.e. gift deed Ex. D1 and Will Ex. D2, it shows that the same are legal and valid in all respective and Puran Chand was competent to execute the said Will and gift-deed in respect of his properties and he was every right to alienate his share. The defendants have very well proved that the defendant No.1 Naresh Kumar Sood is in continuous and peaceful possession



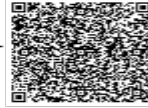
over the property in question for the last more than 10 years. The authority cited by the Ld. Counsel for the defendants (Supra) is fully applicable to the case in hand. On the other hand, the authorities cited by the Ld. Counsel but the same are not for plaintiffs (Supra) are not disputed one, applicable to the case in hand as the facts of the said case are distinguishable from the facts of the abovesaid authorities. Accordingly, in view of my discussion made above issues No. 1, 2 & 3 are decided against the plaintiff and in favour of the defendants.

XXX XXX XXX XXX

ISSUE NO. 7

49. The onus to prove this issue was on the defendants. In view of my discussion on issues No. 1 to 3, the suit is barred by limitation as it has filed beyond the period of 3 years. Accordingly, this issue is also decided in favour of the defendants and against the plaintiff."

45. However, as noted above, none of the above aspects of the matter have been dealt with by the first Appellate Court as is required to be done in the first appeal. It needs no belabouring that first appeal is a valuable right being a continuation of the original proceedings. As such, the first Appellate Court is called upon to fully review the evidence and correct any errors of law and fact. Under Order 41 Rule 31 CPC it is incumbent upon the Court of first appeal to analyse all evidence in detail and give reasons for accepting or rejecting the same. However, in the present case, as noted above the first Appellate Court has ignored/misread vital evidence. The Hon'ble Supreme Court in case of **Somakka v. K.P. Basavaraj (SC) : Law Finder Doc Id # 1999232**, has held that:

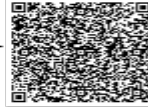


*“29.4 Very recently, this Court in 2022 (to which one of us, Brother Abdul Nazeer, J. was a member) in **Manjua and others v. Shyamsundar and Others, (2022) 3 SCC 90**, reiterated the same view in para 8 thereof, which is reproduced hereunder:*

"8. section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC') provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41, Rule 31 of the CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

- (a) points for determination;*
- (b) the decision thereon;*
- (c) the reasons for the decision; and*
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the Trial Court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the Trial Court are open for re-consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41, Rule 31 CPC and nonobservance of these requirements lead to infirmity in the judgment."



30. From the above settled legal principles on the duty, scope and powers of the First Appellate Court, we are of the firm view and-fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record, in particular which had been relied upon by the Trial Court. The impugned judgment of the High Court is thus unsustainable in law and liable to be set aside.

31. The next question which arises is that where the judgment of the Appellate Court is being set aside on the ground of non-consideration of the evidence on record, the matter would normally be required to be remanded to the First Appellate Court, whether in the facts and circumstances this case requires a remand. In the facts and circumstances of the present case, we find that the suit was instituted in the year 1991, more than three decades ago; the evidence discussed by the Trial Court is neither disputed nor demolished by the learned Counsel for the respondent. As such, we do not find any good reason to remand the matter to the High Court. We are of the view that in order to put a quietus to the litigation and relieve the parties from any further harassment, we set aside the judgment of the High Court and confirm the judgment and decree of the Trial Court to the extent it relates to item no. 3 of Schedule 'A' property described in the plaint, i.e. to say that the appellant and the respondent would be entitled to V share each in the said property. The Trial Court shall accordingly proceed to draw out the proceedings for final decree of partition.

32. The appeal is accordingly allowed. There shall be no order as to costs."

46. Thus, judgment of the first Appellate Court cannot be sustained for the above reasons. The first appellate Court has a duty to analyze the factual position in the background of principles of law involved and then decide the appeal. It is incumbent upon the first Appellate Court

to provide cogent reasons for setting aside a judgment of an inferior Court;
to deeply delve into the question of limitation in compliance with the scope
& powers conferred on it under Section 96 r/w Order 41, Rule 31 CPC.
However, that has not been done in the present case.

47. Therefore, in the conspectus of afore-noted facts and evidence,
it is clear that the judgment of learned First Appellate Court suffers from
material error, contradictions and misrepresentation of evidence; and can
therefore not be sustained.

48. The judgments relied upon by learned counsel for the plaintiff
are distinguishable on facts and law.

49. In view of the above, both the RSA and cross-objection are
allowed; and the impugned judgment and decree dated 12.12.2016 passed
by the learned District Judge, Hoshiarpur is set aside. Suit of the plaintiff
stands dismissed.

50. Pending applications, if any, stand disposed of.

17.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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