

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

**SAO No.47 of 2014 (O&M)**

**Date of Decision: 10.08.2017**

**Nathu Ram**

**.....Appellant**

**Vs**

**Charano @ Charanjit Kaur and ors**

**....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Rakesh Chopra, Advocate  
for the appellant.

Mr. Binderjit Singh, Advocate  
for respondent No.1

\*\*\*\*\*

**RAJ MOHAN SINGH, J.**

[1]. This appeal has been preferred by the appellant/defendant No.1 against the judgment dated 14.07.2014 passed by the Addl. District Judge, Bathinda whereby the case was remanded to the trial Court after accepting the application under Order 41 Rule 27 read with Section 151 CPC.

[2]. Brief facts are that the plaintiff/respondent Charano @ Charanjit Kaur filed a suit for declaration, permanent injunction and joint possession on the ground that she was owner of 1/4<sup>th</sup> share in the property measuring 43 *Kanals* 2 *Marlas*. She had given the land on lease for cultivation to his brother/defendant No.1. Defendant No.1 was to pay 1/3<sup>rd</sup> of the produce to the

plaintiff at the time of cultivation. Thereafter, defendant No.1 filed a civil suit No.540 dated 25.08.1992 against the plaintiff which was decided on 12.03.1993. Defendant No.1 succeeded in obtaining the decree by impersonating the plaintiff. It was submitted that the plaintiff never entered into any family settlement with her brother/defendant No.1 in respect of suit property, nor left her share in the suit property in favour of her brother/defendant No.1. She never received any summons from the Court. Defendant No.1 himself engaged some counsel on behalf of the plaintiff as the plaintiff never engaged any counsel, nor made any statement in the Court. The decree was challenged on the basis of fraud.

[3]. The trial Court proceeded with the suit and framed issues. Though no specific issue of the decree dated 12.03.1993 being fraudulent was framed, but issue No.7-A was to the effect that “*whether the plaintiff was entitled to relief of declaration as prayed? OPD*”. In the evidence, the plaintiff led evidence of expert. Plaintiff denied her thumb impressions on the interim order dated 31.10.1992, written statement dated 03.12.1992, Court statement dated 13.02.1992, vakalatnama dated 13.02.1992 and application dated 13.02.1992 on the summoned file titled 'Nathu Ram vs. Charno i.e. Civil Suit No.540 of 25.08.1992 decided on 12.03.1993. The Handwriting

Expert after summoning the original file compared the signatures on the aforesaid document with the specimen signatures of Charano @ Charanjit Kaur. The trial Court observed that the same were not proved as per the Indian Evidence Act by summoning the author or scribe i.e the Advocate, who has drafted the same under the instructions of the client. Since the written statement was not *per se* admissible in evidence and is not a public document, therefore, the same can only be proved by way of author or by the scribe i.e. the Advocate, who has drafted the same. Plaintiff Charano @ Charanjit Kaur was again identified by her counsel in the previous proceedings. In the absence of examination of Mr. A.S. Bhullar, Advocate, who was allegedly engaged by her in Civil Suit No.540 of 25.08.1992, the trial Court held that the plaintiff has neither examined any evidence, nor placed on record any document to prove her identity as Charano @ Charanjit Kaur and to further prove that specimen signatures are of Charano which as per opinion of the Expert are different from the thumb impressions on interim order dated 31.10.1992, written statement dated 03.12.1992, Court statement dated 13.02.1992, vakalatnama dated 13.02.1992 and application dated 13.02.1992 on the summoned file titled '*Nathu Ram vs. Charno*' i.e. Civil Suit No.540 of 25.08.1992.

[4]. The trial Court further held that the Handwriting Expert further gave the opinion that thumb impression at Mark Q1 on interim order dated 31.10.1992 differ from the thumb impression at Mark Q2 to Q6. Therefore, as per the opinion of the Handwriting Expert even in the case titled as Nathu Ram vs. Charno, two different person on two different occasion were impersonated as Charno in the Court. The trial Court on the aforesaid parameters, dismissed the suit vide the judgment and decree dated 01.10.2011. Feeling aggrieved against the same, an appeal was filed before the lower Appellate Court.

[5]. The lower Appellate Court held that though the plaintiff had examined PW-2 Sh. Anil Kumar Gupta, Handwriting and Fingerprint Expert, who opined that the disputed signature on written statement does not tally with the admitted signatures/standard signatures of Charano. In such like circumstances, Sh. Amar Singh Bhullar, Advocate who is a material witness can identify the plaintiff in order to dispel any suspicion and can also prove the allegations of the plaintiff. Since Sh. Amar Singh Bhullar, Advocate has not been examined, therefore, the application under Order 41 Rule 27 read with Section 151 CPC for grant of permission to lead additional evidence was allowed in order to enable the Court to pronounce the judgment effectively. The application was allowed

for substantial cause. The satisfaction was recorded by the lower Appellate Court that the additional evidence so prayed by the appellant would enable the Court to pronounce the judgment and is necessary for advancing the substantial cause of justice.

[6]. Learned counsel for the appellant vehemently contended that the plaintiff did not lead any evidence in affirmative so as to dispel the alleged cloud on the decree dated 12.03.1993. Issue No.7-A specifically was wide enough to cover the issue of alleged decree being fraudulent. Once the plaintiff did not lead any evidence in affirmative, she was not entitled to lead any additional evidence at appellate stage as she was not entitled to fill lacuna in the present case. Learned counsel relied upon **Youdhister vs. Siri Ram and others, 1996(3) R.C.R. (Civil) 706.**

[7]. I have heard learned counsel for the parties.

[8]. PW-2 Sh. Pawan Kumar Gupta, Handwriting and Fingerprint Expert has given his opinion to the following effect:-

*“The disputed thumb impression Mark Q1 is different from the other disputed thumb impressions Mark-Q2 to Q6. The disputed thumb impressions Mark-Q1 to Q-6 are different from the standard/specimen thumb impressions of Charno Mark R1 to R5 (R.T.I.) & L1, L2 (L.T.I.) i.e. disputed thumb impressions Mark-Q1 to Q6 are not affixed by the ladies, who affixed specimen thumb impressions Mark R1 to R5*

(R.T.I.) & L1, L2 (L.T.I.).”

[9]. The entire case of the plaintiff was based on the decree being fraudulent. If the assertions of the plaintiff are proved with reference to the plea of fraud then the same would vitiate all solemn acts. In view of settled position of law in **S.P. Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853; Hamza Haji vs. State of Kerala and another, 2006(7) SCC 416, A.V. Papayya Sastry and ors. vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431 and Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar through Shri Raghunath Sahi, 2003(2) RCR (Rent) 148**, a party who played fraud has no equities in law and can be thrown at any stage of litigation.

[10]. With regard to the observations made by the lower Appellate Court that Sh. A.S. Bhullar, Advocate, who put his appearance in Civil Suit No.540 dated 25.08.1992 titled as 'Nathu Ram vs. Charno' decided on 12.03.1993 is the best witness, who can identify the person by whom he was engaged and at whose instructions he had filed the written statement while admitting the claim of the defendant, the acceptance of application under Order 41 Rule 27 CPC by the lower Appellate Court cannot be faulted with, as the Court is empowered to allow the prayer, as the additional evidence would enable the

Court for advancing substantial cause of justice. However, under Order 41 Rule 28 CPC, the lower Appellate Court while accepting the application for additional evidence was required to take such evidence of its own or could have directed the trial Court to take such evidence and to send the report to that effect to the lower Appellate Court. To this extent, in my considered opinion the lower Appellate Court has committed error of jurisdiction while remanding the case to the trial Court as a whole, even without setting aside the findings recorded under all the issues.

[11]. In view of above, I deem it appropriate to set aside the impugned judgment dated 14.07.2014 passed by the Addl. District Judge, Bathinda to the extent of remanding the case to the trial Court. However, lower Appellate Court would be at liberty to decide the mode of taking additional evidence in terms of Order 41 Rule 28 CPC and would act in accordance with law. The appeal is partly accepted. Both the parties are directed to appear before the lower Appellate Court on 31.08.2017.

August 10, 2017

*Atik*

**(RAJ MOHAN SINGH)**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No