

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

**RSA No.2290 of 2015 (O&M)
Decided on: 31.05.2016**

Bant Singh and another

....Appellants

Versus

Kanta Rani

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rajbir Singh, Advocate
for the appellants.

- 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?*

REKHA MITTAL, J.

The present appeal has been directed against the consistent findings recorded by the Courts below whereby suit filed by the appellants/plaintiffs to assail sale deed No.2308 dated 30.03.2006 in respect of land measuring 08 kanals situated in village Saffipur Kalan has been dismissed vide judgment and decree dated 07.03.2012 passed by the Civil Judge (Jr. Division), Sunam (hereinafter to be referred as 'the trial Court') and the appeal preferred by the unsuccessful plaintiffs/appellants did not find favour with the Additional District Judge, Sangrur.

The appellants challenged the aforesaid sale deed on the premise that the same is forged, fabricated and is the result of fraud

played upon them by the respondent and her husband namely Sunil Kumar taking advantage of their illiteracy and simple nature. It is averred that Sunil Kumar is running a commission agent shop at village Kamalpur and the plaintiffs used to sell their crop at his shop. Taking advantage of their illiteracy, Sunil Kumar occasionally obtained thumb-impressions of the appellants on the pretext that he was maintaining the records of crops of the plaintiffs. Sunil Kumar did not pay the amount of crops sold by the plaintiffs. In the year 2003, the plaintiffs requested Sunil Kumar to give some money for their domestic purpose and he agreed to give money if the plaintiffs mortgaged their land in the name of respondent. The plaintiffs executed mortgage deed No.350 dated 14.05.2003 in favour of Kanta Rani and borrowed an amount of Rs.2,25,000/- from Sunil Kumar. In March 2006, plaintiffs arranged the amount of Rs.2,25,000/- and asked Sunil Kumar that they were ready to return the borrowed amount and necessary writing be scribed for redemption of the mortgage land. On 30.03.2006, respondent and her husband issued a receipt in token of receipt of Rs.2,25,000/- from the plaintiffs. On that day, plaintiffs reached the office of Sub-Registrar, Dirba for writing the redemption deed and receipt but the respondent and her husband took their several thumb-impressions on stamp papers on the pretext of cancellation of mortgage deed. They, in connivance with Deed Writer wrongly got prepared sale deed No.2308 dated 30.03.2006 regarding 08 kanals of land at the time of scribing the redemption receipt. The plaintiffs neither executed any alleged sale deed in favour of the defendant nor received any alleged amount as consideration nor they appeared before the Sub-Registrar, Dirba for the

purpose of execution of the alleged sale deed.

The respondent/defendant filed the written statement raising preliminary objections *inter alia locus standi*, cause of action, non-maintainability, estoppel and the plaintiffs having not approached the Court with clean hands. She has denied all the allegations on the basis whereof the appellants have sought to assail the sale deed in question being forged, fabricated and the result of fraud.

On due consideration of pleadings of the parties, evidence adduced and rival submissions made by counsel, the learned trial Court non-suited claim of the appellants/plaintiffs that the sale deed in question is illegal, null and void and liable to be set-aside. As has been noticed hereinbefore, the appellants remained unsuccessful before the Court of appeal as the Additional District Judge, Sangrur affirmed the findings recorded by the trial Court without any variance.

Still aggrieved, the matter has been carried in appeal before this Court.

Counsel for the appellants would contend that the Courts below failed to appreciate the evidence in right perspective and fell into a gross error rather illegality in rejecting claim of the appellants/plaintiffs. It is further argued that admittedly on 30.03.2006, Kanta Rani – respondent wife of Sunil Kumar executed receipt Ex.DW5/A with regard to refund of an amount of Rs.2,25,000/- that was advanced to the appellants by way of registered mortgage deed Ex.P-2, proved on record. It is further argued that Dr. Inderjit Singh – DW4, Handwriting and Fingerprints Expert examined by the respondent had admitted in cross-examination that typing is intersecting

the ridges of thumb-impressions marked as Q4 and generally thumb-impressions on the sale deed are taken after it is typed. The learned trial Court has wrongly held that Gurcharan Singh – PW1 and Bant Singh – PW2 in their cross-examination had admitted that they put thumb-impressions on the papers which were already written. It is argued with vehemence that thumb-impressions of the appellants on the sale deed were obtained on the pretext of preparing a redemption deed, therefore, the judgments and decrees passed by the Courts below are liable to be set-aside and suit filed by the appellants should be decreed.

I have heard counsel for the appellants and perused the paperbook.

Indisputably, the present appeal has been preferred against concurrent findings recorded by the Courts below. The second appeal can be admitted for hearing only if it gives rise to a substantial question of law for adjudication. It is not within the domain of Court of second appeal to reappraise and reappraise the entire evidence, to record a finding different from what has been held by the Courts below. Equally settled is that the civil dispute is to be decided on the basis of preponderance of probabilities. As in the case at hand, the appellants have attributed criminality to the respondent by alleging that the sale deed is the result of fraud, it is incumbent upon them to prove the allegations *qua* fraud almost akin to proving it beyond shadow of reasonable doubt as required in a criminal trial.

The plea of the appellants is that Sunil Kumar was running the business of commission agency at village Kamalpur and the appellants were customers at his shop for sale of their agricultural

produce. In this context, another plea has been raised that taking advantage of their illiteracy and simple nature, Sunil Kumar occasionally obtained their thumb-impressions on the pretext that he was maintaining records of crops of the plaintiffs. Firstly, there is no evidence on record that Sunil Kumar had been running business of commission agency prior to 2006 or the appellants were the customers at his shop. There is nothing on record suggestive of the fact that prior to the present litigation, there was any dispute between the appellants and Sunil Kumar *qua* misuse of their alleged thumb-impressions.

The appellants have further pleaded that in the year 2003, they approached Sunil Kumar for some financial assistance and he suggested them to execute a mortgage deed in favour of his wife. This conduct of Sunil Kumar in seeking execution of a mortgage deed as a security for loan advanced to the appellants negates their plea that Sunil Kumar had been getting their thumb-impressions on blank documents. Had Sunil Kumar been a dishonest person or he wanted to exploit the appellants by taking advantage of their illiteracy and simple nature, he could safely get thumb-impressions of the plaintiffs on blank papers at the time of advancing a loan of Rs.2,25,000/-. Another circumstance that counters case of the appellants is that the appellants mortgaged land more than 26 kanals vide mortgage deed dated 14.05.2003 but the sale deed in favour of the respondent is only *qua* land measuring 08 kanals.

The sale deed assailed by the appellants is a registered document. It has been proved on record that the same bears photograph of the appellants and witnesses, clicked in the office of Sub-Registrar

concerned. The Sub-Registrar, Rupinder Singh Manku, Naib Tehsildar, was examined by the respondent/defendant. He has categorically deposed that on 30.03.2006 Bant Singh and Nachattar Singh produced a registry before him and he read over the same to them and after accepting it correct, Bant Singh and Nachattar Singh affixed their thumb-impressions in the presence of Puran Singh Lambardar and Gurcharan Singh. Puran Singh and Gurcharan Singh also appended their thumb-impressions/signatures. He proved the Registry Ex.D1 and the endorsement/certificate Ex.D1/Z and further identified his photo on the certificate. He has further deposed that Puran Singh, Nachattar Singh, Bant Singh, Gurcharan Singh are also in the photograph.

Counsel for the appellants before the trial Court, failed to successfully assail credibility of the witness when otherwise a presumption of correctness is attached to his endorsement made in discharge of official functions. In view of testimony of the Joint Sub-Registrar, I find myself unable to accept the submissions made by counsel for the appellants or to differ with the consistent findings recorded by the Courts below. Conversely, no question of law much less a substantial one arises for adjudication.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed. No order as to costs.

31.05.2016
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(REKHA MITTAL)
JUDGE