

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1177 of 2015 (O&M)
Date of Decision: April 21, 2015

Alka Dhawan @ Shashi and others

...Appellant

Versus

Sunil Dhawan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.C.Chaudhary, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellants-plaintiffs Alka Dhawan alias Shashi and others have filed this regular second appeal against Sunil Dhawan and other respondents-defendants challenging the judgment and decree dated 06.09.2011 passed by learned Addl. Civil Judge (Senior Division), Pehowa vide which the suit for declaration and joint possession filed by the plaintiffs-appellants was dismissed and also judgment and decree dated 31.10.2014 passed by learned Addl. District Judge, Kurukshetra, vide which appeal filed by the appellants-plaintiffs was dismissed.

The brief facts of the case are that plaintiffs-appellants Alka Dhawan @ Shashi, Sakshi Dhawan, Saristi Dhawan and Sumita Chopra @ Aruna filed the suit against defendants Sunil Dhawan, Anita, Smt.Kulwant Kaur, Usha Rani, Smt.Ranjit Kaur, Smt.Anju and

Smt.Sudesh Rani for declaration to the effect that plaintiffs are owner in possession of the suit land as detailed in para 1 of the plaint to the extent of $\frac{1}{2}$ share and further the Dastbardinama dated 29.11.2001 is null and void, non-operative, illegal and not binding on the rights of the plaintiffs and defendant No.2 and further the revenue entries and mutation No.1494 are illegal, null and void and not binding on the rights of plaintiffs and defendant No.2 and are result of fraud. Further, if the Court comes to the conclusion that the suit property is not an ancestral property, even then the plaintiffs and defendant No.2 are the owners in possession of the suit land as detailed in para no.1 of the plaint to the extent of $\frac{1}{2}$ share and further a decree for joint possession as consequential relief.

It is mainly stated in the suit that land measuring 78 kanal 2 marlas $\frac{1}{3}$ share out of total land measuring 234 kanal 7 marla was owned and possessed by Tilak Raj, who died on 23.10.2002 and after his death, the plaintiffs and defendants are the joint owners in possession of the suit land. The suit land is the ancestral property and accordingly, plaintiffs No.1 to 3 are owners in possession of $\frac{1}{4}$ share, plaintiff No.2 $\frac{1}{4}^{\text{th}}$ share, defendant No.2 $\frac{1}{4}^{\text{th}}$ share and defendant No.1 also $\frac{1}{4}^{\text{th}}$ share. The plaintiffs came to know on 07.05.2003 that defendant No.1 in collusion with revenue authorities has prepared a forged and fabricated Dastbardinama vide vasika No.2077 dated 29.11.2001 entered and registered in the office of Sub Registrar, Pehowa. The said Dastbardinama is false and fabricated and has been prepared by way of playing fraud by defendant No.1 in

collusion with witnesses. This Dastbardinama dated 29.11.2001 and mutation showing the ownership and possession of defendant No.1, are illegal, null and void because deceased Tilak Raj used to sign, whereas on Dastbardinama, thumb mark has been shown, which is clearly a case of fraud. It is further stated that defendant No.1 sold the land measuring 30 kanal 15 marla to defendant No.3 and 4 for a consideration of ₹16 lacs vide registered sale deed dated 06.01.2006 and land measuring 48 kanal 0 marla to defendant No.5 for a consideration of ₹25,80,000/- vide registered sale deed dated 06.01.2006. It is also stated that defendants No.3 to 5 had further sold the property to defendants No.6 and 7.

On the other hand, the case of the defendants No.1 and 2 in the written statement is that defendant No.1 had become absolute owner in possession of the suit land vide relinquishment deed dated 29.11.2001 and no other person or the plaintiffs have any right, title or interest for the same. Tilak Raj died on 23.10.2002. During his lifetime, he transferred the said entire suit land in favour of defendant No.1 and the possession of the suit land along with all rights were delivered to the answering defendant.

Plaintiff No.1 examined herself as PW-1 and tendered into evidence documents i.e. jamabandies and copy of sale deeds etc. On the other hand, defendant Sunil Dhawan examined himself as DW-1, Mukesh Kumar as DW-2, Sudesh as DW-3, Lekh Raj Patwari as DW-4, Ram Phal as DW-5 and tendered into evidence some documents.

Learned Addl. Civil Judge (Senior Division), Pehowa vide

judgment and decree dated 06.09.2011, dismissed the suit of the plaintiffs. Appellants-plaintiffs filed appeal against the above-said judgment and decree and learned Addl. District Judge, Kurukshetra, also dismissed the appeal vide judgment and decree dated 31.10.2014.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant.

I have heard learned counsel for the appellants and have gone through the record.

From the record, first of all, I find that the findings given by both the Courts below are concurrent. No substantial question of law arises in the present regular second appeal. There is nothing on the record to show that the findings are given by the Courts below by misreading the evidence. Nothing has been shown as to which evidence has been misread by the Courts below. Learned Addl. Civil Judge, after appreciating the oral as well as documentary evidence, upheld the Dastbardarinama dated 29.11.2001 which is executed at the instance of Tilak Raj, which is Ex.DW5/A. The defendants examined Lekh Raj Patwari, who brought the record, Ram Phal, deed writer and Anil Kumar, who identified the signatures on the document Ex.DW5/A and deposed that it was scribed by deed writer at the instance of Tilak Raj. Deed Writer read over the contents of Ex.DW5/A to the parties and parties put their thumb impression on the same after accepting it as correct.

Learned counsel for the appellant argued that Tilak Raj

was officer in the Excise and Taxation Department and used to sign, whereas, there is thumb mark of Tilak Raj on Dastbardarinama and it is a case of fraud. Learned Addl. Civil Judge discussed the evidence on record and held that no doubt when plaintiff No.1 Alka Dhawan examined herself, she testified that Tilak Raj was not physically fit since September 2009 and he was not in position to move or speak. DW-4 Lekh Raj Patwari produced copies of documents Ex.D1 CC Form No.28, vide which the compensation has been received and this document also bears the signatures of Alka Dhawan. The perusal of this document shows that it bears the thumb impression of deceased Tilak Raj and signatures of Alka Dhawan. DW-4 also produced Deed of Indemnity-cum-surety Ex.D2 executed on 21.03.2002 at Chandigarh and this document also bears the thumb impression of Tilak Raj.

Keeping in view these findings, only on this ground that there was no signature of Tilak Raj but thumb impression being there, it cannot be held that Dastbardarinama has been obtained as a result of fraud. The Court further held that there is no cogent evidence including medical evidence on record to show that Tilak Raj was unfit to execute the document. The Court also discussed that plaintiff Alka Dhawan admitted that her father-in-law also made a registered Will in favour of Sunil Dhawan which has been challenged by them in the Court and said Will also bears the thumb impression of Tilak Raj. The document Dastbardarinama is a registered document and it bears the photograph of deceased Tilak Raj. Learned Addl. Civil Judge, further

held that there is no evidence and fact to show that the suit property was ancestral property of the parties. There is no document/evidence on the record to show that Tilak Raj inherited the suit property from his forefathers.

The findings of fact given by both the Courts below are on the basis of evidence. Both the Courts have read the evidence in right perspective. In no way, it can be held that evidence has been misread or the findings are perverse.

In view of the above discussion, I find that the findings of fact given by the Courts below are correct, as per law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

April 21, 2015
Vgulati

(INDERJIT SINGH)
JUDGE