

HARDIAL SINGH

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v.

BALBIR KAUR & ANR.

(Civil Appeal No. 1925 of 2022)

MARCH 10, 2022

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[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

Code of Civil Procedure, 1973: s.100 – Second appeal – Substantial question of law – On 25.02.2016, Constitutional Bench judgment in Pankajakshi case, held that as far as Punjab and Haryana High Court is concerned, in a second appeal, the law which would be applicable would be s.41 of Punjab Courts Act, 1918 which states that in Punjab and Haryana, in a second appeal, the Court need not frame substantial questions of law in second appeal – Impugned order passed on 02.02.2013 on the ground that substantial questions of law were not framed and without that the second appeal was allowed by High Court – Held: High Court proceeded to deal with the second appeal even without formulating a substantial question of law as would have been the requirement as it was understood in law in the year 2013 in the absence of the judgment in Pankajakshi – Matter remanded to High Court.

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Allowing the appeal, the Court

HELD: A perusal of the impugned judgment which was, in fact, rendered on 02.02.2013 which is prior to the judgment in Pankajakshi (Dead) Through Legal Representatives and Others would, undoubtedly, appear to bear the appellant out in his complaint at the stage when the Court considered it on the first occasion, namely, that the Judge has proceeded to deal with the second appeal even without formulating a substantial question of law as would have been the requirement as it was understood in law in the year 2013 in the absence of the judgment in Pankajakshi (Dead) Through Legal Representatives and Others. The High Court has proceeded in the matter without even carefully attending to the evidence which is available on record. It is another matter that in a second appeal jurisdiction of the Court

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A as understood by this Court is very narrow. The findings which have been rendered and the approach of the Court would make it incompatible with the power available to the Court within the four walls of its jurisdiction in a second appeal as laid down by this Court. The case is remanded back to the High Court. The High Court will consider the matter as early as possible keeping in mind the fact that the suit is of the year 1998. [Paras 9, 11][837-G-H; 838-A-C, E]

C *Pankajakshi (Dead) Through Legal Representatives and Others v. Chandrika and Others* (2016) 6 SCC 157 : [2016] 3 SCR 1018; *Randhir Kaur v. Prithvi Pal Singh and Others* (2019) 17 SCC 71 : [2019] 9 SCR 776; *Avtar Singh & Ors. v. Bimla Devi & Ors.* 2021 SCC Online SC 827 – referred to.

Case Law Reference

D [2016] 3 SCR 1018 referred to Para 5
[2019] 9 SCR 776 referred to Para 7

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1925 of 2022.

E From the Judgment and Order dated 30.08.2016 of the High Court of Punjab and Haryana at Chandigarh in RSA No.1341 of 2013 (O&M).

Rakesh K. Khanna, Sr. Adv., K. P. Singh, Bhupender Singh, Rameshwar Prasad Goyal, Advs. for the Appellant.

Partha Sil, Tavish B. Prasad, Advs. for the Respondents.

F The Judgment of the Court was delivered by

K. M. JOSEPH, J.

Leave granted.

G (1) Respondent Nos. 1 and 2, who are plaintiffs, filed the suit seeking declaration of title and prohibitory injunction. The first defendant was the mother-in-law of the first plaintiff and the paternal grandmother of the second plaintiff. The appellant is the brother-in-law of the first plaintiff that is he is the brother of Sucha Singh.

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(2) The suit was laid on the following basis.

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Shri Sucha Singh, who was the husband of the first plaintiff and the father of the second plaintiff, passed away on 21.04.1998. The case was set-up against the mutation which was allegedly illegally carried out and as a result of which, in regard to the 1/3 right, the name of the defendants were entered.

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The case of the plaintiffs is that Sucha Singh has left behind a will dated 19.04.1998 before he died on 21.04.1998 which was registered on 18.06.1998. Under the will, the plaintiffs were bequeathed all his rights. The appellant and the other defendants contested the suit and contended that the will dated 19.4.1998 was forged. It was their case that since Sucha Singh died intestate, the plaintiffs and the mother of Sucha Singh being Class I heirs inherited 1/3 right each. On the strength of the said succession, the mother executed a will dated 16.07.1998 (D1) in favour of her two other sons of whom the appellant is one. The matter went to trial. The trial Court decreed the suit. The trial Court found that plaintiffs succeeded and declared them the owners in view of will dated 19.04.1998.

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(3) The defendants appealed. In the first appeal, the appellate Court reversed the decree of the trial Court. The appellate Court on appreciation of the evidence has found that there were suspicious circumstances surrounding the will dated 19.04.1998. It was *inter alia* found that the mother of Sucha Singh was living with him and there was nothing to indicate as to why he would exclude his own mother. It was further found that there were certain other circumstances including the registration of the will after the death of the testator which were considered by the first appellate Court in concluding that the will dated 19.04.1998 could not be accepted as genuine. It was also found that D1 will was valid. On the strength of the appreciation of the evidence the first appellate Court set aside the judgment of the trial Court and the mother of Sucha Singh was found to have legal right with the plaintiffs.

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(4) It was now the turn of the plaintiffs to appeal by purporting to invoke Section 100 of the Code of Civil Procedure, 1908. It is in the said second appeal that the judgment which is impugned before us came to be passed.

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The High Court in the impugned judgment has restored the decree of the trial Court. In the course of the judgment, the High Court has proceeded to find that the trial Court was right in finding that the will dated 19.04.1998 could be acted upon.

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A (5) We have heard Mr. Rakesh K. Khanna, learned senior counsel appearing for the appellant and Mr. Partha Sil, learned counsel appearing for the plaintiffs.

B At the time when notice was issued in this case on 06.03.2017, we notice that what was projected before this Court was that substantial questions of law were not framed and without that the second appeal has been allowed by the High Court. It was on this premise that this Court issued notice. Mr. Rakesh K. Khanna, learned senior counsel, would, in fact, point out that this Court had already taken a view regarding the provisions of law applicable as regards the High Court of Punjab and Haryana in a second appeal in the decision reported in *Pankajakshi (Dead) Through Legal Representatives and Others v. Chandrika and Others* (2016) 6 SCC 157. This judgment was rendered on 25.02.2016. In fact, learned senior counsel would point out that at the time when notice was issued by this Court noticing that substantial question of law was not framed, the judgment in *Pankajakshi (Dead) Through Legal Representatives and Others* (supra) had not been reported. This Court in *Pankajakshi (Dead) Through Legal Representatives and Others* (supra) which is, in fact, a Constitution Bench judgment has found that as far as Punjab and Haryana High Court is concerned, in a second appeal, the law which would be applicable would be Section 41 of Punjab Courts Act, 1918. Therein, this Court *inter alia* held as follows:

F “The judgment in *Kulwant Kaur case* [*Kulwant Kaur v. Gurdial Singh Mann*, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter.”

G (6) This Court took the view that it is Section 41 of the Punjab Courts Act, 1918, which would continue to govern the fate of a second appeal in the Punjab High Court. Thus, on the one hand, as far as in Punjab and Haryana is concerned, in a second appeal, the Court need not frame substantial questions of law in a second appeal, that is different from saying that it can exercise its jurisdiction *de hors* the boundaries of its powers located in Section 41 of the Punjab Courts Act, 1918.

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(7) Considering the effect of *Pankajakshi (Dead) Through Legal Representatives and Others* (supra), this Court has in *Randhir Kaur v. Prithvi Pal Singh and Others* (2019) 17 SCC 71 *inter alia*, held as follows:

“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.

16. In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view. The learned first appellate court has considered the absence of clause in the first power of attorney to purchase land on behalf of the plaintiff; the fact that the plaintiff has not appeared as witness.”

(8) Still further, this Court in judgment reported in *Avtar Singh & Ors. v. Bimla Devi & Ors.* 2021 SCC Online SC 827 again the scope of the jurisdiction which is available to the High Court of Punjab and Haryana in the matter of the second appeal has explained as follows:

“20. It is thus evident, therefore, that mere findings of fact cannot be interfered with in exercise of second appellate jurisdiction given the three limbs of jurisdiction available under Section 41 of the Punjab Courts Act. Findings of fact which are unreasonable, or which are rendered by overlooking the record, therefore, *per se* do not appear to fall within the scope of second appellate review by the High Court. In these circumstances, the High Court’s findings - which are based entirely on the reappraisal of the record - and consequent interference with the concurrent findings of the lower courts, cannot be upheld.”

(9) A perusal of the impugned judgment which was, in fact, rendered on 02.02.2013 which is prior to the judgment in *Pankajakshi (Dead) Through Legal Representatives and Others* (supra) would, undoubtedly, appear to bear the appellant out in his complaint at the stage when the

- A Court considered it on the first occasion, namely, that the learned Judge has proceeded to deal with the second appeal even without formulating a substantial question of law as would have been the requirement as it was understood in law in the year 2013 in the absence of the judgment in *Pankajakshi (Dead) Through Legal Representatives and Others* (supra). We would notice that the High Court has proceeded in the matter without even carefully attending to the evidence which is available on record. It is another matter that in a second appeal jurisdiction of the Court as understood by this Court is very narrow. We would think that the findings which have been rendered and the approach of the Court would make it incompatible with the power available to the Court within the four walls of its jurisdiction in a second appeal as laid down by this Court.

- (10) But then, the learned counsel for the respondent, would submit that this Court may remit the matter back so that the Court may consider the second appeal strictly within the ambit of the provision as applicable to the Punjab and Haryana High Court. We would think that the said request merits acceptance.

- (11) Accordingly, the upshot of the above judgment is that we set aside the impugned judgment. We remand the case back to the High Court. The High Court will consider the matter as early as possible keeping in mind the fact that the suit is of the year 1998. We would request the High Court to consider taking up the second appeal on a priority basis. We make it, however, clear that we have not expressed any view on the merits of the contentions of either side. The appeal is allowed as above.

- F Parties will bear their respective costs.