

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

CR No. 7264 of 2014 (O&M)
Date of Decision: March 4, 2016

Manjinder Singh and another

...Petitioners

Versus

Gurdip Singh and others

...Respondents

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

Present: Mr. BS Jaswal, Advocate,
for the petitioners.

Mr. Sarbjit Singh, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The Court has passed an order which is untenable to bring a comparison of a thumb impression of one deceased Thakur Singh found on a sale deed set up by the defendants to be examined with alleged agreement to which he was said to be a party. The plaintiffs' suit was with reference to a right of share of Thakur Singh as by natural succession as brother's son. The defendants were setting up a case of Thakur Singh as having sold his property during his life time and the mutation of entries made even in the year 1964 to the effect. At the time of trial, the sale deed by Thakur Singh to Dalip Singh and from Dalip Singh to Gurmej Singh and a sale in favour of the defendants were set forth and documents filed.

2. After the evidence was closed, the plaintiffs have brought an application for appointment of an expert to make a comparison, as referred to above. There are two reasons why the court could not have passed the order. One, although the date of sale by Thakur Singh was not filed in the

written statement, there has been a sure reference to the sale as having been effected by Thakur Singh and mutation of the revenue entries in the year 1963-1964. The plaintiffs, therefore, ought to have taken steps to challenge the sale or contend that no such sale deed ever executed. If the plaintiffs are attempting to bring such evidence at a belated stage, it cannot again for a comparison with some unregistered document, which the plaintiffs want to place as document executed by Thakur Singh. If the evidence of an expert were to bear any fruit, it ought to be only by making a comparison with admitted document. In the very nature of things, the document which is admitted must be a document admitted by the defendant and not what the plaintiffs themselves propounded. The trial court could not have allowed the application without making reference to how he found the document propounded by the plaintiffs as really a document executed by Thakur Singh and that, therefore, the comparison will have any value. It is an unregistered agreement of the year 1945, and it is anybody's guess how the document has suddenly surfaced.

3. The impugned order cannot be sustained, it is set aside and the revision is allowed.

March 4, 2016
prem

(K.KANNAN)
JUDGE