

**RSA No. 5916 of 2015 (O&M)**

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

**RSA No. 5916 of 2015 (O&M)  
Date of Decision: 2.3.2017**

Lakha Singh

.....Appellant

Vs.

Kulwant Singh and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Vishal Sodhi, Advocate  
for the appellant.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

Unsuccessful plaintiff is in regular second appeal, against the impugned judgments and decrees passed by the learned courts below, whereby his suit for declaration was dismissed by the learned trial court vide judgment and decree dated 20.5.2013, which were upheld by the learned first appellate court, dismissing the first appeal of the plaintiff, vide impugned judgment and decree dated 16.5.2015.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that appellant/plaintiff had filed the suit for declaration to the effect that plaintiff was owner in possession of the suit land measuring around 3K-18Mrls, alongwith declaration to the effect that mutation No. 2177 sanctioned in the name of defendants in respect of the suit property was wrong, illegal, null, void and

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liable to be set aside with consequential relief of permanent injunction, restraining the defendants from interfering into the peaceful possession of the plaintiff. The plaintiff had alleged that he was owner in possession of the suit property and without his knowledge, defendants had got mutation sanctioned in their favour in respect of the suit property on the basis of sale deed allegedly executed by plaintiff in the year 1999 whereas the plaintiff never executed any sale deed in favour of the defendants or anyone else in respect of the suit property. The alleged sale deed was forged and fabricated one and was a result of fraud and misrepresentation, thus, liable to be set aside. The plaintiff further alleged that defendants were real brothers of plaintiff and had kept the sale deed secret since 1991 till the date of mutation. The plaintiff further submitted that he was in continuous possession of the suit property and even at present he is in actual physical possession of the suit property. It was submitted that a week back, the defendants made an abortive attempt to interfere into the peaceful possession of the plaintiff.

Defendants did not appear despite service and were proceeded against ex parte, vide order dated 1.8.2008. Plaintiff produced his ex parte evidence. After hearing learned counsel for the plaintiff and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, his suit was dismissed, vide impugned judgment and decree dated 20.5.2013. Dissatisfied, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court, vide impugned judgment and decree dated 16.5.2015. Hence this regular second appeal at the hands of the plaintiff.

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Heard learned counsel for the appellant.

It is a matter of record that entire case of the appellant was based on the alleged sale deed dated 31.12.1991 and mutation No. 2177, which was allegedly sanctioned in favour of defendants on the basis of sale deed dated 31.12.1991. However, appellant did not challenge the sale deed dated 31.12.1991 and for no good reasons. On the other hand, defendants were drawing their title over the suit land on the basis of sale deed dated 31.12.1991 and mutation No. 2177, which was sanctioned on the basis of abovesaid sale deed. Once the plaintiff did not challenge the validity of the sale deed dated 31.12.1991, it was bound to fail. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees, which deserve to be upheld.

During the pendency of his first appeal, plaintiff moved an application seeking amendment in the plaint to the effect that the sale deed was not of the year 1991 but was of year 1999. However, learned first appellate court dismissed the said application of the appellant, as per its observations made in para 13 of the impugned judgment. Even if the sale deed is to be treated of the year 1999 and the plaintiff filed the suit in the year 2008, i.e. after more than 8 years, it would still be hopelessly time barred, it being a suit for declaration.

Plaintiff-appellant himself was the executant of the sale deed and he alleged fraud, but he did not lead sufficient evidence to prove the plea of fraud. Appellant being plaintiff, onus was on him to prove his case by leading cogent evidence, however, he failed to do so. Under these circumstances, it can be safely concluded that learned courts below

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committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Coming to the judgment of this Court in **Gursharan Kaur Vs. Kuldip Kaur and another, 2011 (2) PLR 742**, relied upon by learned counsel for the appellant, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment, it has not been found to be of any help to the appellant, 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**.

Before arriving at a judicious conclusion, learned first appellate court re-considered the factual as well as legal aspect of the matter and appreciated the same in correct perspective. Relevant findings recorded by the learned first appellate court in para 14 of its impugned judgment, which deserve to be noticed here, read as under:-

*“As regards the merits of the main case, from the perusal of the revenue record Ex. P5 to Ex. P17, whereby in cultivation column, the plaintiff has been shown in possession of the specific khasra no. measuring 3K-18 Mrls. and he*

*had alleged that he never sold this property to the defendants but he had alleged that defendants are purporting one sale deed of the year 1999 executed by the plaintiff in favour of the defendants and on the basis of which defendants had got mutation no. 2177 in their favour. Hence, he had filed the present suit for declaration. In support of his case, he had examined himself as PW1 and other witnesses as PW2 and PW3 who supported this version of his. He produced on record certified copy of the sale deed dated 31.12.1991 as Ex. P1 through PW4 Clerk of the office of Sub-Registrar, Ajnala. As per the sale deed Ex. P1, the suit property has been sold by the present plaintiff to the defendants and this sale deed has been witnessed by Lakhbir Singh, Namberdar and Kashmir Singh, both residents of the same village as that of parties as well as where suit property is situated. The plaintiff had failed to bring on record both these witnesses to prove that this document has not been executed by the plaintiff. He had tried to prove his case through the statement of handwriting expert who had compared the signatures on the certified copy of sale deed dated 31.12.1991 with the standard signatures of the plaintiff on his affidavit. In the present case, she had opined that both the signatures are not by the same person. From the perusal of the record, it is clear that handwriting expert had made comparison of the signatures from the photocopy of the sale deed with the signatures of the plaintiff on the affidavit filed in the present case as standard. It is settled principal of law that only original signatures can be*

*compared. Learned counsel for the respondent had raised a very valid point that variations in the handwriting of a person are bound to come with the passage of time. Ex. P1 was executed in the year 1991 and the standard signatures have been made by the plaintiff in 2008 and therefore, there is gap of more than 17 years and therefore, comparison of both, cannot be held to be valid. For valid comparison, original signatures should belong to contemporary period. Even plaintiff had failed to bring on record the mutation. He only produced on record Ex. P17, jamabandi whereby the mutation no. 2177 has been recorded but from which it is not clear when the mutation has been sanctioned. It has not been specified by the plaintiff that as to when he came into the knowledge of the mutation. The averments made by the plaintiff are very vague, though the plaintiff was very much aware of the sale deed dated 31.12.1991 alleged as of 1999 but he had failed to challenge the same. Therefore, the plaintiff had miserably failed to discharge the onus upon him to prove that he is owner in possession of the suit property. Hence, the trial court had rightly dismissed his suit. Therefore, present appeal bears no merits and the same is hereby dismissed.”*

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of

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the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

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 the present appeal 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 regular second appeal stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

2.3.2017  
*Ak Sharma*

*Whether speaking/reasoned Yes/No*  
*Whether reportable: Yes/No*