

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 746 of 2015 (O&M)

Date of decision : March 02, 2015

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Rajwanti and another

.....Appellants

Versus

Rajmal

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Surajmal Kundu, Advocate for the appellants.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

Present regular second appeal has been preferred against the judgment and decree dated 3.11.2014 passed by the Additional District Judge, Sonapat vide which the appeal against the judgment and decree dated 13.2.2013 passed by the Additional Civil Judge (Senior Division), Sonapat was dismissed.

The plaintiffs-appellants filed the suit for declaration and permanent injunction on the averments that they are co-sharers in the agricultural land duly detailed in para nos. 1 of the plaint. When they visited the Patwari concerned for copies of record of rights for obtaining loan, they surprisingly came to know about the impugned decree purported to have been suffered by them in favour of

defendant. Sine they never suffered any decree in favour of defendant, therefore, it is quite clear that the impugned decree has been fraudulently procured by him by way of impersonation. They never attended any Court and they also never suffered any statement in favour of the defendant.

Upon notice, the defendant resisted the suit of the plaintiffs by raising preliminary objection of maintainability, locus standi and falsity. It was further alleged that the decree which was otherwise voluntarily suffered by the plaintiffs in his favour has been besieged for countering the suit which he has filed; whereby he himself has assailed the decree suffered by his mother whereby land inherited by his mother from her first husband was given by her to the sons of her second husband that is Sh. Desha. The plaintiffs had voluntarily suffered a decree and there was no impersonation. On 5.8.2008, the following issues were framed:

- 1. Whether the impugned decree dated 22.11.1993 is null and void and not binding on the rights of the plaintiffs and is liable to be set aside on the ground of fraud and impersonation? OPP*
- 2. Whether the plaintiffs are entitled for the injunction as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiffs have no locus standi*

to file the present suit? OPD

5. Whether the plaintiffs are estopped from filing this suit by their own acts and conduct? OPD

6. Whether the plaintiffs have concealed the true and material facts from the court and did not disclose the real story? OPD

Issues no. 1 & 2 being interconnected with each other were taken up together for the sake of coherence and continuity.

The case of the plaintiffs was that by way of impersonation, the Civil Court decree had been obtained. The written statement and Power of Attorney did not bear their signatures. The thumb impressions at the foot of their joint written statement in the Court on 22.10.1993 do bear some extra ink. It was the duty of the plaintiffs to get the finger print expert to clarify as to whether these thumb impressions were comparable or not. No effort was made by the plaintiffs to get the thumb impressions compared with the disputed thumb impressions on the written statement and the power of Attorney. At the same time, the defendant has taken a specific stand that after receiving summons of this case, record of the impugned decree was inspected and it revealed that someone had tried to destroy the identity of the thumb impressions of the plaintiffs on the statement suffered by them in the Court in that suit. Original file was opened during the arguments of the present trial and it was found that the thumb impressions were still visible and they

could be got compared. The thumb impressions of the plaintiffs on the written statement and power of Attorney filed on their behalf in the said suit were crystal clear and the plaintiffs could get the thumb impressions compared from the disputed thumb impressions. Since no such effort was made, adverse inference was drawn against them. The plaintiffs failed to discharge their burden of proving impersonation and the suit was dismissed.

Lower Appellate Court upheld the findings recorded by the trial Court and dismissed the appeal. While passing the impugned decree dated 27.11.1993 no evidence was led by the plaintiffs-appellants to show that it was a case of impersonation or any fraud had been committed with them. This aspect has been considered by this Court in the case of ***Lali Devi vs. Jai Singh and others, 2013(5) RCR (Civil) 206***. In this case, it has been held that admission by making statement in Court stands on altogether different footing as the statement made in the court carries authenticity. It has further been held that if such contention is accepted, then there would be no end to litigation and no lis would attain finality and no sanctity would be attached to the proceedings of the Court. Further it has also been held that it is not uncommon that consent decrees are suffered voluntarily and later on person who suffers such decrees, change his mind and challenge the same on different grounds.

In the present case, the trial Court had called the file of the decree dated 27.11.1993 and found that some portions of the

thumb-impressions of both the plaintiffs on the said statement were visible and could be got compared. The thumb impressions of the plaintiffs on the written statement and power of attorney filed on their behalf in the said suit were found to be crystal clear. The plaintiffs have miserably failed to lead any evidence by getting a report from the hand writing expert to prove that the signatures on the written statement as well as the Power of attorney were fabricated. Merely a self-serving statement was not sufficient to hold that the judgment and decree dated 27.11.1993 was got passed by way of impersonation.

After going through the judgments of both the Courts below, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

March 02, 2015
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(RITU BAHRI)
JUDGE