

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

RSA No. 4274 of 2015 (O&M)

Date of decision: November 3, 2015

Smt. Pallo

...Appellant

Versus

Sukhdev Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Tarunveer Vashihst, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The defendant is the appellant before this court. The suit for specific performance was dismissed on a contest taken by the defendant's husband on behalf of the defendant that the agreement was forged. The appeal by the plaintiffs secured a reversal of the judgment and ended in a decree being granted. The appellate court reasoned while reversing the judgment that the basis for rejecting the plaintiffs' case was that one of the witnesses had referred to the agreement as having been written in the month of May whereas it was executed in August and appellate court observed that this is too a minor discrepancy for disbelieving the document. The plaintiffs had attempted to examine an expert to give evidence about the thumb impressions as found in the document, but it did not yield any proof since

the thumb impressions found in the document were smudged and the expert opined that it was not fit for comparison. The appellate court held that it was not possible to make comparison of the genuine thumb impression by mere physical observation and the version of the witnesses must have been taken sufficient for establishing the truth of the agreement. The appellate court observed that the defendant had not even filed her own written statement denying the document and this was filed only by the defendant's husband. The appellate court, therefore, reasoned that the lady who could come to the court to lodge a caveat and take notice of the appeal filed by the plaintiffs, did not take courage to file her own written statement. The conduct of the defendant in not filing the written statement but allowing the statement to be filed only through her husband was adversely commented while reversing the judgment of the trial court and granting a decree.

2. The learned counsel appearing on behalf of the defendant/appellant states that from the very beginning of the trial, the defendant has been contending that the agreement is a forgery and when the thumb impressions found in the agreement were also smudged, the plaintiffs must have examined the scribe to examine to explain the character of the thumb impressions contained. The plaintiffs had not examined the scribe and, therefore, the burden of proof of the agreement cast on the plaintiffs must be taken as having not been established.

3. The examination of the scribe was surely relevant in a situation where thumb impressions itself were smudged but all this exercise came about only because there was purported to be a plea in defence that the agreement was not true. That the statement ought to have been on an

affirmation made in the manner required and verified by the party herself. If the defendant would not file a written statement and would allow for statement to be filed by her husband, I suspect that the defendant was not even willing to make available any document in court containing the thumb impression. The defendant who acted smart was outsmarted by the plaintiffs by relying on the conduct of the defendant in not taking a defence by her own statement and she was hiding behind the veil of secrecy. There were surely two approaches possible on a case that was taken to the brink on a suspicion about the genuineness but if the witnesses spoke about the genuineness of the document and the defendant could not give her own version, for, she fettered the opportunity to give evidence when she chose not to file the statement under her own thumb impression, I cannot find any fault in the decision taken by the Appellate Court for the modification. I must notice that under the circumstances, the assessment made by the appellate court as regard the genuineness shall only remain as an appreciation of facts which was possible on the quality of evidence given by the plaintiffs and their witnesses and the want of a verified statement from the defendant, for rendering the decision in favour of the plaintiffs. I make no intervention and dismiss the appeal.

November 3, 2015
prem

(K.KANNAN)
JUDGE