

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

Regular Second Appeal No.521 of 2011 (O&M)

Date of decision: 16.7.2015

Ajit Singh

... Appellant

Versus

Surjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jagjit Singh, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This is plaintiff's second appeal from a suit for possession by way of specific performance of a contract to sell suit property concluded vide sale agreement dated 15th May, 1998 executed between the sole plaintiff and Harnek Singh who died during the pendency of the litigation and is represented through his LRs. Harnek Singh had agreed to sell his land measuring 37 Bigha-16 Biswas in village Rampura, Tehsil and District Sangrur for a consideration of ₹ 13,23,000/- @ ₹ 35,000/- per bigha to plaintiff Ajit Singh. Ajit Singh paid ₹ 10 lac as earnest money and the balance was payable on registration of the sale deed, for which, the target date fixed was 15th December, 1998. Harnek Singh backed out of the deal which spurred him to bring the suit. The making of the agreement and the

passing of earnest money were denied by Harnek Singh (dead). The suit land measuring 37 Bigha and 16 Biswas was the total land holding owned by the defendant and he reasoned why on earth would he want to sell the suit corpus leaving behind nothing for himself.

Parties led their evidence both oral and documentary besides expert evidence in support of their respective cases.

The first fact in issue was whether there was proof of due execution of agreement of sale. If there was none, that would be the end of the matter. M.N.Sharma, a Finger Print Expert called by the plaintiff examined the disputed thumb impressions of Harnek Singh with his specimen thumb impressions and could only opine that the disputed thumb impressions are ink-smudged and without proper ridges and, therefore, nothing could be said definitely. The original agreement of sale was tendered in evidence by calling summoned file and was exhibited on record. The defendants (LRs) produced Malkeet Singh DW3 who deposed on the relationship between Harnek Singh and Ajit Singh and that they were uncle and nephew. He stated that he knew the parties from before and neither Ajit Singh nor his son Tarlok Singh ever possessed a sum of ₹ 10 lac to be able to pay Harnek Singh towards earnest money. The passing of the earnest money was not a documented transaction and was in cash.

The defendants produced a Finger Print Expert of good reputation. He held a doctorate (Ph.d) in Forensic Science from the Punjabi University, Patiala and was a revising author of a book on fingerprints and had been in practice for 20 years. He had appeared as a witness in over 7000 cases. He testified to have examined the questioned thumb impressions/marks allegedly affixed by Harnek Singh on the agreement to

sell dated 15th May, 1998; on the entry in the register of Stamp Vendor, and compared them with with the thumb impressions of Harnek Singh on the loose specimen signature sheet dated 12th August, 1998, on the written statement filed in civil suit # 389 dated 20th July, 1998 bearing both left and right thumb impressions on a separate specimen sheet dated 12th August, 1998 and submitted his report Ex.D2 in court based on comparison of enlarged photographs Ex.D3 to Ex.D7 and their corresponding negatives Ex.D8 to Ex.D17 and concluded that the thumb impressions on the agreement to sell were not affixed by the person whose specimen thumb impressions were compared by him.

To nail the lie in the making of the sale agreement, the learned Additional District Judge, Sangrur recorded in para. 27 of the judgment matters of the gravest moment on the fate of this case which are best read verbatim: -

“27. It emerges from records of the case that Ajit Singh and his companions tried to play smart by trying to ensure that they manipulate with evidence as far as they could but as the maxim goes even the cunning most person leaves some traces of evidence. Ajit Singh and companions, to begin with, made the impersonator affix his right thumb impression on agreement of sale being well aware of the fact that usually Indian males affix their left impressions and there would be remote possibility of comparison of right thumb impression of Harnek Singh. Not only this, they also smugged thumb impressions of Harnek Singh {?} on agreement of sale in such a manner that it was rendered unfit for comparison. Ajit Singh and others though, in their mind of minds, that they have performed the job to perfection little knowing that in the process they were still leaving enough of evidence against them. Stamp paper, as per their own version, was purchased by Harnek Singh from PW 3 Gurbachan Singh and as is the practice the

stamp vendor, PW3 obtained thumb impression of the person who purchased stamp paper from him. The thumb impression on the register of PW2 was perfect for the purposes of its comparison with the standard thumb impression of Harnek Singh and was compared as such by DW Dr Atul Kumar Singla. He has opined that out of four disputed thumb impression of agreement of sale one (marked as Q3 by him) was not fit for comparison because of excessive smudging of ink. Two of them, Q1 and Q2 were right thumb impression whereas Q4 and Q5 were left thumb impressions. Since Harnek Singh had provided his specimen thumb impressions, right as well as left, before the learned Trial Court, there can be no doubt whatsoever with regard thereto. DW Dr Atul Kumar Singh compared Q4 and Q5 with specimen of left thumb impression of Harnek Singh to conclude that they were not identical with each other and as such Q4 and Q5 were not impressed by Harnek Singh. DW Dr Atul Kumar Singla also compared Q1 and Q2 with right thumb impressions with specimen right thumb impressions of Harnek Singh and concluded that Q1 and Q2 were not impressed by Harnek Singh. Points of dissimilarity have been given in detail in the report of DW Dr Atul Kumar Singla and it is universally accepted that in case of a same person affixing his thumb impressions there can not be even a single dissimilarity or in words even a single point of dissimilarity is enough to conclude that one and the same person did not impress the document in question with his thumb/finger.”

When the entire case turns around such a startling revelation, it would hardly be necessary to go further afield to rebut the summaries of the oral evidences of witnesses of both the parties which have been correctly read and appreciated by the courts below. I have nothing to further to add. The agreement to sell was quite apparently a sham document on which no faith could be placed when both the courts have examined the core issue and have relied on the report of the Finger Print Expert produced by the

defendants and agreed with it as the final arbiter as the expert of experts in search of truth on the probabilities of the case. I find nothing perverse or irrational warranting intermeddling in the original appeal decree and would commend the dismissal of the appeal. A substantial question/s of law do not remotely arise in a case decided on appreciation of pure facts concluding that the sale agreement was a forged document which was a clumsy attempt by the nephew to lay hands on the property of his uncle who was married but had no issue.

For the foregoing reasons the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

July 16, 2015

Paritosh Kumar