

RSA No.1517 of 1990 (O & M)
RSA No.1520 of 1990 (O & M)

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

RSA No.1517 of 1990 (O & M)
Date of Decision:03.04.2018

Amar Singh (since deceased) through his LRs ...Appellant

Versus

Mukhtiar Singh and others ...Respondents

RSA No.1520 of 1990 (O & M)

Amar Singh (since deceased) through his LRs ...Appellant

Versus

Sona Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.P. Soi, Advocate
for the appellant (in both the appeals).

Mr. Ramesh Sharma, Advocate
for respondent No.1 in RSA-1520-1990.

Mr. Vinay Saini, Advocate for
Mr. G.S. Nagra, Advocate
for respondent Nos.2, 6, 7, 8 and 11
in RSA-1517-1990.

ANIL KSHETARPAL, J.

CM No.4060-C-2018 in
RSA No.1520-1990

Application is for permission to place on record a compromise deed arrived at between Sona Singh and Malkiat Singh. As per the compromise deed, which is signed by Sona Singh, he has agreed to execute the sale deed in favour of Malkiat Singh. In fact, this application should have

been filed in RSA-1517-1990. Both the counsels, who were present at the time of hearing, have also made a statement that a compromise deed is signed by Sona Singh and Malkiat Singh. Overlooking technicalities, application is deemed to be filed in RSA No.1517-1990.

In view of the aforesaid, RSA-1517-1990 qua the share of Sona Singh shall stand disposed of in terms of the compromise. The deed of compromise shall form part of the decree.

RSA-1520-1990

By this judgment, two appeals arising between the same parties with respect to same property in dispute, which are connected, are being disposed of.

RSA No.1517 of 1990

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing the suit for specific performance of the agreement to sell dated 23.09.1975.

Plaintiff filed a suit for specific performance of agreement to sell dated 23.09.1975 with the assertion that the defendants had entered into an agreement with the plaintiff with respect to the half share of the land i.e. 73 kanals and 5 marlas out of total measuring 146 kanals and 9 marlas. It was pleaded that the entire sale consideration was paid at the time of entering into an agreement to sell. There were 10 defendants in the suit, agreement to sell is alleged to have been entered with all of them.

Defendants contested the suit and pleaded that no agreement to sell was executed and the amount as alleged has not been received. It was pleaded that the defendants except Sona Singh and Nazar Singh had

13.09.1975 for management of the land in dispute and for getting the mutation sanctioned in their favour but it appears that the plaintiff in connivance with his son has succeeded in fabricating the alleged agreement to sell on the same day. It was pleaded by the plaintiffs that their thumb impressions might have been obtained in the process of getting thumb impressions and signatures on the power of attorney.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit while recording the following reasons:-

- (i) hand writing expert has opined that thumb impression of Nazar Singh do not match/tally;
- (ii) Sona Singh was minor at that time;
- (iii) power of attorney and agreement to sell were scribed through different scribes;
- (iv) power of attorney dated 23.09.1975 has not been produced on file.
- (v) attesting witness-Kewal Singh only knew Jarnail Singh, therefore, he was not known personally known to remaining defendants.

First appeal preferred was also dismissed on the ground of delay as well as on merits. Learned First Appellate Court has refused to condone the delay of less than 3 months. Learned First Appellate Court has also recorded following reasons to dismiss the appeal. (i) Opinion of the expert proves that Nazar Singh has not thumb marked the agreement to sell. (ii) Sona Singh was minor on the date of agreement to sell was executed and therefore, he could not enter into any agreement to sell. (iii) The plaint does not contain pleadings that the plaintiff was always ready and willing to

would be beyond pleadings. No application under Section 12 of the Specific Relief Act has been filed for requesting the Court to leave the share of the minor defendant and decreed the suit with respect to remaining share. The learned First Appellate Court although noticed that in the learned trial Court, plaintiff did move an application, which was dismissed.

In the considered opinion of this Court, following substantial questions of law arise in the present case:-

1- Whether an opinion given by a document and finger print expert is binding on the Court?

2-Whether both the Courts have misdirected themselves while dismissing the suit?

3-Whether the judgment passed by the learned First Appellate Court is result of misreading of the plaint?

4-Once an application for amendment is filed in the learned trial Court and is dismissed, whether a separate application for amendment is required to be filed in the learned First Appellate Court?

Answer to Question No.1 - In the present case, dispute is with regard to signatures/thumb impressions of Sona Singh and Nazar Singh. The agreement to sell was executed by 10 defendants i.e. Mukhtiar Singh, Balbir Singh, Jarnail Singh, Sucha Singh, Shingara, Nazar Singh sons of Bishan Singh, Inder Kaur widow of Bishan Singh, Jit Kaur daughter of Bishan Singh, Paul Kaur widow of Harnam Singh, Sona Singh son of Karnail Singh.

Defendants No.1 to 8 are mother, sons and daughter of Bishan Singh. There

is no dispute with regard to signatures/thumb impressions of remaining 8

defendants. The opinion of the expert i.e. Ex.PA is also not very clear. In the first para, the opinion records that both the thumb impressions are ink smudged and partly interfered with by the writing whereas on the other hand, the expert has opined that left thumb impression is not comparable as the ridge characteristic details of the case print do not tally with the said sample thumb impression.

In the considered opinion of this Court, the opinion given by an expert should not be blindly followed by the Court. Opinion of an expert is only an opinion, which have to be evaluated by the Court, in the facts and circumstances of the each case. In the present case, the Court should have examined that there is no dispute about signatures/thumb impressions of five brothers, mother and sister of Nazar Singh.

Still further, the Court overlooked the fact that direct evidence is available i.e. attesting witness/marginal witness of the agreement to sell Kewal Singh has appeared and proved the execution of the agreement to sell. Even the scribe, who had scribed the agreement to sell has been examined as PW-3. As noticed earlier, Sona Singh has now filed an application for decreeing the suit qua his share honouring the agreement to sell. Thus evaluating the evidence in totality, the opinion of an expert cannot be preferred, once direct evidence available on the file. The circumstances prove the fact that the agreement to sell was executed between the parties. Hence, question No.1 is answered in favour of the appellant.

Answer to Question No.2 - In the considered opinion of this Court, Courts below have misdirected themselves while deciding the case.

The reasons assigned by the learned trial Court that power of attorney and the agreement to sell were executed by different scribes, although on the same

day does not in any way effect the validity of the agreement to sell. Rather on the other hand, it proves and contradicts the stand put forth by the defendants. Defendants have pleaded that at the time of execution of the general power of attorney signatures/thumb impressions of the defendants might have been obtained. Once both the documents were scribed by different document writers/scribes, the possibility of defendants having signed under wrong impression does not appear to be plausible.

Second reason assigned by the learned trial Court that the copy of the power of attorney dated 23.09.1975 executed in favour of son of the plaintiff has not been filed is also not correct. In the considered opinion of this Court, execution of the aforesaid power of attorney is not in dispute in the present case. Defendant themselves have been pleaded in the written statement that power of attorney was executed by 8 defendants except Sona Singh and Nazar Singh. Validity of the power of attorney was not in issue before the Court. Hence, the Court wrongly drew adverse inference on account of non filing of the power of attorney.

Learned trial Court further wrongly observed that attesting witness Kewal Singh only knew Jarnail Singh i.e. defendant No.3 and since he did not personally knew other defendants, therefore, the attestation of the agreement to sell by Kewal Singh is worthless. Attesting witness of a document is not required to be known to all the parties to the document. It is sufficient if the attesting witness knew one of the party. Hence, question No.2 is also answered in favour of the appellant.

Answer to Question No.3 - Learned First Appellate Court has committed an error in while misreading the plaint. In Para 4 of the plaint,

plaintiff has asserted that he was ready and willing to perform his part of the

contract and he is still ready and willing to perform his part of the contract. It is not in dispute that the plaintiff when appeared in the witness-box as PW-1 has also stated that he was ready and willing to perform his part of the contract. Still further, the total sale consideration had been paid at the time of entering into an agreement to sell and no date was fixed in the agreement to sell for execution and registration of the sale deed.

In these circumstances, plaintiff is proved to be ready and willing to perform his part of the contract. Hence, question No.3 is also answered in favour of the appellant.

Answer to Question No.4 - It has been found by the learned First Appellate Court that an application under Section 12 was filed before the learned trial Court, which was dismissed. While filing an appeal, all interim orders passed by the Court can be challenged and are subject to scrutiny of the learned Appellate Court. No fresh application was required to be filed. In any case, now Sona Singh has already compromised with the plaintiff-appellant. Even before the learned First Appellate Court, Sona Singh and Malkiat Singh had filed an application for allowing the appeal with respect to the share of Sona Singh on the basis of compromise. However, learned First Appellate Court committed an error in rejecting the aforesaid application on the ground that since Sona Singh was minor on the day of agreement to sell and there is an opinion of the expert that thumb impression of Sona Singh on the agreement to sell does not match with the standard thumb impression, therefore, there cannot be any compromise.

In view of the what has been discussed above, question No.4 is also answered in favour of the appellant.

delivered to the plaintiff. Sona Singh and Nazar Singh only filed a separate suit for possession. Appeal arising thereof is being decided through this judgment. Therefore, possession of the plaintiff is also not in dispute.

In view of the what has been discussed above, judgment and decrees passed by the Courts below are set aside and the suit filed by the plaintiff-appellant is decreed with respect to the share of defendants No.1 to 9 on merits and Sona Singh on the basis of compromise. Defendants shall execute and get the sale deed registered in favour of the legal heirs of the appellant.

RSA No.1520 of 1990

In view of the judgment passed in RSA-1517-1990, this appeal has to be dismissed as in this suit respondents-plaintiff had filed a suit for possession with respect to the same land which is subject matter of RSA-1517-1990. The suit filed by the appellant has been decreed. Hence, this appeal also is allowed and decree passed by the Courts below decreeing the suit for possession are set aside.

Both the appeals are allowed.

03.04.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No