

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.5030 of 2017(O&M)

Date of Decision:-31.10.2017

Jarseed.

.....Appellant.

Versus

Smt. Rahimi & Anr.

.....Respondents.

Present:- Mr. Inderjit Sharma, Advocate for the Appellant.

JASWANT SINGH, J.

Plaintiff is in appeal assailing the judgment and decree of reversal dated 30.08.2017, passed by the learned Additional district Judge, Mewat, whereby the suit of the plaintiff has been dismissed, while setting aside the judgment and decree dated 27.01.2016, passed by the learned trial Court, whereby the suit for specific performance of the plaintiff was decreed *in toto*.

Learned Counsel for the appellant has argued that the learned Appellate Court has wrongly reversed the findings of the learned trial Court by completely ignoring the fact that the appellant-plaintiff had been able to prove the due and valid execution of the agreement in question by examining its attesting witness i.e. PW-1 Hakam as well as himself as PW-2, however, the Appellate Court has given unnecessary weightage to the report of the handwriting and finger print expert examined by the defendant

thumb impressions from the written statement filed in the Court by Aimna, however, the said thumb impressions were never given by Aimna in the Court as specimen thumb impressions and thus, the same cannot be considered for comparison with the thumb impressions on the impugned agreement to sell. It has been further argued that it is apparent from the record that the thumb impressions which were allegedly taken of Rahimi were actually not of said defendant no.1-Rahimi, but of Aimna and thus, there are many discrepancies in the expert report submitted by DW-2 Naresh Kataria. Hence, prayer has been made that over reliance by the Court below to the Expert report submitted by said Naresh Kataria is incorrect and thus, the findings and observations of learned lower Appellate Court are liable to be set aside and the findings returned by the trial Court deserves to be upheld.

After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the considered view that the present appeal is devoid of any merit and deserves to be dismissed.

Some of the conceded facts as stated by the plaintiff in his plaint are that agreement to sell dated 25.4.2014 was allegedly executed between plaintiff and defendant nos.1 & 2. Defendant nos.1 & 2 are the real sisters and it is alleged that they had received a sum of Rs.20 lacs as earnest money and the remaining amount of Rs.2.5 lacs was to be paid at the time of execution and registration of the sale deed, which was fixed as 10.06.2014. On the other hand, case of the defendants is of complete denial and as per them, the said agreement to sell was never executed by them and it does not bear their thumb impressions. The plaintiff had tried to prove his case by examining himself as PW-2 and also the attesting witness namely Hakam as

PW-1, so as to prove the due and valid execution of the agreement to sell and also passing of the earnest money.

On the other hand, defendant no.1 Rahimi never entered into witness box and it is only defendant no.2 namely Aimna, who entered into witness box as DW-1. The defendants had further examined Naresh Kataria, handwriting and finger print expert.

It is evident from the record that the entire case revolves around the oral evidence led by both the parties, except for the handwriting and finger print expert examined by the defendant. In such a situation, the Courts below had the opinion of expert which was required to be examined within the parameters set out under Section 45 of the Evidence Act. The trial Court had negated the report due to the reason that there were infirmities in the identity of the thumb impressions lifted by him from the “alleged specimen signatures” of the Defendant nos.1 & 2. However, the Appellate Court had reversed the findings by discussing in detail as to how the report submitted by handwriting and finger print expert was valid in the eyes of law.

A perusal of the judgment passed by the first Appellate Court would reveal that it had relied upon the report of the handwriting and finger print expert, primarily for the reasons that respondent-defendant nos.1 & 2 (owners) had appended their thumb impressions upon the alleged agreement to sell. It is by now well established principles of science that no two persons have same thumb impressions and, therefore, the science of finger print is perfect. In the present case, the report of the handwriting expert is categorical that the thumb impressions are not that of the defendants or are blurred. No contrary evidence has come on record to discard said report.

The argument of the appellant that the handwriting expert has compared the thumb impressions of Emna rather than of Rahimi and thus, it cannot be relied upon, is also without any merit. A scrutiny of the judgment passed by the Court below would reveal that the Appellate Court has noticed this argument and given a detailed finding to come to a conclusion that although the thumb impressions were taken of Emna, but mistakenly it was mentioned as that of Rahimi. However, the said fact would not make any difference because it was found that the thumb impressions were blurred and superimposed.

Not only this, the the Appellate Court as well as this Court has seen the impugned agreement to sell and tried to verify as to whether the thumb impressions are indeed superimposed or not. It is found that the thumb impressions are indeed superimposed, as is viewed from the naked eye and thus are incomparable with the thumb impressions of any of the defendants.

As far as the argument of learned Counsel that the handwriting expert could not have lifted thumb impressions from the written statement filed by Aimna to compare it with the impugned agreement to sell is concerned, this Court is of the opinion that the thumb impressions have nowhere been disputed by the plaintiff/appellant at any stage. It is settled position of law that procedural law is handmaid of justice and is subservient to principles of natural justice and an irregularity, which does not go to the root of the case cannot hinder the judicial process. Thus, the plaintiff cannot claim that the thumb impressions of defendant no.2 Aimna on the written statement cannot be compared with the thumb impressions as appended by her in the agreement to sell.

In view of the above the Appellate Court had rightly held that since the remaining thumb impressions did not match with the thumb impressions of defendant Emna and this fact is sufficient to come to a conclusion that the appellant-plaintiff had got the thumb impressions of some other person, instead of defendants-owners and forged the agreement in question. The argument of the learned Counsel that a handwriting expert would normally toe the line of his pay master, cannot have a universal application to all the cases because in the present case, the comparison is of thumb impressions and not of handwriting. In any case, no contrary report has come on record from the side of the respondent-plaintiff to rebut this presumption, which is raised under Section 45 of the Evidence Act.

In view of above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

October 31, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>