

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

RSA No.1702 of 1991 (O&M)

Date of decision: 11th February, 2015

Bodan

... Appellant

Versus

Smt. Ghamli (deceased) through LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ajay Jain, Advocate
for the appellant.

Mr. Mukesh Rao, Advocate
for the respondents.

FATEH DEEP SINGH, J.

In this appeal, the appellant/defendant has challenged judgment and decree dated 25.07.1991 of the learned Additional District Judge, Rewari whereby the findings of the trial Court dated 17.08.1988 passed by the learned Sub Judge 1st Class, Rewari were upheld and the suit of plaintiff Ghamli stood decreed against the defendant/appellant.

Heard Mr. Ajay Jain, Advocate for the appellant and Mr. Mukesh Rao, Advocate for the respondents and perused the records.

Before venturing into the relative merits, it is essential to recapitulate the background of this litigation. Plaintiff Ghamli had filed a suit, out of which the present appeal has arisen, on the grounds that the suit property, subject matter of the dispute, was inherited by her from her mother Parbati and she along with her husband Ram Singh started residing with Parbati; however, to her dismay she discovered that the defendant Bodan surreptitiously by committing fraud by means of impersonation obtained a judgment and decree dated 11.12.1985 passed in Civil Suit No.973 of 1985 of the Court of Sub Judge 2nd Class, Rewari whereby the property, which the plaintiff inherited was fraudulently transferred in the name of the defendant. Thus the plaintiff challenged this decree on the grounds of forgery, impersonation and fraud claiming that the said consent decree was never on her consent and she never appeared or was ever served in that suit. Though the defendant upon putting in appearance controverted the allegations claiming the decree to be legal and valid and which was refuted by the plaintiff in her replication, the learned trial Court framed the following issues:

1. Whether the judgment and decree dated 11.12.85 passed in Civil Suit No.973 of 85 titled as 'Bodan vs. Ghamli' is null and void as alleged? OPP

2. Whether the plaintiff is estopped to file the present suit? OPD
3. Whether the plaintiff has got no locus standi to file the present suit? OPD
4. Whether the suit is barred u/s 23 rule 3-A CPC? OPD
5. Whether the suit is barred by the principle of res judicata? OPD
6. Whether suit is not maintainable in the present form? OPD
7. Relief.

Plaintiff examined PW1 V.K. Rustogi, Handwriting and Fingerprint Expert; PW2 Chajju Ram; PW3 Sheo Narain; PW4 Sheo Karan; PW5 Mahabir Singh; PW6 Ram Sarup and thereafter, the defendant failed to put in appearance and was proceeded against ex parte and thereafter, the plaintiff examined herself as PW7 and proved documents Ex.P1 to Ex.P13. Consequently, through ex parte judgment and decree, the trial Court decreed the suit of the plaintiff and which finding was challenged in appeal by the defendant and the learned first appellate Court upheld these findings and that is how the parties are before this Court in this appeal.

It is admitted case of learned counsel for the appellant Mr.Ajay Jain that the defendant was duly served and had been appearing before the trial Court in this case and thus, being fully aware of the proceedings and the date as has been contended on

behalf of the respondent, had failed to put in appearance leading to passing of the ex parte orders and after examining all the evidence has led to passing of the ex parte judgment and decree.

Respondent's counsel Mr.Mukesh Rao has argued that the defendant neither moved the trial Court for setting aside the ex parte orders nor after passing of the ex parte judgment and decree filed any application under Order IX Rule 13 CPC and had only preferred to challenge the same by way of first appeal.

As has been pointed out, learned first appellate Court in the impugned judgment has delved into the details and has held that there was apparently no error, defect or irregularity in the proceedings culminating into passing of the ex parte judgment and decree by the trial Court and did not find any sufficient grounds to set aside the same. It has been well enunciated in the impugned judgment and decree that there had been no justifiable cause for setting aside the ex parte order and there was no apparent defect which could have been an occasion to set aside these findings.

The second limb of submissions revolves around the very merits of the case. It is well proven by the expert examined by the plaintiff by way of PW1 V.K. Rustogi which is based on his report Ex.PW1/1 who had compared the thumb impressions of the plaintiff on the judicial record of the previous suit and with the admitted thumb impressions obtained of the plaintiff and has categorically stated that the disputed thumb impressions were not affixed by the same very person who has given the specimen thumb impressions. Evidently,

science of thumb impressions identification is a perfect science and nothing remiss could be found out in the statement of this witness together with the fact that the defendant could not in any manner claim that the plaintiff was in any manner related to him or they were collaterals which could have necessitated such a transfer of the suit property without any consideration which is highly uncalled for transfer that too in the name of a total stranger. The unrebutted evidence and statements of witnesses, wherein learned counsel for the appellant could not point out anything adverse to the case of the plaintiff, does not call for any interference. There have been consistent findings of the two courts below which are in consonance with the evidence and the law and finding the appeal to be hopelessly without any merit, stands dismissed with costs.

(FATEH DEEP SINGH)
JUDGE

February 11, 2015
rps