IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.4114 of 2009 (O&M)
Date of Decision: July 13, 2016

Satya Kanta Rai

...Appellant

Versus

Gurmail Singh (now deceased) through L.Rs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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.Sandeep Bansal, Advocate,
for the appellant.

Mr.R.S.Chauhan, Advocate,
for respondent No.1.

*****

AMIT RAWAL, J.

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit seeking declaration that plaintiff is co-sharer in possession and owner to the extent of 7 kanals 2 marlas of land ($1/4^{th}$ share) out of 28 kanals 8 marlas of land, bearing Khewat No.3, Khatoni No.3, Khasra Nos.17/3, 8, 13, 18/1, 28/18/2, 35/13/1 and as well as challenge to the sale deed dated 11.11.1992 in favour of defendant No.3 with respect of $1/4^{th}$ share in 20 kanals 4 marlas of land bearing Khasra No.17/3, 8, 13, situated in Village

Salempur, Tehsil and District Hoshiarpur being forged and ineffective, has been dismissed.

Mr.Sandeep Bansal, learned counsel for the appellant-plaintiff submits that the suit aforementioned was filed on the ground that plaintiff Kailash Chander Rai and defendant No.2 Duni Chand are the sons, whereas defendant No.1 is the widow of Dr.Gurbax Rai, who died in the year 1976. Mutation of his estate was sanctioned in favour of the aforementioned persons as per the terms of the judgment and decree of the Civil Court. Gurbax Rai deceased was owner of land measuring 32 kanals 14 marlas including the land in dispute. He sold part of the land vide mutation No.1932-1933, but remained the owner of 28 kanals 8 marlas of land as per jamabandi for the year 1977-78. The plaintiff became co-sharer to the extent of 1/4th share as mentioned above and was, thus, in joint possession of the same. Defendant No.3 Gurmail Singh alleged that plaintiff along with defendant Nos.1 and 2 had executed the sale deed, aforementioned, in respect of land measuring 20 kanals 4 marlas for a sale consideration of ₹47,000/-. Plaintiff never signed the same nor appeared before the Scribe or the Sub Registrar. Somebody had impersonated him. Allegations of forgery, impersonation, much less fraud had been averred in view of the provisions of Order 6 Rule 4 CPC.

During the pendency of the suit, appellant-plaintiff had suffered a paralytic attack and virtually had become of unsound mind. Accordingly, an application under Order 6 Rule 17 CPC was moved allowing the wife Smt.Satya Kanta Rai to continue with the suit as next friend. The same was allowed by the trial Court vide order dated 22.5.2000. In order to prove the alleged forgery, misrepresentation and fraud, Handwriting Expert PW-1 Arvind Sood was examined, who examined the questioned signatures marked Q1 to Q3 in English on various pages of the sale deed dated 11.11.1992 and compared the same with the standard signatures marked S1 to S3 and it was found that the signatures were not of the identical person.

Defendant Nos.1 and 2 were proceeded ex-parte vide order dated 9.10.1998. Only defendant No.3 contested the suit. Gurmail Singh did not enter into the witness box. Only his daughter had appeared. On the basis of the attorney, Gurmail Singh had also authorised his daughter to engage the services of an Expert vis-a-vis report of Expert and the respondent-defendants did not get the signatures of Kailash Chander Rai examined, therefore, the evidence of the appellant-plaintiff had gone unimpeached. Suit was well within period of limitation as per the provisions of Article 56 of the Indian Limitation Act (for short "the Act"), whereas the Lower Appellate Court has erroneously dismissed the suit on the ground that the period of limitation had expired in 1995. On simple and plain language of Article 56, it is clear that the limitation would start from the date when the alleged forgery surfaced. The trial Court decreed the suit, but the Lower Appellate Court has erroneously arrived at a finding that the statement of the Expert, much less report is not a perfect science and has also referred part of his cross-examination that he should have examined another sale deeds, whereas the aforementioned sale deeds, alleged to have been executed on 13.10.1992 by Kailash Chander Rai, were never pleaded in the written statement, thus, there is illegality and perversity and, thus, following substantial questions of law arises for determination by this Court:-

> 1) Whether the evidence on record clearly shows that the sale deed Ex.D2 is a result of fraud and misrepresentation and the positive evidence to this effect has been misread by Ld.Lower Appellate Court?
>
> 2) Whether the Lower Appellate Court could penalize the appellant for leading positive evidence on an issue on which no rebuttal was led from the defendant side?
>
> 3) Whether the Lower Appellate Court has misread the documents and evidence and could have dismissed the suit without considering the admissions on record?

Mr.R.S.Chauhan, learned counsel for respondent No.1-defendant submits that wife of Kailash Chander Rai appeared in the witness box. She admitted the signatures of her husband on the other sale deeds and intentionally the Expert had not been called upon to compare the signatures with the signatures on the other sale deeds. Even otherwise, the suit was barred by law of limitation as per the provisions of Article 59 of the Act. He further submits that PW-3 Manohar Lal Saini admitted that he along with Kailash Chander Rai executed the sale deed dated 13.10.1992. The plaintiff has not stepped into the witness box and, thus, urges that there is no illegality and perversity in the judgment and decree rendered, much less no substantial question of law arises for determination. In support of his submissions, he has relied upon the judgment rendered by this Court in **Naresh Kumar Versus Sukhdev Singh, 2012 (5) R.C.R. (Civil) 8** regarding the finding on the report of the Expert as the Expert always toe to the line of the person, who engages him.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the judgment and decree of the Lower Appellate Court suffers from illegality and perversity on account of the following reasons:-

1) The Lower Appellate Court has allowed the appeal on two grounds, i.e., limitation and as well as on the basis of the report of the Expert. In my view, the Lower Appellate

Court has erroneously not noticed the provisions of Article 56 of the Act, which is reproduced as under:-

Description of suit	***Period of Limitation***	***Time from which period begins to run***
To declare the forgery of an instrument issued or registered	Three years	When the issue or registration becomes known to the plaintiff

2) On perusal of the aforementioned provisions of the Article, it is evident that the limitation would start from the day when the alleged executor acquired the knowledge of the fraud, misrepresentation and forgery, thus, the suit cannot be said to have been thrown out on this ground;

3) It has been specifically pleaded in the suit that the plaintiff came to know about the mutation and sale only about two months back and thereafter copy of the fard jamabandi and alleged sale deeds were taken and attached;

4) As per the interim order dated 22.5.2000, the wife of the plaintiff has been allowed to pursue the case as next friend owing to the fact that the plaintiff suffered paralytic attack and confined to bed. The said order has attained finality and has not been assailed in the first appeal before the Lower Appellate Court by invoking the provisions of Order 43 Rule 1-A CPC, thus, it does not lie in the mouth of

Mr.Chauhan to buttress his argument with regard to the non-appearance of the plaintiff. It is also matter of record that the wife of the petitioner was substantially cross-examined time and again and question was put about the signatures of her husband and she admitted all the suggestions, whereas on going through the same, there is complete denial.

5) The Handwriting Expert had taken the standard signatures from the impugned sale deed and compared the same with the signatures taken from the family settlement. Had the defendants got any doubt with regard to the report, nothing prevented them to take the aid of the Expert to examine the standard signatures of Kailash Chander Rai from the sale deed dated 13.10.1992. Having failed to do so, in my view, the plaintiff has discharged the onus, whereas on the contrary the defendants have failed to rebut the same. No doubt, in cross-examination the Expert had said that he is not aware of the other documents, but the fact remains that the other sale deeds were not pleaded and, therefore, it was not in the knowledge of the plaintiff, much less there was no challenge to the aforementioned sale deeds, thus, the sale deed qua the share of the plaintiff in favour of the defendant

No.3 is not sustainable;

6) There is no dispute to the ratio decidendi culled out in the judgment cited supra, but it has been mentioned that no doubt the report of the Handwriting Expert is not the perfect science, but a rider has been imposed that it has to be substantially corroborated. The plaintiff has categorically pleaded and proved the ingredients of fraud, much less forgery and has discharged the onus by examining the Expert, which has gone unrebutted;

7) Defendant No.3 had also not put in appearance, but given power of attorney to his daughter and the power of attorney reflected the engagement of the Expert, while no services of the Expert had been availed.

For the foregoing reasons, the judgment and decree of the Lower Appellate Court is hereby set-aside and that of the trial Court is restored. The questions of law, noticed above, are answered in favour of the appellant-plaintiff.

Appeal stands allowed.

July 13, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**