

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

RSA No.1453 of 2006 (O&M)

Date of decision : 01.09.2015

Balbir Singh

...Appellant

Versus

Sham Singh and ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rakesh Chopra, Advocate for the appellant.

Mr. S.S. Swaich, Advocate for respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree passed by Courts below, whereby suit for specific performance of agreement to sell dated 06.07.1992 and 22.03.1993 executed by appellant-defendant No.1 in favour of the plaintiff in respect of land measuring 25 kanal 18 marlas has been decreed and the appellant-defendant No.1 has been called upon to register and execute the sale deed on receipt of balance sale consideration.

Mr. Rakesh Chopra, learned counsel appearing on behalf of appellant-defendant No.1 submits that execution of the agreement in question was not only denied but seriously disputed and in fact the plaintiff is real brother of the appellant-defendant No.1, fraud had been played upon

appellant-defendant No.1 for entering into the agreement to sell for sale of land measuring 25 kanals 18 marlas. He further submits that application under Order 32 Rule 15 was filed before the trial Court which was dismissed and same was assailed under provision of Order 43 Rule 1-A by filing the appeal under Section 96 of Code of Civil Procedure. The Lower Appellate Court has not given any findings on the said point and since the judgment of the trial Court has merged with Lower Appellate Court, the same very grounds have been taken in the present appeal.

He further submits that during the subsistence of the agreement to sell, sons of the plaintiff filed a suit against the appellant-defendant No.1 claiming the right and interest in the property owned by the appellant-defendant No.1, on the basis of the family settlement and the said suit was decreed vide judgment and decree dated 08.02.1993 Ex.P16 and Ex.P17. The appellant-defendant No.1 challenged the aforementioned decree by filing a civil suit dated 17.07.1995. The same was decreed on 23.10.1998 in his favour and the said judgment and decree has attained finality.

During the pendency of the appeal before the Lower Appellate Court, an application under Order 41 Rule 27 of the Code of Civil Procedure was filed, whereby leave of the Lower Appellate Court was sought to place on record the aforementioned judgment and decree which according to him goes to the root of the matter and would have helped the Lower Appellate Court in adjudicating the controversy between the parties to lis. The said application however was also dismissed and the same was also assailed in the present appeal. In this regard another application was filed and same was dismissed vide order dated 06.10.2009. The same was

assailed before Hon'ble Supreme Court in SLP (Civil) No.2833 of 2010 and the aforementioned SLP was withdrawn with liberty to take all the urged available grounds before the High Court vide order dated 26.02.2010. The order dated 26.02.2010 be read thus:-

“SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)/2010

(CC 2833/2010)

(From the judgment and order dated 06.10.2009 in CM No.10911 of 2009 in RSA No.1453 of 2006 of the HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

Balbir Singh*Petitioner(s)*

Versus

Sham Singh & ors.*Respondent(s)*

With I.A.1 (C/delay in filing SLP)

Date: 26.02.2010 This petition was called on for hearing today.

CORAM: HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Rakesh Chopra, Adv.

Mr. P.N. Puri, Adv.

For Respondent(s)

Upon hearing counsel the Court made the following

ORDER

After arguing the case for some time, learned counsel for the petitioner made a request that his client may be permitted to withdraw this petition because he wants to urge all the available grounds before the High Court.

The request of the learned counsel is accepted and the special leave petition is dismissed as withdrawn.

Sd/- (Satish K. Yadav)

Sd/- (Phoolan Wati Arora)

Court Master

Court Master”

Even with the present appeal, miscellaneous application bearing No.4403-C of 2015, under Order 32 Rule 3 read with Section 151 of Code of Civil Procedure for appointing the applicant as guardian had been filed. He further submits that appellant-defendant No.1 did not appear in the witness-box when the matter, in the year 2000, was listed for evidence of the defendants. In fact the appellant-defendant No.1 is unmarried and simple person and is suffering from unsoundness of mind since birth. Even as per provision of Order 32 Rule 15, it is the duty of the Court to hold enquiry with regard to unsoundness of the person. The trial Court did not adhere to such provision and thus committed illegality and perversity in rejecting the said application which was though challenged by by taking the aid to provision of Order 43 Rule 1-A of Code of Civil Procedure.

He has relied upon following judgment in support of his contentions:-

1) *Ms. Ram Aasri Vs. Kuldeep Singh, 2011(3) CivCC 698*

He further submits that respondents-plaintiffs were not ready and willing to perform his part of the agreement and thus both Courts below have committed illegality and perversity in decreeing the suit and, therefore, substantial questions of law arises for determination of this Court.

Mr. S.S. Swaich, learned counsel appearing on behalf of respondents-plaintiffs submits that appellant-defendant No.1 cannot be permitted to, take mutually destructive pleas, particularly, inasmuch as that, agreement to sell has been denied. It is now settled law that the plea of readiness and willingness in such situation cannot be taken on behalf of

appellant-defendant No.1 as it would tantamount to admission of the execution of the agreement to sell. He further submits that Gurdial Singh father of parties to the lis had moved an application under Order 32 Rule 15 of the Code of Civil Procedure for appointing him as Guardian of Balbir Singh. The same was dismissed vide order dated 12.08.1999. After dismissal of such application, another application on behalf of Rameshwar Dass brother of Balbir Singh was filed, the same was also dismissed in September i.e. on 21.09.2000, therefore, second application under Order 32 Rule 15 was not maintainable.

He further submits that before filing of the suit for specific performance, suit for injunction dated 17.09.1992 was filed, wherein the appellant-defendant No.1 admitted execution of agreement to sell in question. The said admission in the shape of written statement has been proved in evidence, as per provision of Section 33 of Indian Evidence Act. He further submits that since the appellant-defendant No.1 was of sound mind in the year 1995, when he challenged the decree dated 08.02.1993 which was set aside vide judgment and decree dated 23.10.1998 i.e. during the pendency of the present appeal which was filed in August 1995, it cannot be believe that appellant-defendant No.1 was of unsound mind. It is an attempt to ploy to delay the execution of the judgment and decree. He further submits that there is no substantial questions of law involved as the impugned judgments & decree do not suffers from illegality and perversity.

I have heard learned counsel for parties and appraised the paper book and as well as the record of the trial Court.

The agreement to sell dated 06.07.1992 has proved on record

by way of additional evidence of 23.03.1993 has also been proved through the testimony of the attesting witnesses. As regards the readiness and willingness, the appellant cannot raise this plea in view of ratio decidendi culled out by this Hon'ble Court in *Jora Singh Vs Lakhwinder Kumar and ors. 2011(1) RCR (Civil) 130, Lal Chand Vs. Tek Chand, 2012(3) PLR 736.*

Once, an application, filed under Order 32 Rule 15 had been dismissed in August 1999 and had attained finality, the second application by invoking the same very provision was not maintainable, therefore challenge to said order by taking the aid of provision of Order 43 Rule 1-A would be immaterial. As regards the judgment and decree dated 23.10.1998 sought to be placed on record, by way of additional evidence, though the same when amended has been rejected and the appellant-defendant No.1 has withdrawn the Special Leave Petition *ibid* with liberty to take all the pleas before Hon'ble High Court, I am of the view even if the said decree is taken into consideration, it would not prove that appellant was of unsound mind as the judgment and decree was confined to existence of any family settlement or not.

In my view the filing of the application under Order 32 Rule 15 & placing on record the judgment and decree dated 23.10.1998 by way of additional evidence runs contrary to the stand taken in the application under Order 32 Rule 15 CPC. On one hand, the appellant-defendant No.1 is filing the suit and challenging the decree dated 08.02.1993 and on the other hand seeking indulgence of this Court for holding an enquiry as envisaged under Order 32 Rule 15 which is nothing but an act of creating rumbles and

hindrances in enabling plaintiff to seek execution of the decree. Such dilatory tactics in my view is attempt to misdirect the Court in some different directions. The fact remains that appellant-defendant No.1 has not examined any Hand Writing Expert to disprove, the thumb impression on the agreement to sell, whereas on the contrary, plaintiff has examined two Hand Writing Experts who have deposed that the thumb impressions, are of Balbir Singh. The judgments cited (Supra) would not be applicable to the facts and circumstances of the case, for the reasons, that application filed under Order 32 Rule 15, as noticed above, had been dismissed and second application on the same cause of action was/is not maintainable.

Even non-examination of the scribe of the agreement to sell would not be vital once the appellant-defendant No.1 has failed to lead any evidence to disprove the thumb impression on the agreement.

Keeping in view the aforementioned, in my view there is no illegality and perversity with the judgment rendered by the Courts below, much less, no substantial questions of law arises for adjudication of the present appeal.

Accordingly, present appeal (O&M) is dismissed.

CM No.4403-C of 2015 filed under Order 32 Rule 15 of CPC for appointment of appellant as guardian also stands dismissed.

01.09.2015

pawan

(AMIT RAWAL)
JUDGE