

**IN THE HIGH COURT OF MADHYA PRADESH**  
**AT JABALPUR**  
**BEFORE**  
**HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL**  
**SECOND APPEAL No. 975 OF 2021**

**BETWEEN:-**

- 1. RAJENDRA SINGH SON OF SHRI BALRAM SINGH THAKUR, BY OCCUPATION AGRICULTURIST R.O. GRAM SYAVANI PALERA DISTT. TIKAMGARH MADHYA PRADESH**
- 2. SMT. UMA DEVI WIFE OF RAJENDRA SINGH OCCU. HOUSE WIFE, R.O. OF GRAM SYAVANI PALRA, AT PRESENT DHAVAKAR POLICE STATION AND DISTRICT MAURANIPUR JHANSI U.P.**
- 3. RAVINDRA SINGH SON OF RAJENRA SINGH OCCUPATION AGRICULTURIST, R.O GRAM SYAVNI PALERA, DISTRICT TIKAMGARH M.P.**
- 4. KU. SEETA D.O RAJENDRA SINGH OCCUPATION HOUSEWORK R.O GRAM SYAVNI PALERA, DISTRICT TIKAMGARH M.P.**
- 5. RAGHVENDRA SINGH SON OF RAJENDRA SINGH, OCCUPATION AGRICULTURIST, R.O. GRAM SYAVNI PALERA, DISTRICT TIKAMGARH M.P.**

**.....APPELLANT**

***(BY SHRI J.P.SINGROL - ADVOCATE)***

**AND**

**1.NARENDRA SINGH SON OF BAHADUR SINGH R.O. GRAM JAIR, RESIDING AT PRESENT PALERA DIST. JHANSI U.P.**

2 SURENDRA SINGH SON OF BAHADUR  
SINGH R.O. VILLAGE JAIR, DISTRICT  
PALERA DISTRICT JHANSI U.P.

3 SHANKAR SINGH S.O. SON SINGH  
THAKUR PAHADI BAKSHI, TAH.  
PRATHVIPUR, TIKAMGARH, M.P.

4 LOCHAN, SON OF BHAGWAN SINGH  
THAKUR, GRAM JAIR, AT PRESENT  
PALERA JHANSI U.P.

5.THE STATE OF M.P. THROUGH THE  
COLLECTOR DISTT. TIKAMGARH  
MADHYA PRADESH

.....RESPONDENTS

(BY SMT.SMITA KEHRI – PANEL LAWYER)

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**RESERVED ON : 29-02-2024**

**PRONOUNCED ON :**

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*This appeal having been heard and reserved for orders, coming on for pronouncement this day the court passed the following :*

### **ORDER**

This second appeal has been filed under Section 100 of Code of Civil Procedure, 1908, against the judgment and decree dated 04.03.2021 passed by Ist Additional District Judge, Niwari District Tikamgarh (M.P.) in RCA No.100033/2015, arising out of the judgment and decree dated 15.09.2015 in Civil Suit No.163A/2004 by Civil Judge, Class-I, Niwari, District- Tikamgarh.

2. Brief facts of the case are that plaintiff filed a suit for declaration of title as well as permanent injunction on the ground that plaintiff's cousin brother

Karan executed a Will in his favour on 01.06.1987, therefore, plaintiff is owner and in possession of the suit property on the basis of above will.

3. Learned counsel for the appellants, after referring to plaint averements as well as evidence adduced by plaintiff, submits that learned courts below have wrongly dismissed plaintiff's suit as well as appeal on the ground that plaintiff has failed to prove execution of Will as per provision of law. It is also urged that Will (Ex. P/8) is a registered Will and plaintiff has examined attesting witnesses to prove execution of Will. On above grounds, it is urged that in the instant appeal substantial question of law as mentioned in the appeal memo arise. Therefore, appeal be admitted for final hearing.

4. Heard and perused record of the case.

5. Learned trial Court vide judgement dated 15.09.2015 passed in RCS No.163A/2015 dismissed the suit filed by the plaintiff and Appellate Court vide judgment dated 04.3.2021 passed in RCA No.100033/2015 dismissed the appeal filed by the plaintiff and confirmed the findings of the trial Court.

6. Therefore, question arises as to when this Court can interfere with the findings of facts arrived at by the **first appellate court**. In this connection, I would like to refer to the law laid down by the Hon'ble Apex Court in the case of Chandrabhan (Deceased) through Lrs. And Others vs. Saraswati and

Others reported in AIR 2022 SC 4601, wherein Hon'ble Apex Court in para

33(iii) has held as under:-

“**33 (iii)** The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well - recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision” based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding”.

7. Similarly in the case of Gurnam Singh (Dead) by legal representatives and Others vs. Lehna Singh (Dead) by legal representatives, Hon'ble Apex Court has held as under:-

*“13.1.....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 inadmissible 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”.

8. In this connection, **Ishwar Dass Jain (Dead) through Lrs vs. Sohan Lal (Dead) by LRs** reported in (2000) 1 Supreme Court Cases 434 may also be referred to. Paras 11 and 12 of the said judgment is relevant and is under:-

“11. 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. This principle has been laid down in a series of judgments of this Court in relation to section 100 CPC after the 1976 amendment. In Dilbagrai Punjabi vs. Sharad Chandra [1988 Supple. SCC 710], while dealing with a Second Appeal of 1978 decided by the Madhya Pradesh High Court on 20.8.81, L.M.Sharma, J.(as he then was) observed that "The Court (the first appellate Court) is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises as of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding. This is the situation in the present case."

In that case, an admission by the defendant-tenant in the reply notice in regard to the plaintiff's title and the description of the plaintiff as 'owner' of the property signed by the defendant were not considered by the first appellate Court while holding that the plaintiff had not proved his title. The High Court interfered with the finding on the ground of non-consideration of vital evidence and this Court affirmed the said decision. That was upheld. In Jagdish Singh vs. Nathu Singh [1992 (1) SCC 647], with reference to a Second Appeal of 1978 disposed of on 5.4.1991. Venkatachaliah, J. (as he then was) held:

"where the findings by the Court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings."

Again in Sundra Naicka Vadiyar vs. Ramaswami Ayyar [1995 Suppl. (4) SCC 534], it was held that

where certain vital documents for deciding the question of possession were ignored - such as a compromise, an order of the revenue Court – reliance on oral evidence was unjustified. In yet another case in *Mehrunissa vs. Visham Kumari* [1998 (2) SCC 295] arising out of Second appeal of 1988 decided on 15.1.1996, it was held by Venkataswami, J. that a finding arrived at by ignoring the second notice issued by the landlady and without noticing that the suit was not based on earlier notices, was vitiated finding. This was in Second Appeal of 1988 decided on 15.1.1996.

12. 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 *Sri Chand Gupta vs. Gulzar Singh* [1992 (1) SCC 143], it was held that the High Court was right in interfering in Second Appeal where the lower appellate Court relied upon an admission of a third party treating it as binding on the defendant. The admission was inadmissible as against the defendant. This was also a Second Appeal of 1981 disposed of on 24.9.1985”.

9. Perusal of plaint averments reveals that plaintiff has filed the present suit for declaration of title as well as permanent injunction on the ground that plaintiff's cousin brother Karan Singh executed a registered Will in plaintiff's favour on 01.06.1987. Present suit has been filed on the basis of above Will in relation to the suit property situated in Village Zer. Perusal of Will Ex P/8 reveals that it has been executed with respect to property situated in Village Siyawani. In view of death of attesting witnesses, plaintiff has examined the

scribe of the Will i.e. Vijay Bahadur Khare and this witness has admitted in para-6 of his cross examination that it is correct that Will was executed with respect to Siyawani property only and not with respect to Village Zer property. Thus, in view of above, plaintiff does not acquire any title over the suit property situated in Village Zer on the basis of Ex.P/8. Hence, learned Courts below have not committed any illegality in dismissing the suit/appeal filed by the plaintiff.

10. If pleadings and evidence adduced by the parties and the impugned judgment passed by the **first appellate court/trial court** are considered, in the light of above legal principles/legal provisions reiterated in aforesaid judgments, then, in this Court's considered opinion, the findings of facts recorded by the **first appellate court/trial court** are not liable to be interfered with in the instant case and it cannot be said that **first appellate court/trial court** has ignored any material evidence or has acted on no evidence or **first appellate court/trial court** has drawn wrong inferences from the proved facts etc. Further, it cannot be said that evidence taken as a whole, is not reasonably capable of supporting the findings. It can also be not said that the findings of **first appellate court/trial court** are based on inadmissible evidence.

11. A perusal of the impugned judgment and decree passed by the **first appellate court/trial court** reveals that it is well reasoned and has been passed after due consideration of oral as well as documentary evidence on record.



Learned counsel for the appellant has failed to show that how the findings of facts recorded by the **first appellate court/trial court** are illegal, perverse and based on no evidence etc. The learned **first appellate court/trial court** have legally and rightly dealt with the issues involved in the matter and has recorded correct findings of fact.

**12.** For the reasons aforesaid, I find no merit in the instant second appeal. Findings recorded by the **first appellate court/trial court** are fully justified by the evidence on record. Findings recorded by the **first appellate court/trial court** is not based on misreading or mis-appreciation of evidence nor it is shown to be illegal or perverse in any manner so as to call for interference in second appeal. No question of law, much less substantial question of law, arises for adjudication in the instant appeal. Hence, appeal is dismissed in *limine*.

**13.** A copy of this order along with record be sent back to the **first appellate court/trial court** for information and its compliance.

**(ACHAL KUMAR PALIWAL)**  
**JUDGE**