

**Bench: Uday Umesh Lalit, S. Ravindra Bhat, Bela M. Trivedi**

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the shop marked 'GFOB' and 'IJEa'. The plaintiffs being in exclusive possession as prospective purchasers, also constructed a residential house on the entire portion marked 'IHCB' on the first floor, which includes the portion purchased by the plaintiffs in 1978. The Market Committee, Shahabad (M) assessed the portion marked 'OJHC' as a separate unit (bearing No. 647, Ward No. 13, Shahabad (M)) in the name of Bimla Devi. Since the staircase to access the roof was only in the said residential portion and there was no access to the roof from any other side as such, the roof too was in their exclusive possession.

3. The suit alleged that on 05.03.2000, Defendant Nos. 2 to 4 broke the lintel portion of the roof (from point X to Y shown in the site plan, of the first floor) illegally and with intention to take forcible possession of the plaintiffs' house constructed on the first floor. It was also alleged that they had secretly constructed a staircase in the portion marked 'AEFG' for forcible occupation of the first floor of the building.

4. Girdhari Lal, in his written statement denied that the plaintiffs had any cause of action and claimed that they lacked locus standi to file and maintain the suit. The written statement alleged that the property which was acquired in his name in the year 1961 did not belong to any Hindu joint family as alleged by the plaintiffs, as he had spent his own funds. He denied entering into an agreement to sell the property to Rajpal, and claimed that he had neither received any sale consideration nor handed over possession to Rajpal. Girdhari Lal sold the shop marked 'AGFE' to the second defendant (hereafter, Avtar Singh) by a registered sale deed dated 06.08.1999 together with first floor of the shop. It was alleged that Avtar Singh was in exclusive possession of the property ever since.

5. The allegations in the written statement of Girdhari Lal, were endorsed by Defendant Nos. 2 to 4 in a joint written statement. They reiterated that Avtar Singh purchased the shop in dispute from Girdhari Lal along with chaubara (a room surrounded by door/windows on all four sides) situated on the roof, for a valuable consideration of 3 lakhs by a sale deed dated 06.08.1999 and possession was delivered to him. Avtar Singh was in possession of the shop for over 30 years prior to the purchase as a tenant and doing business of spare parts of electrical goods and submersible pumps. It was urged that the defendants are in peaceful possession of the shop, roof as well as chaubara constructed thereon.

6. The trial court and the first appellate court after considering the evidence on record - including the report of a local commissioner who, pursuant to the orders made during the trial, visited the site - dismissed the suit. Bimla Devi (the first plaintiff) preferred a second appeal. The High Court, framed a substantial question of law, as required by Section 100 of the Code of Civil Procedure (CPC) which reads as follows:

“Whether the findings of the Courts below in regard to claim of the appellants qua their possession of the chobaras on the first floor of the three shops and mandatory injunction to close the holes in the lintel of the shop in occupation of Avtar Singh are the result of ignoring material evidence and misreading of evidence rendering it perverse”.

The High Court answered the substantial question, in favour of the plaintiffs, Bimla Devi and Rajpal, and, consequently allowed the second appeal, thus resulting in decree of the suit. The High Court's judgment is impugned before this Court.

7. Mr. K.K. Mohan, learned counsel appearing for the appellants/defendants argued that the impugned judgment is in clear error of law because it upsets concurrent findings of fact, based upon a complete misappreciation of the circumstances bearing from the record. Mr. Mohan underlines that the substantial question of law framed by the High Court cannot be termed as falling within the framework of Section 100 CPC. He complained that the High Court assumed perversity on the part of the reasoning of the trial court and the district court and ignored relevant and material evidence in the form of documents as well as the oral depositions.

8. It was argued by the appellant that Avtar Singh is the father of the other two defendants (Defendant Nos. 3 and 4); they purchased the shop in question, measuring 43.33 square yards along with the disputed chaubara for 3 lakhs by a registered sale deed in 1999 from Girdhari Lal, who died during the pendency of the suit. This fact was appreciated by the trial court, which gave credence to the registered document rather than the allegations in the suit that a prior agreement to sell – which was an unregistered document – was executed, favouring Bimla Devi and Rajpal, and on which they based their claim.

9. It was urged that the entire story of the respondents/plaintiffs was that Rajpal Singh was brother of Girdhari Lal and he purchased the northern half portion of the building received by the latter, in lieu of his claim. This was a false and concocted story, disbelieved quite rightly, by the trial court. In fact, they argued that this was not supported by evidence of any kind. The court noticed that there was due execution of the sale deed dated 06.08.1999 (exhibited as Ex.D-1) during the course of the trial. This document unequivocally stated that the chaubara was part and parcel of the property purchased by Avtar Singh. In the absence of a challenge to that sale deed, that Rajpal and Bimla Devi had purchased the property through an agreement (Ex. P- 3 dated 24.08.1999) merely 18 days after the execution of Ex.D-1, was not believed. That claim was never taken in the plaint filed by the respondent Bimla Devi but saw the light of the day only during the trial. Consequently, the so-called agreement (Ex.P-3) was disbelieved and discredited by both the trial court and the first appellate court. This aspect was completely brushed aside by the High Court which proceeded to discuss the pure findings of fact even though it purported to frame substantial questions of law.

10. It was urged that once the plaintiffs admitted to the due execution of Ex.D-1, the evidence appreciated by the High Court and its observations that it was agreed by the parties that ownership of the suit property was pending adjudication in separate proceedings was a superfluity and untenable. Mr. Mohan also submitted that the plaintiffs had admitted to Avtar Singh's tenancy prior to the execution of Ex.D-1. It was highlighted that the lower courts gave importance to the fact that the registered document could not be brushed aside and its contents had to be taken at face value. It was submitted that in view of all these factors, the interference by the High Court with concurrent findings of fact was unwarranted.

11. Mr. Tarunvir Singh Khehar, learned counsel appearing for the respondents/plaintiffs supported the judgment in appeal. He submitted that the suit averments clearly mentioned that after the agreement to sell was entered into in 1978, the plaintiffs were given possession with the property. It was underlined that the plaintiffs reconstructed portions of the property and clearly mentioned that on the first floor of the three shops, there were two portions. It was importantly argued that the dimensions of the chaubara were different from what was alleged by the appellants/defendants.

12. Learned counsel appearing for the respondents/plaintiffs also drew the attention of this court to the report of the Local Commissioner which had been challenged. He submitted that the Commissioner was asked to inspect the site and report to the trial court about the precise dimensions of the various premises. It was stated that Avtar Singh's possession in the capacity as owner of the shop was not a matter of dispute, and what was in issue was only regarding the possession of the chaubara. Learned counsel submitted that the dimensions alleged in the plaint and the dimensions of the chaubara found on the first floor were in accord with each other. It was also submitted that the allegations in the suit that holes had been drilled on the lintels in order to make separate staircase from within the shop premises (of Avtar Singh) was borne out because the Local Commissioner found such holes.

#### Analysis and Conclusions

13. One of the main arguments of the appellants/defendants is that the impugned judgment is erroneous, because it upsets concurrent findings of fact. It is emphasized that even though a substantial question of law was framed for consideration in the second appeal, the exercise of jurisdiction and interference in the findings of the two lower courts, was unwarranted.

14. The Local Commissioner's report corroborated the respondents/plaintiffs' case that a staircase did not exist, or rather that it was in the stage of construction and was not completed. The report also bore out the plaintiffs' allegation that holes had been made in the lintel of the roof. Furthermore, the dimensions of the chaubara, as found by the Local Commissioner, differed from what was stated by Avtar Singh.

15. From an overall discussion of the evidence, it is apparent that undeniably Avtar Singh's possession - and perhaps even ownership - of the ground floor shop, could not be denied. The findings of the lower courts, therefore, based upon the registered documents cannot be faulted. However, both these courts ignored the other evidence - in the form of the Local Commissioner's report - with regard to the issue of possession of the chaubara. The Local Commissioner was neither cross-examined, nor was his report objected to.

16. In these circumstances, the question that arises, is whether the High Court justly interfered with what are unquestionably, concurrent findings of fact. This court in its five-judge bench ruling, in Pankajakshi v. Chandrika<sup>2</sup> held that the provisions of Section 41 of the Punjab Courts Act, 1918 continued to be in force, and not Section 100 CPC. The Court observed that:

(2016) 6 SCC 157.

“27. .... Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.” As a result, the previous smaller bench ruling in *Kulwant Kaur v Gurdial Singh Mann*<sup>3</sup> which held that Section 41 is inconsistent with Section 100 CPC after its amendment in 1976, and that the latter prevails, was expressly overruled.

17. The decision in *Pankajakshi* (supra) came up for discussion in two subsequent judgments of this Court. In *Dhanpat v. Sheo Ram*<sup>4</sup>, citing the ruling in the earlier decision *Randhir Kaur v. Prithvi Pal Singh*<sup>5</sup>, it was held as follows:

“13. It may be noticed that in view of Constitution Bench judgment of this Court in *Pankajakshi v. Chandrika* [*Pankajakshi v. Chandrika*, (2016) 6 SCC 157 : (2016) 3 SCC (Civ) 105] , substantial question of law may not be required to be framed in Punjab and Haryana but still, the finding of fact recorded cannot be interfered with even in terms of Section 41 of the Punjab Courts Act, 1918. The said question was examined by this Court in *Randhir Kaur v. Prithvi Pal Singh* [*Randhir Kaur v. Prithvi Pal Singh*, (2019) 17 SCC 71 : (2020) 3 SCC (Civ) 372] , wherein, the scope for interference in the second appeal under Section 41 of the Punjab Courts Act applicable in the States of Punjab and Haryana was delineated and held as under : (*Randhir Kaur* case [*Randhir Kaur v. Prithvi Pal Singh*, (2019) 17 SCC 71 : (2020) 3 SCC (Civ) 372], SCC p. 80, paras 15-16) (2001) 4 SCC 262.

(2020) 16 SCC 209.

(2019) 17 SCC 71.

“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 [Prithvi Pal Singh v. Randhir Kaur, 2015 SCC OnLine P&H 4792] 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.”

18. 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 reappreciation of the record – and consequent interference with the concurrent findings of the lower courts, cannot be upheld.

19. In view of the foregoing reasons, the impugned judgment has to be set aside. The appeal is accordingly allowed, without orders on cost.

.....J [K.M. JOSEPH] .....J [S.  
RAVINDRA BHAT] New Delhi, September 29, 2021.