



2026:DHC:5488



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 2nd April, 2026

Pronounced on: 9th July, 2026

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RSA 256/2016& CM APPL. 33802/2016

1. **SMT. KUCHCHI @ SHANTI DEVI**

(Deceased Through her L.Rs)

Wife of Late Sh. Shankar Lal

2. **SH. BISHAN DASS**

S/o Late Sh. Shankar Lal

3. **SH. BABU RAM**

S/o Late Sh. Shankar Lal

4. **SH. CHHOTAY LAL**

S/o Late Sh. Shankar Lal

5. **SMT. SHAKUNTALA**

W/o Sh. Bishan Dass

6. **SMT. USHA**

W/o Sh. Babu Ram

7. **SMT. RAJ RANI**

W/o Sh. Chhotay Lal

All R/o 1104, New Usman Pur,
Delhi-110053.

8. **SMT. SHASHI-KALA @ LALIA**

D/o Late Sh. Shankar Lal

W/o Sh. Ganga Ram

R/o Ghasiyari Mandi,
Malik Mau, Near Mal Godam,
Rai Bareilly (U.P.)

9. **SMT. BUDHANI (pre-deceased)**

D/o Late Sh. Shankar Lal



W/o Late Sh. Rajinder
Though her legal heirs

9A. **JITENDER** (Son)

9B. **MS. SEEMA** (Daughter)
R/o 1104, New Usman Pur,
Delhi.

.....Appellants

Through: Mr. S. K. Gupta, Ms. Aarti Bansal
and Mr. Gaurav Gupta, Advocates

versus

1. **SMT. DAULATI (Deceased following through LRs)**
Wd/o Sh. Makua Ram

1(a) **SH. KALLU RAM**
S/o Late Sh. Makua Ram

1(b) **SH. GANGA RAM**
S/o Late Sh. Makua Ram
All R/o B-110, New Usman Pur,
Delhi.

1(c) **SMT. GUDDO**
D/o Late Sh. Makua Ram
W/o Sh. Bahadur
R/o B-133, New Usman Pur,
Delhi-110053.

.....Respondents

Through: Mr. Rajesh Tyagi and Mr. Puneet
Verma, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been filed against the Judgment and Decree dated 12.05.2016 whereby *the learned ADJ in the First Appeal, has upheld* the Judgment and Decree dated 18.11.2010 of the Ld. Civil Judge, whereby the *Suit of the Plaintiff/Respondent for Possession, Declaration and Permanent Injunction, was decreed.*
2. The Plaintiffs had filed a **Civil Suit No.610/2007** for Possession, Declaration and Permanent Injunction.
3. The ***facts in brief as stated in the Plaint***, were that Late Makua Ram during his lifetime was allotted Plot No.90 admeasuring 250 sq. yds. in lieu of his agricultural land in village Ushmanpur, Delhi, through registered Lease Deed dated 18.11.1961 executed by Assistant Development Commissioner of Delhi Administration. On the same date, an Agreement for Lease was also executed.
4. Late Shri Makua Ram out of love and affection permitted Defendant No.1 Shri Shankar Lal, his younger brother to occupy one room having two portions, as shown in red colour in the site plan, as a licensee without any consideration. The Defendant No.1 along with Defendant No.2 to 8 occupied the suit premises and also fixed an Atta Chakki. The Defendants thus, were enjoying the possession of the part of the suit property as a licensee up to 18.10.1992, when Shri Makua Ram died.
5. Thereafter, the Defendants threatened and got vacated four rooms from the tenants and tried to forcibly occupy them in the month of January, 1993, but due to timely intervention of the Plaintiffs and other relatives and common friends, the Defendants were unable to succeed in occupying the remaining portion.



6. On 07.05.1994 at about 08:00 A.M, the Defendants starting demolishing those four rooms, which had been vacated by the tenants. When the Plaintiffs tried to prevent them, they threatened to kill the Plaintiffs. The Police of Police Post New Ushmanpur, did not record the Complaint and advised them to approach the Court.

7. The Plaintiffs thus, filed a *Suit for Permanent Injunction* praying to restrain the Respondents from demolishing the rooms, on 07.05.1994. The *learned Sub-Judge, Delhi* issued Notice to the Defendants, who on receiving the Notice demolished half portion of the House No.1104, New Ushmanpur, Delhi. On 09.05.1995, the *learned Sub-Judge restrained the Defendants* from demolishing the wall which divided the House No.1104, New Ushmanpur, into two parts.

8. During the hearing of the said Suit, *Defendant produced a General Power of Attorney, Agreement to Sell, Affidavit, Will and a duly registered receipt of Rs.50,000/- dated 24.07.1989 allegedly executed in their favour by late Makua Ram*. The Defendants claimed that the half portion of the House No.1104, had been sold by Shri Makua Ram to the Defendant No.1 on 24.07.1989, and since then they are in occupation.

9. The Plaintiffs stated that the perusal of the documents revealed that the signatures of Late Makua Ram, had been forged. It was asserted that Makua Ram during his lifetime, had never visited the office of Sub-Registrar nor had he executed the documents, which had been fabricated to grab the property of the Plaintiffs, who were the owners of the property in question. The Plaintiffs served a Notice dated 21.05.1994 terminating their license w.e.f. 21.05.1994 and sought the peaceful and vacant possession within 30 days of the Notice.



10. The Defendants on receiving the Notice started contacting the Property Dealers with a view to sell the Suit property and thereby, cause loss to the Plaintiffs.

11. The Plaintiffs thus, filed the *Suit for recovery of Possession, Declaration in favour of the Plaintiffs and against the Defendants and also to declare GPA, Agreement to Sell dated 24.07.1989 as forged documents and for Permanent Injunction to restrain the Defendants from creating third party rights, in the suit property.*

12. The **Defendant No.8, Smt. Munni and Defendant No. 9 Smt. Shashi Kala, in their Written Statement** took the *preliminary objection* that the Plaintiffs had no *locus standi* to file the Suit since Late Makua Ram had already sold the half property to Defendant No.1 Sh. Shankar Lal, his younger brother, *vide* documents dated 24.07.1989. After purchasing the Suit property, the Defendant No.1 became the lawful owner thereof. They along with other LRs of Defendant No.1, have become the joint owners of the Suit property.

13. It was further claimed that Shri Makua Ram during his lifetime, never filed any Suit against the Defendants, despite being aware that he had sold the property to his younger brother Shankar Lal who had been exercising his ownership rights in the property. Even the Plaintiffs became aware of the sale of the property by Makua Ram in the year 1989 but had not raised any objection, at the relevant time. ***The Suit is, therefore, barred by limitation.***

14. It was further asserted that the ***Suit was barred under Order 2 Rule II CPC.*** Admittedly, the Plaintiff had earlier filed a Suit for Permanent Injunction against the Defendants, but did not seek effective and appropriate relief of Declaration and Possession, despite being aware of the entire facts.



15. **On merits**, it was re-emphasized that on account of execution of Agreement to Sell, etc., *Sh. Shanker Lal, the Defendant No.1, the younger brother of Makua Ram, became the absolute owner of the suit property.* It was denied that the documents were forged and fabricated or had been executed by playing fraud and mis-representation. It was thus, submitted that the Suit of the Plaintiff be dismissed.

16. The ***Plaintiffs in the Replication***, denied the claim of the Defendants to be the absolute owner in the Suit property and reiterated the averments made in the Plaint.

17. The **Issues were framed on 17.04.1997, as under :**

- (i) *Whether documents comprising of GPA dated 24/07/1989, agreement dated 24/07/1989, affidavit dated 24/07/1989 and receipt dated 24/07/189 as referred to in the prayer clause 'B' of the plaint are forged documents and possession of the defendants in the suit property is of unauthorised occupants? If, so, its effect? OPP*
- (ii) *Whether defendants are absolute owner of half of the suit property as claimed in paragraph no.1 of the preliminary objection of the written statement? OPP*
- (iii) *Whether suit is without cause of action? OPD*
- (iv) *Whether plaintiff has no right, title or interest in the suit property and has no locus standi to file this suit? OPD*



- (v) *Whether there is any concealment of the material facts? If so, its effect? OPD*
- (vi) *Whether plaintiff is entitled to the relief as claimed in the plaint? OPP*
- (vii) *Relief.*

18. The Plaintiffs in support of their case examined **PW1 Smt. Premwati**, from the office of Sub-Registrar, Kashmere Gate to deposed that the suit property had been allotted to Sh. Late Makua Ram by way of Perpetual Lease deed dated 18.11.1961 vide registration no. 878, Vol. no. 691. She also proved the Agreement for lease dated 18.11.1961, which was brought on record.

19. **PW2 Smt. Daulti, (Plaintiff No.1)**, has deposed on the similar lines as the averments made in the Plaint.

20. **PW3 Sh. Kamal Kant Khandelwal** was the Handwriting Expert, who deposed that the signatures on the documents namely Agreement to Sell, etc., were not of Sh. Makua Ram.

21. **PW4 Sh. Ganga Ram** deposed that the property was purchased by his father and he was seriously ill and was bed-ridden and was not in position to walk to the office of Sub-Registrar, to execute the documents dated 24.7.1989. Sh. Ganga Ram has got verified the signatures of his father through handwriting expert Sh. Kamal Kant Khandelwal, who gave his Report Ex. PW3/15.

22. The Defendants in support of their case, examined **DW1 Sh. Sanjay Ray, Assistant Grade-II, BSES Yamuna Power Ltd.**, who proved the record of installation and test report of meter installed at the questioned property Ex. DW1/A and copy of K number file Ex. DW1/B.



23. **DW2 Sh. Babu Ram** deposed that his father, Sh. Shankar Lal is paying the *House Tax* of the questioned property to MCD and receipt for the same is Ex. DW1/E. He is also paying the electricity charges as per bills Ex. DW1/F,G,H, against the Meter No. 0303556.

24. **DW3 Sh. Chhotay Lal, son of Shanker Lal** deposed on the same lines as his brother, DW2. He also deposed that his father is residing in the suit property since 1967, being owner and was receiving the rent in respect of various tenanted portion.

25. **DW4 Sh. Bishan Dass** deposed that Ex. DW1/A to D are not forged documents as they have been duly signed by his *uncle Sh. Makua Ram*, wherein he put his signatures at point A on all documents and also put his thumb impression at point B, on document Ex. DW1/A.

26. **DW5 Sh. P.C. Tiwari, LDC from the office of Sub-Registrar IV, Nand Nagri, Delhi** deposed that the Receipt pertaining to payment of Rs. 50,000/- by Sh. Shankar Lal to Sh. Makua Ram Ex. DW1/A, was registered *vide* document registration no. 33354 book no. 4, volume no. 2096 page no. 57 dated 24.07.1989.

27. **DW6 Sh. Rajesh Kumar from House Tax Department, MCD** proved Receipt Ex. PW4/D1 to Ex. PW4/D3 as pertain to property no. 99/5, Ushmanpur Village; whereas Ex. PW/D4 and Ex. PW4/D5 pertain to property no. 29/5, Ushmanpur village.

28. The **Learned Civil Judge** in the impugned judgment dated 18.11.2010, observed that the Defendants/Appellants had sought to claim the ownership on the basis of Agreement to Sell, Will, Affidavit and Receipts, all dated 24.07.1989 alleged to have been executed in their father, Sh. Shanker Lal, by late Sh. Makua Ram.



29. However, on a close scrutiny of the evidence of the Handwriting Expert and also the testimony of the witnesses, *it was concluded that these documents were not genuinely executed by late Sh. Makua Ram and were forged and fabricated documents.* It was thus, concluded that the Defendants had not been able to establish their right, title and interest to establish their absolute ownership in respect of half part of the Suit Property.

30. It was further observed that the Plaintiffs were able to establish their ownership rights in the Suit Property. *Consequently, it was declared that Defendants were unauthorised occupants in the Suit Premises and the decree of possession was passed in favour of the Plaintiffs.* The Suit was decreed with cost of Rs.3,500/- to be paid by the Defendants.

31. The Defendants have filed **Regular Civil Appeal No. 40/16/11** against the impugned judgment dated 18.11.2010 and decree dated 20.11.2010.

32. The **learned ADJ** concurred with the appreciation of evidence by the Ld. Civil Judge and dismissed the Appeal, *vide* judgment dated 12.05.2016.

33. Aggrieved by the dismissal of the Regular First Appeal, *the present Second Regular Appeal under Section 100 CPC, has been filed to challenge the impugned Judgment dated 12.05.2016.*

34. The **grounds of challenge** are that the facts and circumstances as well as the documents placed on record, had not been appreciated correctly and wrong conclusions/observations were made, based on conjectures and surmises and not on any sound legal reasoning. The documents which were admittedly part of the Court record, had not been considered in the right perspective. The legality and validity of the sale purchase documents in favour of the Appellants/Defendants, is based on incorrect appreciation of evidence.



35. The **learned Civil Judge** accepted the Report of hand-writing expert selectively by relying upon the opinion with regard to thumb impression, but disregarding the opinion as regards the signatures. The **learned Civil Judge** disbelieved the Report with respect of thumb impressions by basing his observations on the literature available on Wikipedia. The learned First Appellate Court disapproved the approach of learned Civil Judge in placing reliance on such unauthenticated material on Wikipedia, but surprisingly chose to affirm the findings of the learned Civil Judge, in regard to the evidence of Handwriting Expert. This has given rise to anomalous situation whereby while the Appellate Court itself discarded the basis on which the learned Civil Judge gave his finding in respect of the evidence of Handwriting Expert, however, chose to agree with the findings of the learned Civil Court.

36. Furthermore, both the Courts committed an error in fact and law, by relying upon one aspect of the report of the Handwriting Expert and discarding the other aspects. Such piecemeal reliance on the Report of the Handwriting Expert is against the law; either the entire Report should have been accepted or rejected *in toto*.

37. The **learned Civil Judge** held that the sale-purchase documents relied upon by the Defendants/Appellants, were legally invalid, on the premise that only the Receipt was registered, which carried the thumb impression of Makua Ram, while thumb impression was not present on all other documents, i.e., GPA, Agreement to Sell, etc. It is asserted that learned Trial Court lost site of the fact that thumb impression of executants is mandatory only on the documents which is submitted for registration. Therefore, thumb impression was not mandatorily required to be present on all other



documents, i.e., GPA, Agreement to Sell, etc., as they were not submitted for registration, before the Sub-Registrar.

38. The learned Civil Judge further observed that the registered Receipt did not contain the photograph of the payer and the payee. However, the testimony of DW5, witness from the office of Sub-Registrar has been overlooked. It would clearly show that in the year 1989, there was no requirement of affixing the photograph of the parties on the documents submitted for registration. The absence of the photograph on registered Receipt Ex.PW2/D1, could not have been the basis to hold the document invalid.

39. It remains undisputed that the plot in question was divided in two equal parts and one half was in the possession of the Plaintiffs and the other half was in the possession of the Appellants, since 1989. It is also not in dispute that the Appellants were depositing the House Tax and the essential service provided in this half portion, were in the name of the Appellants, in the records of statutory authorities.

40. No evidence has been placed on record by the Respondents/Plaintiffs to show that they were being assessed to house tax in respect of half portion and that the essential services were in their name, thereby establishing the long possession of the Appellants in the suit property. The inevitable conclusion was that since 1989, it was accepted that the suit property was owned and possessed by the Appellants/Defendants. The stand of the Respondents/Plaintiffs that the Appellants were in occupation of the suit property as a licensee, is an afterthought and devoid of any merit.

41. Furthermore, the basis on which the learned Civil Judge held the sale documents to be invalid, did not find favour with the **First Appellate Court**



and it proceeded to declare the documents invalid on a totally different premise, which was not even addressed by the learned Civil Judge.

42. According to the First Appellate Court, the documents were invalid because its execution was not proved in accordance with law, as none of the witnesses to the documents, had been examined.

43. The Appellants submitted that if at all, the learned Appellate Court was of the view that the basis adopted by the learned Civil Judge to give a finding on the factual aspect was incorrect, then too, it ought to have remanded the matter back and allowed the parties to lead evidence on the aspect on which the observations had been made.

44. *It has been erroneously held by learned First Appellate Court* that the Respondents/Plaintiffs were able to discharge the burden, to prove that the documents were forged and fabricated by examining the Handwriting Expert. Such a finding is totally unsustainable, in fact and in law.

45. The careful reading of the impugned judgment of First Appellate Court would reflect that no reasons have been given as to how the Report of Handwriting Expert found favour with it, since the basis on which the learned Civil Judge attached credence to the Handwriting Expert Report, was ignored by the First Appellate Court. No basis has been explained by the First Appellate Court for holding the Expert Report to be correct.

46. From the observations made by the learned Civil Judge as well by the First Appellate Court, it emerges that the Report of Handwriting Expert remained as a piece a paper with no evidentiary value; such a Report could not have been held to be an admissible evidence, and that too, sufficient to hold the documents in favour of the Defendants/Appellants as forged and fabricated.



47. It is asserted that the onus of proving that the documents of title, all dated 24.07.1989 in favour of the Appellants were forged and fabricated, was on the Plaintiffs. However, the Plaintiffs failed to discharge this burden and the Plaintiffs were unable to explain the presence of late Makua Ram on 24.07.1989, i.e., the date of execution of documents.

48. Surprisingly, for the first time, PW4-Ganga Ram in his evidence disclosed that the father was suffering from illness on the relevant date, but during the cross-examination, he was unable to give any specific details of the illness and the treatment, in proof thereof. It is claimed that late Sh. Makua Ram was hale and happy and capable of walking and executing the relevant documents in the year 1989.

49. The Appellate Court in the impugned judgment dated 12.09.2016, had observed that the Plaintiffs claim that Makua Ram was bed ridden and could not have gone to the office of Sub-Registrar in the year 1989 for registration of the receipt, was not proved in any manner. This establishes the execution of the registered Receipt dated 24.07.1989 Ex.DW1/A. Once the registration of the Receipt is duly proved and established, the authenticity and the execution of other documents, namely, Agreement to Sell, GPA, etc., cannot be held to be forged and fabricated.

50. Late Sh. Makua Ram had expired in the year 1992, despite which no steps were taken by the Plaintiffs for eviction of the Defendants/Appellants from the Suit Property. This was so because they were well aware of the title documents executed by late Makua Ram in favour of his brother Sh. Shankar Lal after taking the sale consideration of Rs.50,000/-.

51. It is submitted that the evidence of the witnesses examined by the Plaintiffs was full of discrepancies and were far from truth. **Therefore, the**



impugned judgment and decree of both the Courts be set aside and the Suit of the Plaintiffs, be dismissed.

52. ***Written Submissions were filed on behalf of the Respondents***, who gave the narration of entire facts and the evidence and stated that the evidence has been rightly appreciated by the learned Civil Judge and the cogent reasons have been given by the First Appellate Court for decreeing the Suit of the Plaintiffs. There is no merit in the present Appeal, which is liable to be rejected.

53. The ***Appellants had essentially argued on the lines of their grounds of Appeal***, to claim that the impugned judgment was liable to be set aside. Reliance was placed on ChennadiJalapathi Reddy v. Baddam Pratapa Reddy(2019) 14 SCC 220, Kartar Singh v. DDA 1999 SCC OnLine Del 1013, Vinod Kumar and Ors. v. Smt. Krishna Devi &Anr.2011 SCC OnLine Del 887 and Amar Nath v. Gian Chand(2022) 11 SCC 460.

Submissions heard and record perused.

54. The ***substantial question of law*** was framed on 03.01.2024 by this Court, which are as under:-

“Whether the manner in which the learned trial court as well as the learned first appellate court examined the evidence with respect to the claim of the appellants that the title in the suit property stood transferred by Makua Ram to Shankar Lal, suffers from perversity?”

55. In order to ascertain, whether the findings of the learned Civil Judge, which have been upheld by the Appellate Court, are perverse, it would be pertinent to examine the facts and the evidences led by the parties.

56. The Plaintiffs had claimed that the suit property was owned by Sh. Makua Ram. PW-2, Smt. Daulati w/o Sh. Makua Ram, had proved the



Agreement for Lease Ex.PW-2/1, Perpetual Lease Deed Ex.PW-2/2, and the Mortgage Deed Ex.PW-2/3 dated 18.11.1961 in favour of Late Sh. Makua Ram. The perpetual Lease Deed, Ex.PW-2/2 clearly establishes that the Suit Property, which was a plot of land at the relevant time admeasuring 250 sq. yds. of land, had been allotted to Late Sh. Makua Ram. On the same date, the Agreement for Lease, Ex.PW-2/1 was executed for raising the construction on the said plot of land within a period of 12 months at the own expense to the satisfaction of the Chief Commissioner of Delhi.

57. In order to raise the construction, a loan of Rs.3,000/- had been taken by Sh. Makua Ram from the Government for which, Mortgage Deed dated 19.11.1966, Ex.PW-2/3 was executed. The authenticity of these documents, is not being questioned by the Defendants and it is an admitted fact that the Suit Property, which was a plot at the relevant time, was allotted to Sh. Makua Ram *vide* the perpetual Lease.

58. These documents and the ownership of Sh. Makua Ram, is admitted by the Appellants, as well.

59. According to the **PW-2, the wife of Sh. Makua Ram**, the Defendant No. 1/Appellant, Sh. Shankar Lal, was the younger brother of Late Sh. Makua Ram, who had been allowed to reside him in part of the property in question, out of love and affection.

60. The Defendant No. 1, Sh. Shankar Lal as DW-1, deposed that he has been residing in the suit property, which is part of the property in question since 1967 in the capacity of an owner. However, there were no title documents executed in his favour in 1967 when he entered into the premises; thereby lending support to the testimony of the Plaintiff that he



had been permitted to occupy part of the property in question, out of love and affection.

61. **DW-1, Sh. Shankar Lal** had asserted his ownership rights by claiming that his brother, Sh. Makua Ram had executed the registered *Receipt in the sum of Rs.50,000/-, GPA, ATS, Affidavit, Ex.DW-1/A to Ex.DW-1/D respectively*. He also deposed that a ***Will of the same date i.e. 24.07.1989***, Ex.DW-1/1 was also executed in his favour.

62. *DW-2, Sh. Babu Ram, DW-3, Sh. Chhotay Lal and DW-4, Sh. Bishan Dass*, who are the three sons of Sh. Shankar Lal, had deposed on similar lines as their father, DW-1, Shankar Lal.

63. The challenge to the authenticity of this Agreement to Sell, etc., had been questioned by the Plaintiffs, on the grounds that these documents had never been executed by Sh. Makua Ram and his thumb impression and signatures on these documents, were forged and fabricated; a fact, which was deposed by PW-2, Smt. Daulati and PW-4, Sh. Ganga Ram s/o Late Sh. Makua Ram, who consistently deposed that the Defendants/Appellants had been in occupation only because of pure love and affection, being the younger brother of Late Sh. Makua Ram.

64. The most material witness examined by the Plaintiffs, to corroborate that these documents did not bear the signatures/thumb impression of Late Sh. Makua Ram, was ***PW-3, Sh. Kamal Kant Khandelwal, the Hand Writing Expert, who gave his Report, Ex.PW-3/15***. He deposed that he had examined the disputed thumb impression on the Receipt, Ex.DW-1/A by comparing it to the thumb impression of Sh. Makua Ram, on the Perpetual Lease Deed and Agreement to Lease Deed. He also enlarged the ink prints and the photographs, which are Ex.PW-3/1 to Ex.PW-3/13, the negatives of



which are Ex.PW-3/14 (collectively). He deposed that the thumb impression on the Receipt, did not match with the admitted thumb impression, as it was found that the admitted thumb impression at C-1 and C-2, was of 'WHORL' type while the questioned thumb impression on the Receipt Ex.Ex.DW-1/A at point D1 to D3, was of 'LOOP' type and was opening towards left side. The thumb impressions on the Receipt, did not match with the admitted thumb impression.

65. *The learned Civil Judge* had referred to this aspect of the testimony of PW-3, to observe that in the Hand Writing Expert Report, Ex.PW-3/15, he had categorically stated that the thumb impressions on the admitted and the disputed documents, were not same for the reasons stated hereinabove.

66. For the purpose of explaining what a LOOP and WHORL type thumb impression is, Ld. Civil Judge had referred to WIKIPEDIA. It was only for the purpose of comprehending the two terms and not for the purpose of ascertaining the credibility of the Report of the Hand Writing Expert, that a reference was made to Wikipedia.

67. *The learned Civil Judge in the light of this Report and the testimony of the PWs, had concluded that the thumb impression on the Receipt, was not that of Late Sh. Makua Ram.*

68. *The learned District Judge* while recording the contention of the Appellants that the WIKIPEDIA could not have been referred to determine the authenticity of the thumb impression, it was observed that the Report of the Hand Writing Expert, Ex.PW-3/15, gave cogent reasons and established the thumb impression on the Receipt, Ex.DW-1/A as not those of Late Sh. Makua Ram and therefore, the Receipt was a forged document. It would be



erroneous on the part of the Appellant to say that the authenticity of the Report has been determined on the Wikipedia information.

69. PW-4, Sh. Ganga Ram s/o Late Sh. Makua Ram, further explained that Late Sh. Makua Ram had suffered paralysis and was bed ridden in the year 1989 and was incompetent to even go to the Office of the Sub-Registrar, to execute the Receipt.

70. While there was no cogent evidence produced by the Plaintiffs, to show that Sh. Makua Ram was physically disabled, but the fact remains that the thumb impression as per the Hand Writing Expert and even to the naked eye and on examining of the enlarged photographs blatantly are different and are not those of Sh. Makua Ram..

71. The learned Civil Judge thus, rightly concluded that the thumb impressions on the Receipt, Ex.DW-1/A were not of Late Sh. Makua Ram. This finding of fact has been duly upheld by the learned Appellate Court and there is no infirmity, which has been brought forth by the Appellants, in this Second Appeal.

72. The next significant ***aspect was the alleged signatures of Makua Ram on the Agreement to Sell and Affidavit, Ex.DW-1/B to Ex.DW-1/D dated 24.07.1989.*** It had been observed in the Report of the Hand Writing Expert that the examination of the disputed signatures with the admitted signatures of Late Sh. Makua Ram, reflected that the signatures on the documents, Ex.PW-1/B to Ex.PW-1/D were not those of Late Sh. Makua Ram and were forged by the forger with free hand.

73. The explanation was given that there were dissimilarities in the Curves, Angles, Slant, Alignment, Spacing, Sizing, Pen-Hold, Movement and in Pictorial aspect in both the signatures. The formation of Letter 'Ma'



is totally different in both the set of signatures in the executorial manner. The Letter 'Ma' is written with two pen operation in the admitted signatures on A-1 and A-2 whereas in the disputed documents, it is written with one pen operation. There is a Loop formation at the bottom of first staff in the admitted documents at A-1 and A-2 but in the disputed document, there was an angular formation. Further, there was also dissimilarity in the formation of Letters "Ka" and "Va" and the placing of formation of "U" *matrain* the manner of execution of both the sets of signatures. It was further found that there were dissimilarities in the over stroke over the signature. It was thus, concluded that the signatures on the disputed documents, Ex.PW-1/B to Ex.PW-1/D, were not of Late Sh. Makua Ram.

74. PW-3, Sh. Kamal Kant Khandelwal, withstood the extensive cross-examination by the Plaintiffs, but were unable to bring out any discrepancy in the Report. the Defendants/Appellants had also been unable to establish the execution of the sale documents in their favour.

75. It may be observed that the two signatures, on bare examination by the naked eye, are also blatantly distinct. Though it was contended that with passage of time, there is bound to be natural variation in handwriting, but it has been explained by PW-3 Mr. Khandelwal that the basis strokes remain the same. The disputed signatures were intrinsically distinct from the admitted signatures and were not of the same person.

76. While the Defendant/DW-1, Sh. Shankar Lal admitted that he came into the possession since 1967, he has not explained the capacity in which he entered into the suit property, especially when the sale documents allegedly were executed in favour of Late Sh. Shankar Lal, in 24.07.1989.



77. Pertinently, to prove that they had proprietary rights in the suit property, DW-1 in his testimony, deposed that he had been renting out the portions of the Property since 1967, to various tenants and one tenant, Sh. Ram Kripal and Sh. FirtuRam, had been inducted by him from 1993 to 1997 at a monthly rent of Rs.400/- per month. Further, PW-4, Sh. Ganga Ram has also admitted that Sh. Shankar Lal had erected AattaChakki in the portion of the Plaintiffs. However, the fact remains that such user of the property does not confer any ownership rights on the Defendants merely because he was using the Property of Late Sh. Makua Ram and the Plaintiffs. The Defendant having been put into the permissive occupation of the premises by Sh. Shankar Lal, may have permitted him to rent out some part of the Property and collect their rent, but that in itself in the absence of any cogent evidence or documents, cannot be a ground to prove that he had acquired ownership rights in the suit property.

78. The Defendants had also claimed that they had the electricity connection in their name for their portion of the Suit Property.

79. They had also relied on the *House Tax Receipts*, Ex.DW-4/D1 to Ex.DW-4/D5 in the name of Sh. Shankar Lal, but it has been rightly noted by the learned Civil Judge and endorsed by the learned ADJ, that these House Tax Receipts mentioned the address as 99/5, Usmanpur Village (Ex.PW-4/D1 to Ex.PW-4/D3) and as 29/5, Ex.PW-4/D4 and Ex.PW-4/D5.

80. DW-3, Sh. Chhotey Lal son of Late Sh. Shankar Lal, admitted that he was not aware of who was the owner of the Property No. 29/5. DW-4 also admitted that the Property No. 29/5 was neither owned by his father nor by him. **DW6 Sh. Rajesh Kumar from House Tax Department, MCD** proved Receipt Ex. PW4/D1 to Ex. PW4/D3 as pertaining to property no. 99/5,



Ushmanpur Village; whereas Ex. PW/D4 and Ex. PW4/D5 pertain to property no. 29/5, Ushmanpur village.

81. These House tax Receipts, on which reliance was placed by the Defendants, were not proved to be pertaining to the Suit Property.

82. Even if for the sake of arguments, it is accepted that the Appellants had been paying the House Tax or had the electricity connection in their name in the Suit Premises, but that by itself, cannot be any defence of the occupation of the Appellants in the Suit Property in the nature of ownership. This may prove their possession, which is admitted by the Plaintiffs also since 1967 but in no manner creates ownership rights in the Suit Property.

83. The Defendants had also placed reliance on Affidavit dated 24.07.1989, Ex.DW-1/D, to assert that the Late Sh. Makua Ram had given an authority to get the Property mutated in his name. It may be noted that this Affidavit, Ex.DW-1/D is also part of the same set of documents i.e.GPA, ATS etc. and the signatures on the documents, has been held to be forged and fabricated.

84. Assuming all the contentions of the Defendants/Appellants to be accepted, then too it is trite law that mere Agreement to Sell, GPA etc., cannot create any ownership rights in favour of the Defendants. The GPA merely gives an Authority to act on behalf of the owner while Agreement to Sell may give a right to get a sale deed executed in his favour. On the basis of this mere Agreement to Sell, the defendants cannot claim any proprietary rights in their favour.

85. The defendants also relied upon Affidavit dated 24.07.1989 Ex. DW1/D whereby Late Sh. Makua Ram had authorised Sh. Shankar Lal, to get the Property mutated. Though the Appellants have failed to establish the



authenticity of these documents and the alleged Affidavit is not even attested, but the fact remains that had Shanker Lal acquired proprietary rights including the right to get the Property mutated, but it has never been acted upon by the Defendants and there is nothing to show that the Suit premises ever got mutated in the name of Sh. Shankar Lal.

86. The *learned Civil Judge rightly concluded* that the Defendants had miserably failed to establish any document of title in their favour. The claim of the Plaintiffs as deposed by PW-2 and PW-4 that the Defendants being the younger brother of Late Sh. Makua Ram, ***had been in permissive user of the Suit premises, stands fully established and has been rightly so concluded by the two Courts.*** There is no infirmity in any of the findings on fact, which have been arrived at after due appreciation of the evidence on record.

87. It may further be noted that though the Appellants had also relied upon a Will dated 24.07.1989, Ex.DW-1/1 allegedly executed by Late Sh. Makua Ram in favour of the Defendant No. 1 but as already noted above, this Will also formed part of the documents i.e. GPA, etc. on which, the signatures have been found to be forged. It has been established that the signatures on the Will, are also not genuine.

88. Moreover, the Will had to be necessarily required to be proved in accordance with Section 68 of Evidence Act, by examination of at least one witness to the said document. However, no attesting witness has been examined. The Will also not only has the forged signatures of Late Sh. Makua Ram, but has also not been proved in accordance with law. No benefit can be sought by Sh. Shankar Lal, under the said Will Ex.DW-1/1.



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89. The learned Civil Judge had correctly appreciated the evidence and given the findings of fact in favour of the Plaintiff that the possession of the Defendants/Appellants, was permissive and has rightly decreed the Suit of the Plaintiff. The Ld. District Judge, on re-appreciation of evidence, arrived at the same conclusions. No perversity in any of the findings of the two Courts, has been shown in the present Appeal.

CONCLUSION:

90. In the light of the aforesaid discussion, it is held that no question of law is discernible in this Appeal. The challenge is essentially on the findings of facts, which is beyond the scope of Second Appeal. There is no merit in the present Second Appeal, which is hereby dismissed. The pending Applications, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

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