

**(2008) 11 SHI CK 0004**  
**In the High Court Of Himachal Pradesh**

Ramesh

APPELLANT

Vs

Ved Vrat and Others

RESPONDENT

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**Date of Decision :** 03-11-2008

**Acts Referred:**

**Citation :** (2009) 1 ShimLC 136

**Hon'ble Judges :** Dev Darshan Sud, J

**Bench :** Single Bench

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### Judgement

Dev Darshan Sud, J.—This appeal was argued on 22.9.1998 and judgment was reserved. The matter was listed in Court again today for clarifications from the Counsel for the reason that the judgment passed by the learned District Judge has not determined the questions of fact raised before it by assigning cogent reasons. For this purpose, the matter was again listed for rehearing.

2. The appeal is not being disposed of on merits, but some facts are being noticed. The respondent, who was the plaintiff before the learned trial Court prayed for a decree of declaration for the suit land on the basis that a Will executed by the deceased in favour of the defendants 3 to 8 before the trial Court is illegal, null and void. The learned trial Court, on a detailed consideration of the evidence, dismissed the suit holding the will to be genuine and proper. In appeal, the learned District Judge set aside the will Ex.DW-2/A as being a document having been executed under suspicious circumstances and declared the will to be null and void. Although the learned District Judge does consider evidence of the witnesses, but when discussing/returning his findings on the points urged, simply says that on the basis of the oral and documentary evidence, there is ample scope for suspicion about the genuineness of the will Ex.DW-2/A, primarily basing his finding on the circumstances that the natural heirs have been excluded. This finding has been recorded in para 14 of the judgment. Other findings recorded therein are that the testator was an old person and that he died within two months after the execution of the Will as such, there are strong suspicious circumstances regarding the genuineness of the

will.

3. This cannot be described as a satisfactory way of disposing of a first appeal. It is by now well settled that the first appellate Court should deal with the questions of fact as well as law.

4. In *Shantilal Kesharmal Gandhi Vs. Prabhakar Balkrishna Mahanubhav*, , the Supreme Court held:

(7) On going through the judgments of the trial Court, and the appellate Court in the light of the submissions made before us it may be possible to say that there has been a failure on the part of the appellate Court to discuss all the relevant materials and to that extent its conclusion is open to challenge. The trial Court had considered the relevant aspects and had recorded its conclusions. The appellate Court should have made a proper reappraisal of the pleadings and the evidence in the case before coming to an independent conclusion of either affirming the findings of the trial Court or of interfering with them. Some items of evidence brought to our notice are not seen discussed by the first appellate Court. The first appellate Court being the final Court of fact and law, should have made a proper examination of the relevant materials. To that extent there may be a point in the submission of learned Counsel for the tenant. But then, we may have to reckon with the reasoning of the trial Court before we make up our mind on the question of interference with the finding on that aspect.

In *Madhukar and Others Vs. Sangram and Others*, , the Supreme Court holds:

(6) In *Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs.*, , this Court opined, (Para 15):

The Appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate Court while reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the First Appellate Court had discharged the duty expected of it.

(7) The salutary principles referred to above in *Santosh Hazari*'s case have been respected in their breach.

5. This very principle was stated by the Supreme Court in *State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs.*, . (See also *H.K.N. Swami v. Irshad Basith (Dead) By LRs* (2005) 10 SCC 243).

In *Sanjay Singh Rawat and Ors. v. National Small Industries Corporation Ltd. and*

Ors. (2005) 12 SCC 146, the Supreme Court held that the first appeal is a valuable right and all questions of fact and law decided by the trial Court are open for reconsideration.

6. It is the primary duty of the appellate Court to discuss and analyze evidence with respect to each and every point urged and whether it supports the case of the appellant or defendant. It is not merely sufficient to reproduce the evidence and then summarize it to say that it supports a particular conclusion. The findings and the conclusions have to be co-related and not arrived at on a general surmise.

7. Considering that genesis of the dispute was in 1991 and now after a period of seven years, remand would lead to interminable proceedings, I was, in the first instance reluctant to remand the matter for decision afresh. However, I find that in case I do not follow this course, this Court in second appeal would be undertaking the task of appraisal/reappraisal of evidence which is statutorily impermissible and would also amount to donning the mantle of the first appellate Court.

8. In the facts and circumstances of the case, this appeal is disposed of with the direction that the learned District Judge, Solan shall re-admit the appeal and decide it in accordance with law. Parties shall appear before the learned District Judge on 1.12.2008. A further direction is issued, that the case shall be disposed of not later than 31.3.2009. There shall be no order as to costs. Record be sent back forthwith. Pending application(s) shall stand disposed of.