

CR No 2674 of 2017 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No 2674 of 2017 (O&M)
Date of decision: 24.5.2017**

Omaxe Chandigarh Constructions Private Limited

...Petitioner

Versus

Gurdarshan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Munish Gupta, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 4.3.2017 (Annexure P-6) passed by the learned trial court, whereby plaintiff was permitted to examine Fingerprint Expert for the purpose of comparison of signatures of Smt. Amarjit Kaur-defendant No.1, it is defendant No.2 who has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

Plaintiff-respondent No.1 filed suit for possession by way of specific performance of the agreement to sell dated 22.9.2008, executed by defendant No.1 in favour of the plaintiff. Plaintiff also sought a decree of declaration qua sale deed dated 22.7.2011 allegedly executed by defendant No.1 in favour of defendant No.2 as illegal, null and void. It is also not in

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dispute that defendant No.1 filed her written statement. Defendant No.2 also filed its separate written statement. On conclusion of pleadings of parties, learned trial court framed the issues. Thereafter, defendant No.1 disappeared from the scene and stopped appearing in the court, because of which she was proceeded against ex parte by the learned trial court.

During pendency of the suit and after conclusion of the evidence by respondent No.2-Amarjit Kaur, plaintiff moved an application seeking permission of the learned trial court to examine the Fingerprint Expert for the purpose of comparison of signatures of defendant No.1-Amarjit Kaur, who has denied execution of the agreement to sell dated 22.9.2008 by her in favour of the plaintiff. So far as the factum of execution of the agreement to sell dated 22.9.2008, is concerned, defendant No.2-petitioner was not party to it and because of this material aspect of the matter, defendant No.2-petitioner cannot deny the correctness and validity of said agreement to sell. Admittedly, alleged sale deed in favour of defendant No.2-petitioner by defendant No.1 was after about three years of the agreement to sell executed by defendant No.1 in favour of the plaintiff. Having said that, this Court feels no hesitation to conclude that the learned trial court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

So far as four judgments of this Court in **Mohan Pal Singh and another Vs. Karampal Singh and another, 2010 (4) RCR (civil) 627; Krishan Vs. Surta alias Surat and others, 2012 (5) RCR (civil) 483; Jagdish and another Vs. Ranbir and others, 2015 (2) PLR 367 and Ramanand alias Budhram Vs. Ram Singh and others, (CR No. 3588 of 2017, decided on 17.5.2017)**, relied upon by learned counsel for the

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petitioner, are concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgments, none has been found to be of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....*Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the*

inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law.

Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of

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Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it

Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

A bare perusal of the impugned order would show that it is a well

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reasoned and speaking order. The learned trial court has rightly discussed and appreciated each and every relevant aspect of the matter in the correct perspective, before passing the impugned order. Finally, the learned trial court itself found that examination of Fingerprint Expert would help the court to adjudicate the matter in dispute. Once the learned trial court itself has found the examination of Fingerprint Expert necessary for effective adjudication of the matter, with a view to do substantial justice between the parties, defendant No.2-petitioner would not be in a position to oppose the examination of Fingerprint Expert. It is so said, because the learned trial court has rightly exercised its jurisdiction in the given fact situation. In this view of the matter, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld.

Further, it is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Every court of law must make an endeavour to grant reasonable opportunity to both the parties to the litigation to put up their respective best cases before the court. Nobody should be forced to go home with the grievance that he was not granted due opportunity to put up its best case. While proceeding on this principle of law, the learned courts would be achieving twin objects; i) they would be avoiding multiplicity of litigation and ii), the learned courts would be in a much better position to do complete and substantial justice between the parties. It is equally true that while doing complete and substantial justice, technicalities must not be allowed to stand in the way of imparting justice. Since the learned trial court has rightly followed the abovesaid settled principle of law, while passing the impugned order, the same deserves to be

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upheld, for this reason as well.

During the course of hearing, learned counsel for the petitioner could not could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and the same deserve to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

24.5.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No