REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6567 OF 2014

GURNAM SINGH (D) BY LRS. & ORS. …APPELLANT(S)

VERSUS

LEHNA SINGH (D) BY LRS. …RESPONDENT(S)

J U D G M E N T

M.R. SHAH, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 27.11.2007 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Regular Second Appeal No.2191 of 1985 by which the High Court has allowed the said appeal preferred by the respondent herein-original plaintiff

(now dead and represented by LRs) and has quashed and set aside the judgment and decree passed by the First Appellate Court and consequently restored the judgment and decree passed by the learned Trial Court, the original defendants have preferred the present appeal.

2. The facts leading to present appeal in nutshell are as under:

That the respondent–original plaintiff (hereinafter referred to as 'original plaintiff') filed a suit in the Court of Sub Judge, First Class, Sangrur for perpetual injunction restraining the original defendants from dispossessing him from the suit land. It was the case on behalf of the original plaintiff that he and his brother Bhagwan Singh alias Nikka Singh were owners and in possession of the suit land. Bhagwan Singh alias Nikka Singh expired leaving behind the plaintiff to be his only successor. Bhagwan Singh had no wife or children. The defendants who had no concern with the suit land were out to dispossess him from the same forcibly. Hence, therefore, he filed the aforesaid suit against the defendants for perpetual injunction.

2.1 That the defendants appeared before the Trial Court and resisted the suit by filling the written statement. It was denied by

the defendants that the plaintiff was the successor of Bhagwan Singh, deceased. According to the defendants, Bhagwan Singh, before his death, executed a Will in favour of Defendant Nos.2 to 6 on 17.01.1980. According to the defendants, as all the defendants served Bhagwan Singh in his lifetime and therefore he executed the Will in favour of Defendant nos.2 to 6 because of the services rendered. It was the case on behalf of the defendants that prior to it also, Bhagwan Singh alias Nikka Singh had got executed a Will on 17.08.1979, but the same remained as unregistered one. It was admitted that in the lifetime of Bhagwan Singh, both the plaintiff and the Bhagwan Singh, cultivated the suit land jointly. According to the defendants, after the death of Bhagwan Singh, Defendant Nos.2 to 6 came into possession of half share of Bhagwan Singh. In the alternative, the defendants pleaded that even if it was proved that the original plaintiff was in possession of the suit land, Defendant Nos. 2 to 6 were entitled to joint possession of half share of the suit land which belonged to Bhagwan Singh, deceased.

2.2 That the original plaintiff, in the replication filed, denied having Bhagwan Singh - deceased, executed the Will in favour of

the Defendant Nos.2 to 6 on 17.01.1980. He pleaded that Bhagwan Singh was not in a position to make any Will. Bhagwan Singh was actually murdered by the defendants by administrating poison to him and that the defendants were prosecuted for the murder of Bhagwan Singh deceased. That the defendants forged the Will on behalf of the Bhagwan Singh and under the umbrella of that forged document they were out to dispossess him forcibly. It was also denied that the defendants were in possession of the suit land with regard to the share of Bhagwan Singh.

3. That on the basis of pleadings, the learned Trial Court framed the following issues :

> "1. Whether the plaintiff is the sole heir of Bhagwan Singh, deceased?
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> 2. Whether the plaintiff is in possession of the property in dispute?
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> 3. Whether the plaintiff is entitled to the relief prayed for?
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> 4. Whether Bhagwan Singh deceased made a valid will as alleged in written statement in favour of defendants Nos.2 to 6?
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> 5. If issue No.2 is proved in favour of the plaintiff whether defendant Nos.2 to 6 are entitled to joint possession of the land in suit?

6 Whether the defendants are governed in matters of marriage by the Punjab Pepsu Customary Law? If so, its effect?

7. Relief."

4. That pursuant to the order passed by the High Court, the learned Trial Court framed the following additional issue:

"4. A. Whether the defendants have committed the murder of Bhagwan Singh? If so, its effect?"

5. Both the parties led evidence on the issues framed. That on appreciation of evidence and on considering the submissions made by the learned advocates on behalf of the respective parties, the Trial Court held Issue Nos.1,4,2,5,6 and 3 in favour of the plaintiff and against the defendants. The Trial Court held the Issue No.4A in favour of the defendants and against the plaintiff. Consequently, the learned Trial Court held Issue No. 3 in favour of the plaintiff and against the defendants and held that the plaintiff is entitled to the perpetual injunction as prayed for. Consequently, the learned Trial Court decreed the suit.

6. That in an appeal before the First Appellate Court preferred by the defendants, the First Appellate Court reversed

the judgment and decree passed by the Trial court, by giving cogent reasons which were on re-appreciation of evidence. The First Appellate Court allowed the appeal preferred by the defendants and consequently dismissed the suit by quashing and set aside the judgment and decree passed by the learned Trial Court.

7. Feeling aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, the plaintiff preferred Regular Second Appeal before the High Court. By impugned judgment and order, the High Court allowed the same Second Appeal and has quashed and set aside the judgment and decree passed by the learned First Appellate Court dismissing the suit and consequently has restored the judgment and decree passed by the Trial Court decreeing the suit.

8. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original defendants have preferred the present appeal.

9. Ms. Mansi Jain, learned advocate has appeared on behalf of the appellants-original defendants and Mr. Amit

Sharma, learned advocate has appeared on behalf of the respondent– original plaintiff.

10. Ms. Jain, learned Advocate appearing on behalf of the original defendants has vehemently submitted that, in the facts and circumstances of the case, the High Court has committed a grave error in allowing the second appeal and quashing and set aside the well-reasoned judgment and order passed by the First Appellate Court.

10.1 It is vehemently submitted by Ms. Jain, learned Advocate appearing on behalf of the original defendants that the impugned judgment and order passed by the High Court is beyond the scope and ambit of Section 100 of the Code of Civil Procedure (CPC). It is vehemently submitted by Ms. Jain that while allowing the Second Appeal and quashing and set aside the judgment and decree passed by the First Appellate Court, the High Court has re-appreciated the entire evidence on record as if the High Court was deciding the First Appeal under Section 96 of the CPC.

10.2 It is vehemently submitted by Ms. Jain, learned Advocate appearing on behalf of the original defendants that

High Court, while deciding the second appeal, has not properly appreciated the fact that the High Court was deciding the second appeal under Section 100 of the CPC and therefore was bound by the limitations in exercise of the powers under Section 100 of the CPC. It is submitted that in the second appeal under Section 100 of the CPC, the High Court was not required to appreciate/re-appreciate the evidence and the appellate jurisdiction of the High Court was restricted to the substantial question of law. It is submitted that therefore while quashing the impugned judgment and order, the High court has exceeded in its jurisdiction under Section 100 of the CPC and therefore the impugned judgment and order passed by the High Court deserves to be quashed and set aside on these grounds alone. In support of her above submissions, Ms. Jain, learned Advocate has relied upon the decisions of this Court in the case of *Panchugopal Barua* v. *Umesh Chandra Goswami,* (1997) 4 SCC 713; *Kondiba Dagadu Kadam* v. *Savitribai Sopan Gujar,* (1999) 3 SCC 722; *Ishwar Dass Jain* v. *Sohan Lal,* (2000) 1 SCC 434.

10.3 It is further submitted by Ms. Jain, learned advocate appearing on behalf of the original defendants that even on merits also, the impugned judgment and order passed by the High Court is not sustainable. It is submitted by Ms. Jain that the learned Trial Court while holding and not accepting the Will executed in favour of the defendant Nos.2 to 6 framed following suspicious circumstances:

> "(i) There is no mention about the Plaintiff being disinherited by the testator in the Will though it was proved on record that the Plaintiff was the real brother of the testator and was serving him and also cultivating his land. The factum of Plaintiff cultivating the land stood proved from the revenue record and, therefore, covenant in the Will that the land was being cultivated by the Defendants was factually incorrect.
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> (ii) In the Will it is mentioned that it was first and last Will, whereas stand of the Defendants was that earlier also there was a Will executed by the testator.
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> (iii) The name of father of Gurnam Singh was also wrongly mentioned.
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> (iv) As observed by the learned Trial Court, in the Will, it has been stated that the testator had headed and understood the Will and thumb marked the same in the presence of witnesses and the witnesses also attested it in his presence. This statement is not required for proving the Will and, therefore, the learned Trial Court formed an opinion that such type of convenient in the Will creates a doubt about its

authenticity. Thus the learned Trial Court was pleased to hold that the Will was stage-managed by hatching a conspiracy and that is why DW-3 alone took Nikka Singh stealthily from the village in a car and DW-4 Joginder Singh was already present at Bhawanigarh hobnobbed with the petitioner-writer and got the transaction sealed.

(v) All the witnesses stated that Nikka Singh was in good health at that time which is not acceptable as admittedly Nikka Singh was suffering from cancerous disease and was also a patient of T.B.

(vi) It was also observed by the learned Trial Court that DW-1 in his deposition has stated that before the death of Nikka Singh he obtained his thumb impression on 4-5 blank papers.

(vii) The way in which the Will was executed was itself a suspicious circumstance taken note of by the trial court to reject the said Will."

10.4 It is submitted by Ms. Jain, learned Counsel appearing for the original defendants that all the aforesaid circumstances which were found to be suspicious circumstances by the learned Trial Court, came to be dealt with by the First Appellate Court which gave its own reasons on appreciation of evidence. It is submitted that the First Appellate Court observed and held as under :

"1. Just because Lehna Singh, natural heir of

Bhagwan Singh, hereinafter referred as Testator, not mentioned in the will, does not make it suspicious.

2. Declaring the will to be surrounded by suspicious circumstances, mainly based on recitals in the body of the will Ex.D2, is not well founded, as such, will is a registered document and has been duly proved by attesting witnesses, DW3 and DW4.

3. Testator would cancel Schedule will by a registered document are not recitals in the will which would mean as suspicious circumstances surrounding the will.

4. Father's name of Gurnam Singh described as Dewa Singh, instead of Mehar Singh, are not such recitals in the will which would means as suspicious circumstances surrounding the will.

5. The perusal of the will reveals that the will when it was scribed, it was thumb marked at two places, when the will as a whole was scribed and when it was read over to Testator, in the presence of attesting witnesses.

6. Just because Testator was suffering from an illness does not mean his testamentary capacity can be questioned.

7. Nothing has been brought on file by the Respondent to show that DW3 and DW4 were in any way inimical towards him, the sworn testimony of these witnesses remains unimpeached and unshattered.

DW3 and DW4, who are respectable independent witnesses and not inimical toward Respondent."

10.5 It is submitted by Ms. Jain, learned Advocate appearing for the original defendants that therefore when the

First Appellate Court recorded its own findings and reasoning on appreciation of evidence, which was permissible as the First Appellate Court being an appeal under Section 96 of the CPC, the same was not required to be set aside by the High Court in a second appeal under Section 100 of the CPC. It is submitted that re-appreciation of the evidence while deciding the second appeal is wholly impermissible. Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court and restore the judgment and decree passed by the learned First Appellate Court and consequently dismiss the suit.

11. Mr. Amit Sharma, learned advocate appearing on behalf of the respondent–original plaintiff while opposing the present appeal has vehemently submitted that in the facts and circumstances of the case and on appreciation of evidence and having found that the findings recorded by the First Appellate Court are perverse, the High Court has rightly interfered with the judgment and decree passed by the First Appellate Court

and has rightly restored the judgment and decree passed by the learned Trial Court.

11.1 It is further submitted by Mr. Amit Sharma, learned Advocate that cogent reasons were given by the Trial Court holding the Will dated 17.01.1980 as suspicious and finding recorded by the learned Trial Court were on appreciation of the evidence, as rightly observed by the High Court, the First Appellate Court was not justified in interfering with such findings which were recorded on appreciation of evidence.

11.2 It is further submitted by Mr. Sharma, learned Advocate appearing on behalf of the original plaintiff that the testator, at the time of execution of the alleged Will, was not in a position to execute the Will as he was suffering from cancerous disease and was also a patient of TB.

11.3 It is further submitted by Mr. Sharma, learned Advocate appearing on behalf of the original plaintiff that even the DW1, in his deposition, admitted that before the death of Nikka Singh, he obtained his thumb impression on 4-5 blank papers. It is submitted that there are number of discrepancies in the alleged Will, viz., though in the Will it was stated that

land was being cultivated by the defendants, actually the plaintiff was cultivating the land; that in the Will it was mentioned that it was the first and last Will, whereas, even according to the defendants, earlier also there was a Will executed by the testator and the name of the father of Gurnam Singh was also wrongly mentioned. It is submitted that therefore, as rightly observed by the learned Trial Court, the Will was executed in suspicious circumstances and therefore the learned Trial Court rightly rejected the same Will. It is submitted that despite the above glaring suspicious circumstances, the First Appellate Court held the Will genuine and therefore the High Court has rightly interfered with the judgment and decree passed by the First Appellate Court.

11.4 It is further submitted by Mr. Sharma, learned Advocate appearing on behalf of the original plaintiff that the learned Trial Court was justified in holding the Will to be surrounded by suspicious circumstances due to ill-health of the testator. It is submitted that the testator was admittedly suffering from cancerous disease and T.B. and therefore, the

evidence of the attesting witnesses that he was in good state of mind, was rightly ignored by the Trial Court.

11.5 Making the above submissions, it is prayed to dismiss the present appeal.

12. Heard the learned advocates appearing on behalf of the original plaintiff and defendants at length. We have considered in detail the judgment and decree passed by the Trial Court, Judgment and order passed by the First Appellate Court and impugned judgment and order passed by the High Court.

13. At the outset, it is required to be noted that the learned Trial Court held the Will dated 17.01.1980, which was executed in favour of original defendant Nos. 2 to 6, surrounded by suspicious circumstances and therefore did not believe the said Will.

13.1. The suspicious circumstances which were considered by the learned Trial Court are narrated/stated hereinabove. On re-appreciation of evidence on record and after dealing with each alleged suspicious circumstances, which were dealt with by the learned Trial Court, the First Appellate Court by giving cogent reasons held the Will genuine and consequently did not

agree with the findings recorded by the learned Trial Court. However, in Second Appeal under Section 100 of the CPC, the High Court, by impugned judgment and order has interfered with the Judgment and Decree passed by the First Appellate Court. While interfering with the judgment and order passed by the first Appellate Court, it appears that while upsetting the judgment and decree passed by the First Appellate Court, the High Court has again appreciated the entire evidence on record, which in exercise of powers under Section 100 CPC is not permissible. While passing the impugned judgment and order, it appears that High Court has not at all appreciated the fact that the High Court was deciding the Second Appeal under Section 100 of the CPC and not first appeal under Section 96 of the CPC. As per the law laid down by this Court in a catena of decisions, the jurisdiction of High Court to entertain second appeal under Section 100 CPC after the 1976 Amendment, is confined only when the second appeal involves a substantial question of law. The existence of 'a substantial question of law' is a *sine qua non* for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by this Court in the case of Kondiba Dagadu Kadam

(Supra), in a second appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being:

(i) Contrary to the mandatory provisions of the applicable law;
OR
(ii) Contrary to the law as pronounced by the Apex Court;
OR
(iii) Based on in-admissible evidence or no evidence.

It is further observed by this Court in the aforesaid decision that if First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. It is further observed that the Trial Court could have decided differently is not a question of law justifying interference in second appeal.

14. When a substantial question of law can be said to have arisen, has been dealt with and considered by this Court in the case of *Ishwar Dass Jain (Supra)*. In the aforesaid decision, this Court has specifically observed and held :

> "Under Section 100 CPC, after the 1976 amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so. There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered, would have led to an opposite conclusion. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. In either of the above situations, a substantial question of law can arise."

15. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has erred in re-appreciating the evidence on record in the second appeal under Section 100 of the CPC. The High Court has materially erred in interfering with the findings recorded by the First Appellate Court, which were on re-appreciation of evidence, which was permissible by the First Appellate Court in exercise of powers under Section 96 of the CPC. Cogent reasons, on appreciation of the evidence, were given by the First Appellate Court. First Appellate Court dealt with, in detail, the so-called suspicious circumstance which weighed with the learned Trial Court and thereafter it came to the conclusion

that the Will, which as such was a registered Will, was genuine and do not suffer from any suspicious circumstances. The findings recorded by the First Appellate Court are reproduced hereinabove. Therefore, while passing the impugned judgment and order, the High Court has exceeded in its jurisdiction while deciding the second appeal under Section 100 CPC.

15.1 As observed hereinabove and as held by this Court in a catena of decisions and even as per Section 100 CPC, the jurisdiction of the High Court to entertain the second appeal under Section 100 CPC is confined only to such appeals which involve a substantial question of law. On going through the substantial questions of law framed by the High Court, we are of the opinion that the question of law framed by the High Court while deciding the second appeal, cannot be said to be substantial questions of law at all. The substantial questions of law framed by the High Court are as under :

> "(i) Whether the Appellate Court can reverse the findings recorded by the learned trial court without adverting to the specific finding of the trial Court?
>
> (ii) Whether the judgment passed by the learned lower Appellate Court is perverse and outcome of misreading of evidence?"

The aforesaid cannot be said to be substantial questions of law at all. In the circumstances, the impugned judgment and order passed by the High Court cannot be sustained and the same deserves to be quashed and set aside. At this stage, decision of this Court in the case of *Madamanchi Ramappa* v. *Muthaluru Bojappa,* AIR 1963 SC 1633, is required to be referred to.

In the aforesaid decision, this Court has observed and held as under:

> "Whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by S.100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by Courts of fact; but on such occasions it is necessary to remember that what is administered in Courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of S.100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which

> is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

16. Therefore, we are of the opinion that this is a fit case to interfere with the impugned judgment and order passed by the High Court, as, as observed hereinabove, the High Court has exceeded in its jurisdiction, while allowing the second appeal under Section 100 of the CPC.

17. In view of the above and for the reasons stated above, we allow this appeal, set aside the impugned Judgment and Order passed by the High Court dated 27.11.2007 passed in Civil Regular Second Appeal No.2191 of 1985 and restore the Judgment and Order passed by the learned District Judge, Sangrur dated 06.06.1985 passed in Civil Appeal No.27 of 29.02.1983 and consequently dismiss the suit preferred by the respondent herein–original plaintiff. No costs.

18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the

second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of *Narayanan Rajendran* v. *Lekshmy Sarojini,* (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.

Therefore, we are constrained to observe as above and remind the High Courts the limitations under Section 100 of the CPC and again hope that High Courts would keep in mind the legal position before interfering in Second Appeal under Section 100 of the Code of Civil Procedure.

.....J.
(L. NAGESWARA RAO)

.....J.
(M. R SHAH)

New Delhi;
March 13, 2019.