

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

109 (3 cases)

1. Regular Second Appeal No.3404 of 2013 (O&M)
Date of Decision: November 06, 2015

Mohinder Singh and others

...Appellants

Versus

Jagtar Singh and others

...Respondents

2. Regular Second Appeal No.3624 of 2013 (O&M)

Great Punjab Agro Industries Limited

...Appellant

Versus

Jagtar Singh and others

...Respondents

3. Regular Second Appeal No.4088 of 2013 (O&M)

Mohinder Singh and others

...Appellants

Versus

Jagtar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Raj Kumar Kakkar, Advocate
for the appellants in RSA Nos.3404 and 4088 of 2013.

Mr. Jagjit Gill, Advocate
for the appellant in RSA No.3624 of 2013.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.9728-C of 2013 in RSA No.3624 of 2013

Prayer in this application is for condonation of delay of 19 days
in filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of Suraj Kant Sood, Director/authorised signatory

of the applicant-appellant, the present application is allowed.

Delay of 19 days in filing the appeal stands condoned.

CM No.11073-C of 2013 in RSA No.4088 of 2013

Prayer in this application is for condonation of delay of 39 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the counsel, the present application is allowed.

Delay of 39 days in filing the appeal stands condoned.

RSA Nos.3404, 3624 and 4088 of 2013

By this order, I propose to dispose of three appeals i.e. Regular Second Appeal Nos.3404, 3624 and 4088 of 2013, as they arise from a judgment and decree passed by the Additional Civil Judge (Senior Division), Fazilka, dated 07.10.2009 by which the suit filed by the respondents-plaintiffs for declaration and permanent injunction, stands decreed and the appeal preferred against the same by the appellants-defendants i.e. Civil Appeal No.48 was dismissed, while Civil Appeal No.49 preferred by Great Punjab Agro Industries Limited was partly allowed by a common judgment passed by the District Judge, Ferozepur, on 26.04.2013.

2. It is the contention of learned counsel for the appellants-defendants that the suit, which is alleged to have been filed by Smt. Khushian Bai widow of Alla Singh is, in fact, not by the said person as she is not the wife of Alla Singh, who was the brother of appellants-defendants 1 to 3. They, on the basis of this, assert that the suit and the vakalatnama, where the thumb impressions of the respondent-plaintiff Khushian Bai were affixed, could not have been taken as the

standard thumb impressions of hers and, therefore, the report of the handwriting/fingerprint expert could not have been relied upon by the Courts below. It has also been asserted that the Courts below have wrongly proceeded to hold that Khushian Bai had married Sikandar Singh after the death of Alla Singh and children were born out of the said wedlock. Assertion has also been made that on the death of Khushian Bai, the property devolved upon appellants-defendants 1 to 3 by succession as there were no children born out of the wedlock between Khushian Bai and Alla Singh. The contention has, thus, been made that the findings have been given by the Courts below on mere presumptions and assumptions without appreciating the pleadings and the evidence brought on record and cannot be sustained.

3. I have considered the submissions made by learned counsel for the appellants and with their able assistance, have gone through the judgments passed by the Courts below but the said assertions cannot be accepted.

4. Learned Lower Appellate Court has threadbare dealt with all these aspects and has given categoric finding with regard to relationship between Khushian Bai and Alla Singh, which factum has not been controverted in the pleadings except to the extent that the person, who had filed the suit, is not Khushian Bai but this argument cannot be accepted in the light of the fact that the appellants-defendants are claiming themselves to be the successors of Khushian Bai. As a matter of fact, one of the defendants, in her written statement, has accepted the said fact and there is contradictory stand taken by the defendants, which has been discussed in

detail by the Court below. The counsel, who had filed the suit Shri Gobind Lal Tuteja, Advocate, appeared as PW-6 and has proved the thumb impressions on the vakalatnama as also the plaint, which have been taken as the standard thumb impressions. Although, an argument has been raised by one of the learned counsel for the appellants (Mr. Jagjit Gill, Advocate) that PW-6 has in his cross-examination stated that he did not know Khushian Bai personally but further perusal of the same would show that he has stated that he had known her as his client and the statement in his examination-in-chief is that the thumb impressions have been put by her and in the cross-examination, he has only stated that they were not got attested from any other person. Since the thumb impressions have been treated to be the standard thumb impressions and rightly so by the Courts below, the evidence of the handwriting and fingerprint expert, which clearly establishes that they are not of Khushian Bai in the impugned sale deed dated 15.02.1985, which has gone unrebutted, the findings of the Courts below that the said sale deed is not a valid sale deed, cannot be faulted with.

5. Perusal of the judgments passed by the Courts below leaves not manner of doubt that all aspects, pleadings and the evidence brought on record have been threadbare discussed, considered in the right perspective, leaving no scope for even thinking, what to say of observing that there is misreading or overlooking as could be asserted by the counsel for the appellants. The findings, therefore, recorded by the Courts below, cannot be faulted with.

6. An argument has been raised by learned counsel for the appellants in RSA Nos.3404 and 4088 of 2013 (Mr. R.K. Kakkar,

Advocate) that no recovery could have been ordered in favour of Great Punjab Agro Industries Limited-defendant No.4 as there was no such plea or prayer or counter claim, also cannot be accepted in the light of the findings, which have been recorded by the Courts below on the basis, and is also not disputed by the counsel for the appellants that the impugned three sale deeds dated 11.12.1987 were executed for a valid consideration and the consideration amount having been received from the Great Punjab Agro Industries Limited-defendant No.4 by the appellants-defendants 1 to 3, has been admitted and the Court had given a specific finding that they are the *bona fide* purchasers from defendants 1 to 3, the said recovery as has been ordered, cannot be faulted with as the Court is doing complete justice with the parties, for which it is meant.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties in detail and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeals. Therefore, finding no merit in the present appeals, the same stand dismissed.

9. In the light of the dismissal of the appeals, the applications for stay i.e. CM Nos.9140-C, 9729-C, 11074-C of 2013, stand disposed of as infructuous.

November 06, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE