

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1873 of 2015

Date of Decision: 15.09.2016

Smt. Hoshiyari Devi

... Appellant

Vs.

Sewa Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. R.N. Lohan, Advocate,
for the appellant.

Amol Rattan Singh, J.

This is the second appeal of the plaintiff in a suit filed by her, seeking a declaration that she is the owner in possession of the suit land measuring 9 kanals 3 marlas (fully described in the suit as well as the judgment of the learned Civil Judge (Junior Division), Narwana).

2. The facts, as taken from the judgment of the learned Civil Judge, are that it was contended in the plaint that originally, her uncle, Major Singh, was the owner of the land and that he used to live with the plaintiff, who used to look after him. During his life time, Major Singh is stated to have suffered a consent decree dated 05.11.1990 in favour of the plaintiff, qua the suit land, and accordingly, she became the owner in possession thereof.

Major Singh is stated to have died about 12-13 years before filing

of the suit, which was filed on 06.11.2008.

It was further contended that the two defendants (respondents herein) did not have any concern with the suit land and that Major Singh in his life time had not executed any instrument qua the land.

However, the plaintiff subsequently came to know that on the basis of a sale deed allegedly executed by Major Singh in favour of defendant no.1, for a sale consideration of Rs.5000/-, qua land measuring 200 sq. yards, the said defendant executed a sale deed dated 21.10.2008 in favour of defendant No.2, for a sale consideration of Rs.2,20,000/-, in respect of the said 200 sq. yards of the suit land.

It was, therefore, contended that sale deed bearing no.1826, dated 15.01.1987 and the second bearing No.2763, dated 21.10.2008, were both based on fraud and misrepresentation and were therefore, illegal, null and void. It was further contended that when defendant no.2 never came in possession of the suit land, the question of possession of defendant no.2 over it, did not arise.

Yet further, it was contended by the plaintiff that the defendants are bent upon alienating the suit land and encroaching upon it on the basis of the aforesaid sale deeds and consequently, she being the owner of the land, was entitled to a decree of declaration as well as permanent injunction against them, after declaring the sale deeds to be null and void and not binding upon the rights of the plaintiff.

3. On notice issued to them, the defendants appeared and filed a joint written statement, stating that the plaintiff had no concern with the suit land and that defendant no.1 had purchased a plot measuring 200 sq. yards on the Tohana-Narwana road, vide the sale deed dated 05.01.1987, executed by

Major Singh son of Sunder Singh.

It was further stated that Major Singh had become owner in possession of the suit land measuring 9 kanals 3 marlas on the basis of a consent decree dated 20.09.1986, pursuant to which mutation no.8361, dated 04.04.1987, had been entered in his favour. The said consent decree was actually executed by the husband of the plaintiff, Ram Sarup, in favour of Major Singh and consequently, he having become the owner of the land, had sold a plot measuring 200 sq. yards to defendant no.1, vide the impugned sale deed no.1826 dated 05.01.1987, which also bears the signatures of the plaintiffs' husband, Ram Sarup, as a witness.

It was further contended that Ramdhari, Numberdar of village Loan, was also present at the time of the execution of the sale deed and that in fact, the plaintiff and her husband had handed over possession of the said 200 sq. yards out of the total land of 9 kanals and 2 marlas. Neither the vendor, Major Singh, nor even the husband of the plaintiff, had ever raised any objection on the aforesaid sale deed. Hence, after 21 years, the plaintiff was estopped from filing the suit which was also barred by limitation.

Yet further, it was stated that the plaintiff was, in fact, a 3rd party qua the suit land, which had already been further alienated by the 1st defendant in favour of the 2nd defendant vide the sale deed dated 21.10.2008, bearing no.2763.

The defendants also filed a counter-claim stating that the consent decree dated 05.11.1990, in favour of the plaintiff, was illegal to the extent of 200 sq. yards that was the subject matter of the sale deeds dated 05.01.1987 and 21.10.2008.

4. A replication-cum-reply to the counter-claim having been filed

by the plaintiff, denying the allegations in the counter-claim and asserting the stand taken in the plaint, the following issues were framed by the learned Civil Judge:-

- “1. Whether impugned registered sale deed no.1826 dated 5.1.1987 is illegal on the grounds taken in the plaint? OPP
2. Whether another sale deed no.2763 dated 21.10.2008 is also illegal on the grounds taken in the plaint? OPP
3. If issues no.1 and 2 are proved, whether plaintiff is entitled for decree of declaration and injunction as prayed ? OPP
- 3(a) Whether the defendants are entitled to the relief of counter claim as prayed for? OPD
4. Whether suit is barred by limitation? OPD
5. Whether suit is bad for non impleadment of necessary parties? OPD
6. Whether plaintiff has no locus-standi to file the suit? OPD
7. Whether suit is not maintainable in the present from? OPD
8. Relief.”

5. The plaintiff first examined herself as PW1 and further examined a Registration Clerk in the office of the Sub-Registrar as PW2, who proved the record of sale deed no.1826 dated 05.01.1987. She also examined one Bhupinder Singh, Record-Keeper of the Court, who proved the record of case no.602 titled as Major Singh v. Ram Sarup, decided on 20.09.1986.

She also examined Dr. Inderjit Singh, a Handwriting & Finger Print Expert as PW4, who proved his report Ex.PW4/A, in which it was stated that the standard thumb impression of the late Major Singh, taken from the Power of Attorney executed by him in favour of his Advocate in the suit, decided on 20.09.1986, differed from the thumb impression on the sale deed dated 05.01.1987.

By way of documentary evidence, the plaintiff relied upon the following documents:-

Ex.P1	Sale deed no.1826 dated 5.7.1987
Ex.P2	Sale deed no.2763 dated 21.10.2008
Ex.P3	Jamabandi for the year 2003-04
Ex.P4	Mutation no.8361
Ex.PW4/1	Expert report
Ex.PW4/2 to Ex.PW4/6	Photographs
Ex.P6	Judgment dated 5.11.1990
Ex.P7	Decree-sheet dated 5.11.1990

6. The defendants, on the other hand, examined defendant no.1 Sewa Singh, who admitted that Major Singh was a relative of Ram Sarup, husband of the plaintiff. He also admitted that there was no mention of any khewat and khata number in the registry.

As regards one of the attesting witness, Ramdhari, who was a Numberdar, it was stated that he was his (this witness') uncle, who had died.

The 2nd defendant, Parsanni Kaur, examined herself as DW2 and stated that though she had seen the plot in dispute, which was vacant, but she was ignorant about the foundations of 3-4 shops having been laid in the plot.

One Surender Pal Garg, Document Writer, testified as DW3, in favour of the sale deed dated 05.01.1987, stating that he was its writer and he had read over and explained it to the parties who had thereafter appended their thumb impressions/signatures, after admitting to the correctness of the document. He further testified that he had entered the sale deed in his register at column no.4 on 05.01.1987, and that Major Singh had appended his

signatures in the said register. He however, admitted that he did not know the parties to the suit personally and no monetary transaction ever took place in his presence.

One Subhash Lohan, Registry Clerk, produced the record of sale deed no.2763 dated 21.01.2008 (Ex.D4)..

Shri Sajjan Kumar, Advocate, also testified as DW5 and brought the summoned record of *bahi* no.2750 pertaining to the aforesaid sale deed dated 21.10.2008, deposing that he had seen the original *bahi* which bears his signatures and his seals and that the attested copy, Ex.D4, was a correct copy and further, that he had read over and explained the contents of the deed to the parties who he did not know personally but who had appended their thumb impressions/signatures in his presence. This witness also testified that no monetary transaction took place in his presence.

The last defence witness was Dharambir, who stated that he had seen the document, Ex.D6, (shown to be an application for details of receipt no.95), which bears his report and the signatures of the Municipal Councillor, Narwana. He further testified that Ex.D7 was a receipt issued by the Municipal Committee. However, he admitted during cross-examination that no site map of the disputed land had ever been sanctioned.

The defendants also relied on the following documentary evidence:-

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|-------|------------------------------------|
| Ex.D1 | Jamabandi for the year 1988-89 |
| Ex.D2 | Mutation no.8361 |
| Ex.D3 | Sale deed no.1826 dated 5.1.1987 |
| Ex.D4 | Sale deed no.2763 dated 21.10.2008 |
| Ex.D5 | Jamabandi for the year 2008-09 |

- Ex.D6 Application for detail of receipt no.95
- Ex.D7 Receipt of Municipal Committee, Narwana
- Ex.D8 Copy of plaint
- Ex.D9 Copy of judgment dated 5.11.1990
- Ex.D10 Copy of decree-sheet dated 5.11.1990

7. Upon appraising the aforesaid evidence and considering the pleadings and arguments on behalf of the parties to the *lis*, the learned Civil Judge came to the conclusion that once the registered sale deed dated 15.01.1987 had been duly proved, the onus to prove that it was based upon a fraud committed upon Major Singh, was upon the plaintiff, which she had failed to discharge. The contention that the sale deed was without any consideration was also found to be incorrect, in view of the fact that in the sale deed itself a consideration of Rs.5000/- was admitted to have been paid, by the parties.

It was further held that the signatures of Major Singh, on the sale deed, though alleged to be not his, were not proved by the plaintiff to be actually not his.

As regards the important evidence with regard to the report of the finger print expert (PW4), it was found by the learned Court that the said witness had admitted that what he had compared as the standard thumb impression of Major Singh, from his power of attorney executed in favour of his Advocate, in the *lis* between him and the husband of the plaintiff in 1986, was his left thumb impression, whereas the thumb impression on the sale deed dated 05.01.1987, was his right thumb impression.

The witness had, in fact, admitted that the left and right thumb

impressions of a person are not identical. Hence, naturally, his report was virtually held to be of no value, by the trial Court. It was further held that admittedly the husband of the plaintiff, Ram Sarup, who was shown to be the one of the attesting witness of the registered sale deed, was alive; however, even he had not stepped into the witness box to deny that he had actually attested the deed.

8. As regards the possession, it was held that from Ex.D7, i.e. the receipt issued by the Municipal Committee, it was proved that defendant no.2 was in possession of the property and therefore, the sale deed dated 21.10.2008 had been acted upon. The said sale deed was also duly proved by the defendants in their testimony, read with that of the Registration Clerk, DW4 and the scribe thereto, DW3.

Hence, it was held that the sale deed dated 05.01.1987 was not proved to be a document which was the result of any fraud or any misrepresentation to Major Singh, with Major Singh also never having challenged its execution during his life time.

9. Consequently, holding that the land that was subject matter of the sale deed dated 05.01.1987 had actually been sold by Major Singh on 05.01.1987, to defendant no.1, as such, he could not have suffered a consent decree qua the said land in the year 1990. Therefore, the first sale deed not having been proved to have been obtained by fraud, the subsequent sale deed dated 21.10.2008 could also not be challenged by the plaintiff.

Holding as above, the suit of the plaintiff was dismissed.

10. In the first appeal filed by her, the learned Additional District Judge, Jind, after noticing the aforesaid facts, the evidence led by the parties and the judgment of the learned Civil Judge, first held that the contention

raised in the first appeal, to the effect that the sale deed dated 05.01.1987, bearing no.1826, was patently ambiguous, was an argument raised beyond pleadings, and as such, could not be raised at the stage of the first appeal and in any case, it was admitted in the main body of the plaint that the sale deed was the same as was mentioned in the head note, and that the relief claimed was with regard to the same 200 sq. yards (as were subject matter of the sale deed).

11. It was further found that with the scribe of the document, DW3, also having deposed that Major Singh had personally appeared to execute the sale deed and had appended his signatures in the register of the scribe, and thereafter, the sale deed had also been duly registered, even the absence of the attesting witnesses (one having died and one being the husband of the plaintiff), made no difference, with no fraud or misrepresentation proved.

Hence, on the aforesaid reasoning and the reasoning already given by the learned Civil Judge, the first appeal was also dismissed.

12. Before this Court, Mr. R.N. Lohan, learned counsel appearing for the appellant-plaintiff, essentially reiterated what had been argued before the Courts below, to the effect that Major Singh having suffered a consent decree even qua the land that was subject matter of the sale deeds in question, the first sale deed dated 05.01.1987 could not be accepted to be a document executed with the complete knowledge of the vendor, i.e. Major Singh, especially as it did not describe the suit land in detail.

He, therefore, submitted that the Courts below had wholly erred in upholding the said sale deed and consequently, also the second sale deed dated 21.10.2008.

13. Having considered the aforesaid arguments, I find myself unable

to agree with learned counsel, in view of the fact that as regards the suit land not having been described in detail in the first sale deed dated 05.01.1987, the learned lower appellate Court has come to a specific finding that even in the plaint, the appellant-plaintiff had admitted that the suit land was the same as was described by her in the head note of the plaint, giving therein the khewat/khata numbers.

Thus, even the issue of any demarcation would not arise in the present case, in view of the fact that it has not been shown to be the case of the plaintiff that Major Singh intended to sell some other land but actually sold another. If that had been so, then firstly, Major Singh having remained alive at least 8 to 9 years after 1987, (it having been cited in the plaint that he died about 12 to 13 years prior to the date of its institution), i.e. sometime in the year 1995-96, he never in his life time challenged the sale deed executed by him. Further, though one of the attesting witness to the sale deed, i.e. husband of the plaintiff, Ram Sarup, was admitted to be alive, he, even though did not stand in support of the defendants, also did not step into the witness box to deny his signatures on a deed which was registered and registration thereof also proved by the Registration Clerk, examined by the plaintiff herself, i.e. PW2.

Hence, with no evidence whatsoever, to refute the correctness of the sale deed or to prove that a fraud was perpetuated upon Major Singh, then, in the opinion of this Court, the sale deed dated 05.01.1987 being a duly registered document with its execution not disproved, the plaintiff also failed to discharge the onus upon her, to prove that there was any fraud perpetuated in the execution of the sale deed, or that it was a forged document. With the scribe to the registered document also having been duly examined and he

having testified to its veracity (DW3), in the opinion of this Court, the validity of the document was duly proved even in terms of Section 71 of the Indian Evidence Act, 1872.

In this regard, the learned Civil Judge also rightly relied upon the judgment of the hon'ble Supreme Court in Prem Singh & Ors. v. Birbal & Ors. (SCC online) (2006) 5 SCC 353, wherein it was held that a presumption exists that a registered document is validly executed and the onus to prove otherwise, is on the person who leads evidence to rebut the presumption.

That presumption is not found to be rebutted in any manner, in the present case.

14. As regards the report of the finger print expert, nothing further need be said on that, the learned Civil Judge having found that the expert himself (PW4), having admitted that the standard thumb impression of the late Major Singh and the thumb impression on the sale deed of 1987, were of two different thumbs of the said person.

Consequently, finding no merit in this appeal, it is dismissed *in limine*, with no order as to costs.

September 15, 2016
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(AMOL RATTAN SINGH)
JUDGE