

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

RSA No. 4865 of 2015

Date of Decision: 05.01.2016

Amarjeet Kaur

.....Appellant

Vs.

Jagdev Singh

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Abhilaksh Grover, Advocate,
for the appellant.

AMOL RATTAN SINGH, J. (ORAL)

This appeal has been filed by the appellant-plaintiff, aggrieved of the dismissal of her suit by the learned Civil Judge (Sr. Division), Ratia, vide judgment and decree dated 17.04.2013 and that of the learned first Appellate Court (Additional District Judge-I), Fatehabad, vide his judgment and decree dated 10.03.2015.

2. The suit filed by the plaintiff-appellant was for possession by way of declaration, with consequential relief of permanent injunction against the respondent-defendant, in respect of land measuring 3 Marlas out of the total land measuring 8 Marlas, being 3/8th share comprised in Khasra No. 705//13/8/2/2 (0-8), situated in village Ratia, District Fatehabad (hereinafter referred to as the suit property). The defendant is stated to be the brother of the plaintiff. As per the plaint, he is a

“very clever person” and got executed sale deed No. 2081 dated 20.03.1998, in respect of 3 Marlas of land, after producing some other lady to impersonate as the plaintiff. In fact, the plaintiff never sold the said 3 Marlas of land and also did not receive any sale consideration. The alleged sale deed is thus alleged to be a bogus and forged instrument, null & void and thus liable to be cancelled.

On the basis of the alleged sale deed, mutation No. 12308 dated 07.05.1998 was also entered and sanctioned, which is also consequently alleged to be wrong, against law and facts, null & void and liable to be cancelled.

About six months prior to the institution of the suit, the defendant is stated to have taken forcible possession of a shop constructed on 3 Marlas of land, in the absence of the appellant. She is stated to have resisted, upon which the defendant told her that she had executed a sale deed. It was then that the appellant came to know of the said bogus and forged sale deed executed by the respondent. She convened a Panchayat, in which the respondent gave an assurance to her that he would get the alleged sale deed cancelled and would give possession of the land to her. However, one week prior to institution of the suit, he threatened to alienate the land to some other person.

3. Before the trial Court, the appellant examined herself as PW-1 and relied upon the following documents:-

*“Ex. P-1 : Photocopy of sale deed No. 2081
dated 20.03.1998*

Mark-A : mutation No. 12274"

The respondent, on the other hand, examined himself as DW-1, hand-writing and finger print expert Shamsheer Singh Malik as DW-2 and relied upon the following documents:-

"Ex. D1: Original Sale deed No. 2081 dated 20.03.1998;

Ex. D2: mutation No. 12274;

Ex. D3: mutation No. 12308;

Ex. D4: jamabandi for the year 1998-99;

Ex. D5: jamabandi for the year 2003-04;

Ex. D6: jamabandi for the year 2008-09;

Ex. Dw2/A: report of handwriting expert;

Ex. DW2/B1 to B11: Photographs;

Ex. DW2/C: specimen sheet and

Mark-A: Release deed No. 943 dated 07.07.2010"

The trial Court framed the following issues to determine the rights of the parties:-

"1. Whether the plaintiff is owner of the suit land as fully detailed and described in the head note of the plaint? OPP

2. Whether sale deed No. 2081 dated 20.03.1998 in favour of defendant in respect of the suit land is illegal, null & void being the result of fraud and misrepresentation, having no binding effect on the rights of the plaintiff and thus, is liable to be set aside? OPP.

3. If issues No. 1 and 2 are proved in affirmative, then whether the plaintiff is entitled to the relief of possession in respect of the suit land? OPP.

4. Whether the plaintiff has no locus

*standi and cause of action to file the present suit?
OPD.*

5. *Whether the suit is not maintainable?*

OPD

6. *Whether the plaintiff has not come to the Court with the clean hands and has concealed the material facts? OPD*

7. *Whether the suit is time barred? OPD*

8. *Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD*

9. *Relief."*

4. On merits, the trial Court, after considering the evidence led before it, came to the conclusion that no evidence whatsoever was led by the plaintiff to substantiate the fact that the photograph on the sale deed (Ex. P-1 as also Ex. D-1) was that of the somebody else who stood in her place before the Registrar, on the date of registration of the deed. Further, no evidence was led by her to prove that the fingerprints on the sale deed were not hers and, to the contrary, DW-2 deposed in favour of his report (Ex. DW-2/A), which stated as follows:-

"After seeing all the points of similarities, I am of the opinion that the disputed thumb (sic) impressions marked Q1 to Q5 are similar and identical with the standard thumb impressions marked S1 to S6 of Amarjeet Kaur and it is confirmed that the disputed thumb impressions marked Q1 to Q5 on the document-'Sale Deed' No. 2081/20.03.1998 have been affixed by the same lady Amarjeet Kaur, who had affixed her thumb impression marked S1 to S6 in the present case file on various documents mentioned above in the

report.”

5. Having held that the deed was not proved to be forged or fake, the trial Court held that the suit had been filed twelve years after sale deed No. 2081 dated 20.03.1998 executed by the appellant. The suit having been instituted on 06.10.2010, obviously the finding was that there was a delay of more than 12 years and six months. The contention that the appellant came into knowledge of the sale deed only upon the respondent taking forcible possession of the shop constructed on the suit land (in her absence), six months prior to the institution of the suit, was, therefore, also obviously rejected, she having held to have executed the deed herself. It was also held that the appellant-plaintiff had not led any evidence to show that she had no knowledge of the sale deed till six months prior to the institution of the suit.

Accordingly, having held against her on the issue of limitation as also on issues No. 1 to 3 (substantively No. 2 and 3), the suit was dismissed.

6. The first Appellate Court, essentially reiterated the same reasoning and also held that the photograph on the sale deed was that of the appellant, though denied by her. Further, it held that other than the statement of the appellant (plaintiff) there was no corroborative evidence led to disprove the authenticity of the sale deed.

7. Mr. Abhilaksh Grover, learned counsel for the appellant first reiterated the arguments raised before the trial

Court and thereafter, relied upon the judgment of the hon'ble Supreme Court in **Krishna Mohan Kul** vs. **Pratima Maity** 2003 (3) PLR 757 to submit that the onus of proving that the sale deed was fabricated, was actually on the respondent-defendant, since he would be in a dominant position over the appellant-plaintiff who is his sister, sixty years old at the time of filing of the suit. However, as regards the issue of limitation (issued No. 7 framed by the trial Court) as to why the suit has been filed in the year 2010 when the sale deed is of the year 1998, learned counsel could not refute that no evidence was led by the appellant to show that she had no knowledge of the sale deed, for twelve years.

Though the ratio of the judgment relied by learned counsel in **Krishan Mohan Kul's** case (supra), is that to prove the validity of a document, onus would lie on the dominant party, in my opinion the judgment would not apply in the facts of the present case, where even the revenue record, admittedly, in the form of mutation of the suit land in favour of the respondent, had been entered in the year 1998. Hence, lack of knowledge, twelve years thereafter, by the appellant, is not an acceptable fact.

8. Seen with the above, the fact that she also led no evidence whatsoever, to disprove either her photograph on the sale deed, or the fingerprints on the deed, which were proved by the experts' report to be that of the appellant, further lay hollow the claim of the appellant. In fact, by producing the report of fingerprint expert and the expert himself before the Tribunal, to

testify as DW-2, in my opinion even the onus cast upon the respondent to prove the sale deed was not a fake one, stood discharged which could not be refuted by the appellant.

Further she also did not produce any member of the Panchayat allegedly convened on the issue, to testify in her favour.

9. In view of the above discussion, I find no perversity in the impugned judgments of the learned Courts below, far less any question of law which needs to be adjudicated upon by this Court.

The appeal is, therefore, dismissed *in Limine* with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

January 05, 2016
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