

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**RSA No.4890 of 2013
Date of decision: 17.02.2016**

Paramjit Singh

... Appellant

Versus

Balwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr.Karan Vir Nanda, Advocate,
for the applicant-appellant.

AMOL RATTAN SINGH, J.

1. The plaintiff is in second appeal after his suit was dismissed by the learned Additional Civil Judge (Senior Division), Phillaur and the first appeal by the learned Additional District Judge, Jalandhar.

He had filed a suit seeking a declaration that he, alongwith respondents No.2 and 3 (defendants), i.e. his brother and mother respectively, be declared to be co-owners to the extent of 1/3rd share of land measuring 4 kanals and 5 marlas and be put in possession thereof after declaring that the 1st respondent (defendant no.1 in the suit) has been shown in illegal ownership and possession thereof.

2. The suit land is stated to have been previously owned and

possessed by the father of the appellant and respondent No.2 (husband of respondent No.3), in village Pasala, Tehsil Phillaur, District Jalandhar. Gian Singh, i.e. the father of the appellant, died on 27.07.1997 and thereafter, as per the plaint, the appellant and respondents No.2 and 3 inherited the land in equal shares. All the three are generally stated to be resident outside India and when the appellant came to India in January 2003 and approached the village Patwari to get the suit land mutated in his and his co-sharers' names, he allegedly came to know that it stands the name of respondent No.1, Balwinder Singh son of Gurdip Singh.

Upon query, respondent No.1 is stated to have told him that he had purchased the suit land from Gian Singh vide a sale deed on the basis of which the mutation was entered in his favour. However, according to the appellant, Gian Singh never sold the land nor received any consideration for such sale. Balwinder Singh is stated to be the son of the brother of Gian Singh, i.e. he is the first cousin of the appellant and respondent No.2.

The appellant further alleged that Balwinder Singh may have impersonated Gian Singh and forged a thumb impression showing it to be that of Gian Singh, on the sale deed. As such, he alleged that the sale deed being a forgery and a fraudulent transaction, did not convey any right, title or interest in the suit land on defendant No.1.

Respondents No.2 and 3 were held to be proforma respondents as the suit was also for their benefit, but who had not been joined as plaintiffs, as they were not resident of India at that time.

3. On being issued notice, respondent (defendant No.1) filed a written statement in which other than the usual preliminary objections of lack of locus-standi etc., he stated that the suit land had been purchased by

him from Gian Singh vide a registered sale deed dated 27.06.1996, for valuable consideration and consequently, he had come in possession thereof.

He further stated that the appellant and his brother, alongwith their mother had been living in the house of their maternal grand-parents, i.e. parents of respondent No.3, since childhood and had not been accompanying Gian Singh anywhere right upto the time that they left India. In fact, respondent No.2 even when in India thereafter, never lived with Gian Singh, leaving him to his own fate.

Therefore, when Gian Singh was not in a position to earn for himself, even for his treatment, he sold out this land for a sum of Rs.1,08,000/- vide a registered sale deed, to respondent No.1, on 27.06.1996.

Upon replication having been filed, reiterating the contents of the plaint, the following issues were framed by the Additional Civil Judge:-

- “1. Whether plaintiff is entitled to joint possession of the land measuring 4 kanals 5 marlas? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
4. Whether the plaintiff is barred by his own act and conduct from filing the present suit? OPD
5. Whether the plaintiff has not come to the court with clean hands? OPD
6. Whether the suit is time barred? OPD
7. Whether the defendant is bonafide purchaser for consideration? OPD
8. Relief.”

4. The appellant examined one Kewal Singh as PW1, Mani Jain, Document Expert as PW2 and Gurmit Singh as PW3.

As stated in the judgment of the learned Civil Judge, PW1 stepped into the witness box and stated that Gian Singh had, in fact, sold 20 kanals and 14½ marlas of land to his brother Mohan Singh (not the father of respondent No.2), for a sum of Rs.1,32,000/- on 26.03.1991 and he produced by way of evidence, sale deed (Ex.P1) in proof of that sale.

Thereafter, he also stated in cross-examination that Gian Singh had sold the suit land to Balwinder Singh, i.e. respondent No.2.

PW2, Mani Jain, supported his report to the effect that the disputed thumb impression was not that of Gian Singh, but in cross-examination, he admitted that crease marks were present on the disputed as well as the standard thumb impression stated to be of Gian Singh. He also admitted that he had not mentioned anything about the crease marks in his report and that he had not also not written about the flow and configuration of the ridges in the clear portion of the thumb impressions.

PW3, Gurmit Singh, who also claimed to be the attorney of the appellant-plaintiff, first deposed in the plaintiffs' favour but in the cross-examination, he stated that he did not know the witness of the sale deed. He also could not given the name of the father of Gian Singh and further deposed that he had never moved any application to the police with regard to any fraud having been committed. He next submitted that respondent No.1 was in possession of the suit property and lastly, that the appellant had never told him anything about how Gian Singh lived.

He also deposed that respondent-defendant No.1 had illegally mortgaged the land in the absence of Gian Singh.

5. The 1st respondent-defendant No.1 examined one Arvind Sood, Handwriting Expert as DW1, who in his report (Ex.DW1/A), stated that the disputed thumb impressions marked Q1 to Q3 matched the standard thumb impression S1 and were of the same person.

Respondent No.1 appeared himself as DW2 and is shown to have deposed in terms of his written statement.

DW3, Varinder Kumar, Vasika Navis (Deed-Writer) deposed that he had scribed the sale deed dated 27.06.1996 at the instance of Gian Singh, pertaining to the land measuring 4 kanals and 5 marlas. He also admitted his signatures and seal on the original sale deed and further deposed that Mangat Ram, Namberdar and Kulwant Singh attested the sale deed as marginal witnesses.

The last witness of the defendant was Banarsi Dass, Namberdar, who proved the signatures of his late uncle Mangat Ram, Namberdar, stating further that Mangat Ram had died.

6. The learned Additional Civil Judge, after appraising the evidence, came to the conclusion that PWs1 and 2, i.e. Kewal Singh and Mani Jain, Document Expert, were not credible witnesses in view of the fact that Kewal Singh had virtually demolished his case in cross-examination and Mani Jain had also admitted to the faults in his report.

PW3 Gurmit Singh was disbelieved in view of the fact that though he claimed to be the attorney of the plaintiff, he actually knew nothing about the suit land or about the father of the appellant.

On the other hand, it was held by the Additional Civil Judge, that respondent-defendant No.1 had been able to prove that the suit property was purchased through a valid sale deed on 27.06.1996, for a consideration

of Rs.1,08,000/- and as such, he had proved his right and title to the land, of which he was in possession.

7. In appeal, the learned first Appellant Court, holding that reliance could not be placed on the reports and testimonies of either of the two Finger Print/Document Experts, i.e. PW2 Mani Jain and DW1 Arvind Sood, in view of the wholly contradictory reports which simply supported the parties that they represented, however, agreed with the findings of the lower court on the basis of the testimonies of the other witnesses. The oral evidence led on both sides has been more elaborately discussed in the judgment of the learned Additional District Judge, than that of the Additional Civil Judge (Senior Division).

8. The first Appellate Court found that PW1 Kewal Singh had tendered into evidence his affidavit in which he stated that he was Gian Singhs' brother and that Gian Singh had died in the year 1997. He (Gian Singh) had sold 20 kanals and 14½ marlas of land on 26.03.1991, to his (other) brother Mohan Singh, for a consideration of Rs.1,32,000/-. The sale deed was written by Om Parkash, Deed Writer and read over and explained to Gian Singh, who admitting to the contents thereof had put his thumb impression on it in his (PW1s') presence, as also in the presence of marginal witnesses, Darshan Singh, Namberdar and Gurdeep Singh son of Chanan Singh, both of the same village, Pasala. This witness, as per the learned first Appellate Court, also signed the sale deed on behalf of Mohan Singh, the purchaser, i.e. brother of both Gian Singh and this witness, Kewal Singh.

That sale deed was duly registered and was exhibited as Ex.P1. However, the witness further testified, that the Deed-Writer, Om Parkash, and one of the marginal witnesses, Darshan Singh, had died.

The learned lower Appellate Court further found that the validity of this deed dated 26.03.1991, with regard to sale of 20 kanals and 14½ marlas of land, in favour of Mohan Singh, was not disputed by respondent No.1 and in fact, was taken to be the standard document, bearing the thumb impression of the late Gian Singh, father of the appellant-plaintiff.

9. As regards the reports of Document Experts, though the learned Additional District Judge discussed the reports of both PW2 and DW1, as already noticed, he did not accept either, as being simply supportive of either the plaintiff or the defendant respectively.

However, comparing the oral testimonies of the witnesses (other than the document and finger print Experts) on both the sides, it was found by that Court that the testimony of DW3 Varinder Kumar, Deed Writer and scribe of the sale deed in favour of respondent No.1, dated 27.06.1996, proved the execution of the said sale deed, when further read with the testimony of Banarsi Dass, who identified the signatures of his late uncle, Mangat Ram, Namberdar, on the said deed.

As opposed to that, none of the witnesses of the appellant-plaintiff could dislodge the testimonies of the witnesses of the defendant, nor disprove the execution of the sale deed in question. Though PW3 (Gurmit Singh) the attorney of the appellant had supported his case, such support did not extend to disproving the sale deed in favour of respondent No.1.

Consequently, the appeal of the appellant was dismissed by the lower Appellate Court.

10. Before this Court, Mr.Karan Vir Nanda, learned counsel for the

appellant, submits that the Additional Civil Judge has wholly erroneously relied upon the report of the finger print expert produced by the respondent-defendants and not upon the finger print report produced by the appellants, on wholly erroneous parameters.

He however, on query, could not point to any error in the conclusion drawn by the learned courts below, with regard to none of the witnesses for the appellant having been able to disprove the sale deed in favour of respondent No.1.

As regards the report of the Finger Print Experts also, learned counsel could not point out as to how the courts below have erred in not believing the report of the Finger Print Expert (PW2), by which the said witness had stated that the standard finger print of the late Gian Singh did not match with the finger print on the sale deed dated 27.6.1996.

The lower Appellate Court, disbelieved both the finger print/document experts as already noticed. The Additional Civil Judge, also did not accept the report of PW2 because of the fact that, admittedly, there were crease marks in the thumb impressions in both, the standard thumb impressions as also the disputed thumb impression, which were not discussed in the report and further, nothing had been written in the report about the flow and configuration of the ridges in the clear portion of the thumb impressions.

Learned counsel has not been able to contradict that finding by relying on any expert opinion, to the effect that the parameters on which the report has been disbelieved, are incorrect parameters.

11. Coming then to the testimonies of the other witnesses, I again find no fault in the reasoning given by the lower Appellate Court. Though

PW1 Kewal Singh, uncle of the appellant proved that 20 kanals of land had been sold by the late Gian Singh to his other brother, Mohan Singh, vide a sale deed dated 26.03.1991, neither did Kewal Singh state that the suit land was part of that earlier sale deed, nor could he otherwise disprove that the sale deed in favour of respondent No.1 was a forged and fabricated document, in any manner. In fact, he even admitted, in cross-examination, that Gian Singh had sold the land to respondent No.1.

PW3 Gurmit Singh, attorney of the appellant-plaintiff, though otherwise supported the appellant-plaintiffs' case, said nothing either in support of any earlier sale deed, nor anything to even prove that he knew much about the suit land. Hence, he too could not disprove the execution of the sale deed in question, or prove that it was obtained by fraud and forgery.

12. Conversely, the respondents examined the deed writer who had scribed the sale deed dated 27.06.1996, who testified wholly in its favour, as also did one Banarsi Dass, who proved the signatures of his late uncle, Mangat Ram, Namberdar, with Mangat Ram being a witness to the sale deed.

Thus, with the witnesses of the respondents having duly proved the said sale deed dated 27.06.1996, and the witnesses of the appellant not having been able to disprove it, as discussed above, I see no error in the judgments of the learned Courts below.

In view of the above, I find no merit in this appeal, which is dismissed *in limine*, with no order as to costs.

17.02.2016
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE