

**IN THE HIGH COURT OF PUNJAB & HARYANA HIGH COURT
AT CHANDIGARH**

Civil Revision No.604 of 2015

Date of Decision: 27.01.2015

Shri Kulwant Singh and others

..... Petitioners

Vs.

Smt. Karnail Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Ramesh Sharma, Advocate for the petitioners.

JASWANT SINGH, J. (ORAL)

The plaintiffs are in revision under Article 227 of the Constitution assailing the order dated 09.01.2015 (**P-6**), passed by learned Addl. Civil Judge (Sr. Divn.), Baba Bakala Sahib, whereby on the application of the L.R.-Sohan Singh son of defendant-Karnail Kaur, the thumb impressions of defendant-Karnail Kaur on the alleged agreement to sell dated 12.12.2005 have been directed to be compared by the Central Forensic Science Laboratory, Chandigarh for comparison.

Learned Counsel for the petitioners argues that the respondent/defendant in the pending suit for specific performance had put in appearance and filed a written statement and after appearing as a witness was proceeded against *ex parte* due to her non-appearance. Consequently, an *ex parte* decree dated 29.11.2011 was passed in favour of the plaintiffs. Defendant-Karnail Kaur subsequently filed an application under Order 9 Rule 13 CPC for setting aside the *ex parte* order and *ex parte* judgment and decree, wherein the impugned order has

been passed, which is not relevant for adjudication of the application for setting aside the order dated 29.11.2011.

Having heard learned Counsel for the petitioners/plaintiffs, this Court finds no reason to interfere in the impugned order.

It is not in dispute that four plaintiffs are the sons of defendant-Karnail Kaur, and on the death of their mother-Karnail Kaur, the fifth son-Sohan Singh was impleaded as her legal heir. No doubt, for adjudication of the issue under Order 9 Rule 13 CPC, the comparison of the thumb impression of the defendant-Karnail Kaur on the agreement to sell would not really be relevant at this stage, however, the approach adopted by the learned trial Court keeping in view the close relationship of the parties and the possibility of fabricating her thumb impression and cannot be really faulted with as the learned trial Court has given its reasons in detail for making a search for the truth. In Para 7 of the impugned order, the Court has observed as under:-

“ After hearing both the sides I am of the considered view that on perusal of original agreement dated 12.12.2005 lying on the judicial file of civil suit no.68, date of institution on 10.4.2006, decided on 29.11.2011 which is lying attached with the execution file titled as Kulwant Singh vs. Karnail Kaur which is also fixed for today itself, this Court prima facie suspects the questioned thumb impression of Karnail Kaur on the agreement to sell in question, to be a scanned thumb impression as ink of questioned thumb impression is different from usual ink of pads which are usually used for affixation of thumb impressions and it prima facie appears that ink of questioned thumb impression is extra ordinary dark and appears to be ink of a computer printer. I am further of the view that keeping in view the peculiar facts and circumstances of the present case, the present application deserves to be allowed at this stage during the proceedings of application u/o

9 Rule 13 CPC so as to ascertain the fact whether judgment and decree in question was obtained by defrauding the court, on the basis of a forged and fabricated agreement to sell while affixing a scanned thumb impression of Karnail Kaur on the same or not? I am further of the view that it is settled law that any judgment or decree obtained by playing fraud upon the court is nullity and fraud vitiates everything and in case it is found that questioned thumb impression on the disputed agreement to sell was a scanned thumb impression with computer printing, then certainly this fact will have bearing on finding on the present application as well. Even otherwise the very aim and object of the judicial system is to make a search for truth and to uphold the same, so that there may be complete justice to parties. Further in order to adhere to the basic canon of Indian Judiciary that not only justice should be done but it seems to have been done, the present application deserves to be allowed as in case it is found that the agreement to sell in question was a forged and fabricated document and the decree for specific performance had been obtained by respondents by playing fraud upon the Court by concealing the true and material facts from court, then this fact will certainly have bearing on the findings of this Court on the main application u/o 9 Rule 13 CPC. Further it is not out of place to mention here that similar application for seeking permission to take opinion of finger print bureau of Phillaur regarding the authenticity of thumb impression of Karnail Kaur on agreement to sell dated 12.12.2005 was filed by Karnail Kaur defendant during the pendency of the main suit on 15.10.2011 and in the said application it was pleaded that the questioned thumb impression was appearing to be a photostat/scanned copy of thumb impression as there were appearing small black dotted marks in the peripheri portion of questioned thumb impression of Karnail Kaur on agreement to sell dated 12.12.2005 and that Govt. Laboratories were well equipped

with the latest techniques and instruments to determine the fact whether the questioned thumb impression is scanned by using some electronic process like scanning or with the help of photostat machine. Afterwards the main civil suit was adjourned to 22.10.2011 for filing reply to said application and on 22.10.2011 reply to application was not filed and the case was further adjourned to 31.10.2011 for filing reply. On 31.10.2011 reply was filed and the case was adjourned to 7.11.2011 for consideration and on 7.11.2011 on joint request of ld. counsel for parties the case was further adjourned to 14.11.2011 for consideration on that application subject to last opportunity and on 14.11.2011 due to absence of defendant, defendant was proceeded against ex parte and case was adjourned to 16.11.2011 for ex parte arguments without passing any order on the application moved by defendant and ultimately vide ex parte judgment and decree 29.11.2011 the suit of the plaintiff was decreed ex parte which has caused prejudice to applicant Karnail Kaur. I have further gone through the ex parte judgment and decree passed by my Ld. Predecessor, the said judgment and decree is silent on the point whether the questioned thumb impression appears to be a scanned thumb impression or not? Thus in these circumstances in order to decide the present application effectively and further in order to ascertain whether the judgment and decree in question was obtained by playing fraud upon the court on the basis of a forged and fabricated document, it is incumbent upon this court to allow the present application and in case the version of the present applicant is found correct then certainly this court is legally bound to set aside the judgment and decree in question while allowing the present application and while further neutralizing the benefit obtained from the Court by playing fraud upon the Court. On this point I am supported by ratio of law laid down by Hon'ble Apex Court of the country in case reported as 2012(3) RCR

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It is also not in dispute that a criminal complaint against the plaintiffs for fabricating the thumb impressions of defendant-Karnail Kaur is also pending for criminal trial.

In view of the above, this Court finds no merit in the present revision petition, the same is hereby dismissed.

January 27, 2015
Gagan

(JASWANT SINGH)
JUDGE