

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. \_\_\_\_\_ OF 2024  
(ARISING OUT OF SLP (CIVIL) NO.9785/2019)**

**TEJ PAL SINGH (D) THROUGH LRS.**

**Appellant (s)**

**VERSUS**

**DHAN SINGH (DECEASED) THROUGH HIS LRS.**

**Respondent (s)**

**O R D E R**

**Hrishikesh Roy, J.**

**Leave granted.**

2. Heard Ms. Sneha Kalita, learned counsel appearing for the appellant(s). Also heard Mr. Sanjeev Kumar, learned counsel appearing for the respondent(s).

3. The appellant (Tej Pal Singh) died on 02.10.2021 and accordingly an application (IA No. 44080/2024) is filed for substitution of the legal heirs of the appellant, whose names are mentioned in Paragraph 3 of the application as follows:-

*"3. ...The legal Representative of the deceased Petitioner, Late Tejpal Singh are:-*

<b>Sl. No.</b>	<b>Name &amp; Address of LR.</b>	<b>Age</b>	<b>Relation</b>
<b>(i)</b>	<b>Rajo 260/5, Dairy Mohalla, Rohtak Haryana - 124001</b>	<b>76</b>	<b>Widow</b>
<b>(ii)</b>	<b>Sushma VTC: Puthi Saman(60) PO: Puthi Saman, Hansi, Hisar, Haryana - 125042</b>	<b>33</b>	<b>Daughter</b>
<b>(iii)</b>	<b>Ram Bhateri H.No. - 2260/1, Nehru Colony, Rohtak, Rohtak, Haryana - 12400</b>	<b>39</b>	<b>Daughter</b>
<b>(iv)</b>	<b>Krishan H.No.- 260/5, Dairy Mohalla,</b>	<b>26</b>	<b>Son</b>

	<b>Rohtak, Rohtak, Haryana - 124001</b>		
<b>(v)</b>	<b>Kajal</b> <b>VTC: Puthi Saman(60)</b> <b>PO: Puthi Saman, Hansi, Hisar,</b> <b>Haryana - 125042</b>	<b>21</b>	<b>Daughter</b>
<b>(vi)</b>	<b>Nitesh</b> <b>H.No.- 260/5, Dairy Mohalla,</b> <b>Rohtak, Rohtak, Haryana -</b> <b>124001</b>	<b>19</b>	<b>Son</b>

"

4. Opposing the above names, Mr. Sanjeev Kumar, learned counsel for the respondent submits that Tej Pal Singh is survived by his wife (Rajo Devi) and others mentioned are not born to Tej Pal Singh and Rajo Devi. In fact, they were born to one Chaina Devi, who was the wife of the deceased's brother (Dharamveer).

5. On the above, Ms. Sneha Kalita [learned counsel for the appellant(s)] submits that following the death of Dharamveer, Tej Pal Singh got married to the widow (Chaina Devi) of his brother and that is how the names of the concerned legal heirs are mentioned in Paragraph 3.

6. On the above aspect, we may usefully note the definition of "legal representative" in Section 2(11) of the Code of Civil Procedure, 1908 (hereinafter "CPC") which reads as under :-

*"11(2) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued" (Emphasis added)*

7. As can be appreciated, a "legal representative" means a person, who in law, represents the estate of the deceased person and may also include any person who intermeddles with the estate of the deceased.

8. In the circumstances mentioned in the application, we deem it appropriate to allow the substitution of the legal heirs of the deceased (Tej Pal Singh), whose names are mentioned in Paragraph 3 of this order. Accordingly, the IA No. 44080/2024 is allowed. The abatement of the case is accordingly, set aside.

9. The learned counsel for the parties are next heard on the merits of the Appeal.

10. Tej Pal Singh (Plaintiff) filed Suit No.337 of 1987 for possession of Plot 59 (admeasuring 113 sq. yards) against Dhan Singh (Defendant). The learned Trial Court dismissed the suit on 03.10.1989 with the observation that the plaintiff failed to prove his title and possession.

11. The above decision of the Trial Court (dated 03.10.1989) was however reversed by the first Appellate Court on 27.04.1991, by allowing the plaintiff's Appeal (C.S. No.42/13/1989) and the suit was decreed in favor of the plaintiff. According to the first Appellate Court, the plaintiff was able to prove his ownership and also the illegal possession of the defendant, over the suit land.

12. Through the impugned judgment dated 20.07.2018, the High Court in the defendant's regular second appeal, decided the matter against the plaintiff by setting aside the judgment of the Appellate Court and restoring the decision of the Trial Court. The High Court, to avoid framing substantial question of law, referred to the 5-judge bench decision in *Pankajakshi (dead) vs. Chandrika and others* reported in (2016) 6 SCC 157, wherein it has been held that with respect to second appeals before the Punjab and Haryana High Court, Section 41 of the Punjab Courts Act, 1918 is applicable and not Section 100 of the CPC. For reference, the relevant extract is reproduced:

"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 80-A 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."

13. Under Section 41 of the Punjab Courts Act, 1918<sup>1</sup>, a second appeal against the appellate court's decision lies to the High Court on three grounds i.e., the decision being contrary to law, failure of appellate court to determine material issue of law, or where there exists a substantial error or defect in the procedure and such error affects the decision on merits. In *Hardial Singh v. Balbir Kaur*, (2022) 6 SCC 491, this Court held that though the Punjab & Haryana High Court is not required to frame substantial questions of law in a second appeal, the jurisdiction of the High Court cannot be exercised beyond the scope of Section 41 of the Punjab Courts Act, 1918.

14. In view of the law laid down in *Pankajakshi (supra)* and *Hardial Singh (supra)*, while the Punjab & Haryana High Court was not required to formulate any substantial question of law to decide the second appeal, the justification for interfering with the decree of the Appellate Court should have been appropriately indicated by the Court. For instance, how the decision is contrary to law and which might warrant the interference of the High Court.

15. Reliance may also be placed on the decision of the three-

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<sup>1</sup> 41. Second appeals.—(1) An appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court on any of the following grounds, namely:

(a) the decision being contrary to law or to some custom or usage having the force of law;

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law;

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure, 1908 (V of 1908), or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

judge bench in *Satyender v. Saroj*, (2022) 17 SCC 154 at para 17:

"17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or reappraise questions of fact settled by the trial court and the appellate court."

16. In this case, the first Appellate court as a final court on facts, clearly concluded that the plaintiff was able to prove his ownership over the Suit land and that the defendant was in illegal possession. The said finding was disturbed by the High Court without indicating the error in the decree passed in favour of the plaintiff. The High Court should have examined whether the Appellate court's findings were sustainable or not within the contours of Section 41 of the Punjab Courts Act, 1918 and should have recorded acceptable reasons for disagreeing with those findings. But this was not done.

17. Moreover, in the impugned judgment, the High Court decided to ignore the evidence produced by the plaintiff i.e., Assessment tax register to indicate the possession of his father, on the ground that it does not prove title. However, the High Court failed to note that while the assessment tax register does not prove title, an entry in a public document

is a relevant fact under Section 35 of the Indian Evidence Act, 1872 and has probative value. In our view, the High Court has erred in completely discarding the assessment register and questioning the reliance placed on the document by the first Appellate court.

18. This matter, therefore, deserves to be remitted back to the High Court. The judgment under appeal is set aside and the Regular Second Appeal No.1849/1991 is restored to the file of High Court for fresh adjudication.

19. With the above order, the appeal is disposed of. Pending application(s), if any, stand closed.

.....J.  
[ HRISHIKESH ROY ]

.....J.  
[ S.V.N. BHATTI ]

NEW DELHI;  
NOVEMBER 19, 2024.

ITEM NO.12

COURT NO.4

SECTION IV-B

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (C) No(s).9785/2019

[Arising out of impugned final judgment and order dated 20-07-2018 in RSA No. 1849/1991 passed by the High Court of Punjab & Haryana at Chandigarh]

TEJ PAL SINGH (D) THROUGH LRS.

Petitioner(s)

VERSUS

DHAN SINGH (DECEASED) THROUGH HIS LRS.

Respondent(s)

IA No. 19535/2024 - APPLICATION FOR ABATEMENT

IA No. 44078/2024 - APPLICATION FOR CONDONATION OF DELAY IN FILING THE APPLICATION FOR SETTING ASIDE THE ABATEMENT

IA No. 44080/2024 - APPLICATION FOR SUBSTITUTION

IA No. 44077/2024 - SETTING ASIDE AN ABATEMENT)

Date : 19-11-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY

HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Ms. Sneha Kalita, AOR

For Respondent(s) Mr. Sanjeev Kumar, AOR  
Mr. Sanjeev Kumar Aggarwal, Adv.  
Mr. Rajesh Ranjan Prasad, Adv.  
Mr. Rahul Kumar, Adv.  
Mr. Sandeep Lamba, Adv.  
Mr. Rajani Shahi, Adv.  
Mrs. Gunjan Sharma, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

Application for substitution is allowed along with all the connected applications.

The appeal is disposed of in terms of the signed order. Pending application(s), if any, stand closed.

[DEEPAK JOSHI]  
ASTT. REGISTRAR-cum-PS

[KAMLESH RAWAT]  
ASSISTANT REGISTRAR  
(Signed Order is placed on the File)