

RSA No.1520 of 1995 (O & M)
RSA No.1809 of 1995 (O & M)

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

RSA No.1520 of 1995 (O & M)
Date of Decision: 16.05.2018

Bant Singh (through LRs) ...Appellant

Versus

Darshan Singh (through LRs) and others ...Respondents

RSA No.1809 of 1995 (O & M)

Ram Singh ...Appellant

Versus

Darshan Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh Maho, Advocate
for the appellants in RSA-1809-1995.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for the appellants in RSA-1520-1995.

Mr. M.L. Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate
for the respondents.

ANIL KSHETARPAL, J.

By this judgment RSA Nos.1520 and 1809 of 1995 shall stand
decided. Both the appeals are arising out of same suit and the judgment
passed by the learned First Appellate Court is also common.

the decree for possession by way of specific performance of the agreement to sell dated 24.09.1982 with respect to land measuring 51 bighas and 19 biswas. Late Sh. Bhuja Ram @ Bhuja Singh, who was not having any children and his wife had also pre-deceased him, was the owner of the property in dispute. It is the case of the plaintiff that he executed an agreement to sell in favour of the plaintiffs on 24.09.1982 for a total sale consideration of Rs.1,80,000/- and received Rs.1,30,000/- as earnest money. It is further pleaded that the sale deed was to be executed on 10.06.1983 on payment of balance sale consideration of Rs.50,000/-. There are five defendants in the suit. Defendants No.1 (Bant Singh) and 2 (Ram Singh) are sons of Niranjana Singh brother of late Sh. Bhuja Ram @ Bhuja Singh, whereas defendants No.3 to 5 (Sadhu Singh, Rulda Singh and Kirpal Singh) are sons of defendant No.1 (Bant Singh son of Niranjana Singh). Bhuja Ram @ Bhuja Singh died on 01.10.1982. Initially defendants No.1 and 2 filed separate written statements denying execution of the agreement to sell and receipt of earnest money by Bhuja Ram. Counter allegations were made by defendants No.1 and 2 inter se asserting that Bhuja Ram @ Bhuja Singh was kidnapped and while in captivity his thumb impressions were taken on blank papers on which agreement to sell has been printed. However, later on defendants No.1 and 2 appears to have resolved the *inter se* dispute and a statement to that effect was recorded by the learned trial Court on 08.02.1991. Sum and substance of the written statement filed by defendants No.1 and 2 is that the agreement to sell is forged and fabricated document.

Learned trial Court after appreciating the evidence available on the file recorded a finding that the agreement to sell is drafted on an already

existing thumb marked papers and, therefore, the suit filed by the plaintiffs was ordered to be dismissed. Plaintiffs filed the first appeal. Learned First Appellate Court has chosen to reverse the aforesaid judgment and decree passed by the learned trial Court.

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

(i) whether the learned First Appellate Court before reversing the judgment of the learned trial Court, is required to discuss, analyse the reasons and after critical appraisal thereof, give its findings?

(ii) Whether the judgment passed by the learned First Appellate Court is result of misreading of evidence?

Before discussing question of law, certain more facts would be necessary to be noticed, Bhuja Ram was owner of land measuring 51 bighas and 19 biswas being half share of total land 113 bighas and 18 biswas situated at village Rauni, Tehsil and District Ludhiana. He was not having Class I heir. Defendants No.1 and 2 are sons of brother (Niranjan Singh) of Bhuja Ram. On 05.04.1982, Bhuja Ram executed a registered Will in favour of defendants No.3 to 5, sons of defendant No.1 (Bant Singh). It is the allegation of defendant No.1 that Hardit Singh alongwith Jarnail Singh, two brothers-in-law of defendant No.2, accompanied with Teja Singh (father-in-law of defendant No.2) of village Bija along with others, who were fully armed came in a truck to village Natt at about 10.00 a.m. and forcibly took away Bhuja Ram alias Bhuja Singh, who was aged about 76 years at that

time at the behest of Ram Singh – defendant No.2. Defendant No.1 lodged a complaint dated 17.9.1982 to the SSP, Ludhiana with a copy to SHO, Sadar, Ludhiana, copy of which is Ex.DW-4. The complaint was lodged in the Court of Shri S.S. Sandhu under Sections 364, 365/34 IPC.

On 17.9.1982, when Bhuja Ram alias Bhuja Singh alias Rabbi was in the custody of Teja Singh etc. another registered Will dated 17.9.1982 was got executed in favour of Ram Singh and his wife.

It is further alleged that defendant No.1 had lodged criminal proceedings against defendant No.2 and since he was fearing of arrest, he took Bhuja Ram to the house of his father-in-law Teja Singh, who was known to Shingara Singh, who promised to keep a watch on Bhuja Ram @ Bhuja Singh. During the period of unlawful captivity of Bhuja Ram @ Bhuja Singh, thumb impressions were obtained by Darshan Singh and Shingara Singh, the plaintiffs, on which the agreement to sell has been forged. Defendant No.2 pleads that it was defendant No.1, who had kidnapped Bhuja Ram. In any case, Bhuja Ram is alleged to have been recovered by the police where a compromise was arrived at between defendants No.1 and 2 and Bhuja Ram. Pursuant to the aforesaid settlement, a registered Will dated 27.09.1982 was executed bequeathing his entire property in equal share in favour of defendants No.1 and 2. Bhuja Ram died on 01.10.1982 i.e. after five days of the execution of the registered Will.

As noticed earlier, Bhuja Ram was resident of village Rauni.

Now the stages set for considering the questions of law

(i) whether learned First Appellate Court being

last Court of appreciation of evidence and facts is required to discuss and analysis the reasons given by the learned trial Court to arrive at findings of fact after critical appraisal thereof reversed the aforesaid reasons before setting aside the judgment and decree?

(ii) Whether the judgment passed by the learned First Appellate Court is result of misreading of evidence?

In the present case, a reading of the judgment passed by the learned First Appellate Court does not show that the learned Court has dealt with the reasons given by the learned trial Court and after critical appraisal and due analysis, reversed the judgment of the learned trial Court. Learned First Appellate Court has passed its judgment on two major grounds; (i) Bhuja Ram gave all his earning in charity and did not give anything to defendants No.1 and 2 during his life time and hence it is established that Bhuja Ram @ Bhuja Singh was not having love and affection towards defendants No.1 and 2. Bhuja Ram @ Bhuja Singh was never served by defendants No.1 and 2; (ii) plaintiffs are not required to disclose from where he had arranged and paid the earnest money.

Crucial document in the present case is agreement to sell executed by Bhuja Ram @ Bhuja Singh. Copy of the agreement to sell is Ex.P1. It is on two pages scribed on a non judicial stamp papers of Rs.2.50/-. A bare look at the agreement to sell proves that agreement to sell is although hand written but consistently spacing between the lines has been reduced from top to bottom on the Ist page. However, when one looks at

page No.2 of the alleged agreement to sell, it is established beyond any doubt that the spacing has been reduced drastically to ensure completion of the agreement to sell on 1/3rd part of the non judicial stamp paper of Rs.0.50 paisa. It is quite apparent that first line at the second page has overlapped the print on the non judicial stamp paper. Spacing between the lines on the second page is entirely different than the first page. The endoresement for purchase of stamp paper does not bear thumb impression of Bhuja Ram @ Bhuja Singh, although normally the stamp vendor do get the signatures or thumb impressions of the purchaser of the person, who has purchased the stamp paper. Still further, material evidence in this regard is of the scribe, who has stated that the agreement to sell was executed at Samrala. When attention of the witness was drawn to the difference in the spacing at pages 1 and 2 and within page No.1, he denied this fact. However, subsequently when once again his attention was drawn, in later part of the cross-examination, he admitted that there is difference in spacing between the lines but did not give any reason except saying that it may be due to details of the khasra numbers i.e. description of land. Even that reason is incorrect because the description of the land has been given within first five lines of the agreement to sell whereas space between the lines decreases drastically at the end of the first page and further reduces on the second page where no khasra number has been mentioned. Still further, the scribe who has appeared as PW-3 has admitted that village Rauni is near to Sub Tehsil Payal where documents are scribed and registered. Sub Registrar sits at Payal. However, no reason has been given as to why old man, who died after few days' chose travel to Samrala to execute the agreement to sell. The

scribe when appeared along with his register, it was found that the register has not been properly maintained. He stated that entry No.241 is dated 09.08.1982, which has been deleted and thereafter 3-4 pages were left blank which he claims were unfolded due to mistake. He further admitted that on the second page the writing of the agreement to sell (Narration) is only on 1/3rd page and remaining was blank.

Learned First Appellate Court has also misread the evidence. Learned First Appellate Court has based its entire judgment on the statement of Bant Singh wherein he states as under:-

“Whatever he earned from his agricultural land he used to give that to me, my brother and also used to give in charity (reference to 'he' is to Bhuja Ram @ Bhuja Singh).”

Learned First Appellate Court at more than two places have interpreted this evidence to record that Bant Singh has admitted that Bhuja Ram @ Bhuja Singh never used to give part of his earning to his nephews but was giving everything in charity. In the considered opinion of this Court, such finding is clearly misreading of the judgment.

Bhuja Ram @ Bhuja Singh was approximately 75 years of age, who was issueless and his wife had pre-deceased him. He executed a registered Will in favour of defendant No.1 on 05.04.1882. Even if it is assumed for the sake of arguments that Bhuja Ram @ Bhuja Singh was annoyed with inter se fight between two nephews i.e. defendants No.1 and 2 still Bhuja Ram @ Bhuja Singh once again executed a subsequent Will on 27.09.1982 bequeathing his entire land in equal share in defendants No.1

and 2. If Bhuja Ram @ Bhuja Singh had executed an agreement to sell on 24.09.1982 there was no occasion for him to execute a registered Will in favour of defendants No.1 and 2 on 27.09.1982.

Still further, a careful reading of the cross-examination of Darshan Singh (one of the plaintiff), who has appeared in evidence states that the other plaintiff i.e. Shingara Singh had seen the revenue record and visited the village. However, Shingara Singh has not stepped in the witness box. On careful reading of the cross examination of Darshan Singh plaintiff, it is apparent that he is not candid in the Court and conceals more that he reveals. He does not have means to purchase the land. Mazhail Singh, the other marginal witness has also not been examined in the evidence.

Learned First Appellate Court has also erred in recording a finding that the plaintiff was not required to prove source of earnest money.

In the considered opinion of this case where allegations are that thumb mark taken on blank papers have been misused, it was incumbent on the plaintiff to prove payment of huge earnest money of Rs.1,30,000/- in the year 1982. It is admitted by Darshan Singh that he does not maintain any bank account.

Still further, it is the allegation of the plaintiff that Bhuja Ram @ Bhuja Singh was accompanied by defendants No.1 and 2 when agreement to sell was executed. However, neither presence of defendants No.1 and 2 have been noted anywhere nor thumb impressions or signatures have been obtained.

Still further, learned First Appellate Court has further erred in examining the case as a Will of the testamentary document of Bhuja Ram

@ Bhuja Singh is in issue. The point which needed determination in the present litigation was only that whether the agreement is proved or not?

In view of the discussion made above, this Court has come to the conclusion that plaintiffs have failed to prove that any agreement to sell was entered into with free will and violation of the Late Sh. Bhuj Singh or any earnest money was paid to him.

Hence, both the questions are answered in favour of the appellants. While setting aside the judgment and decree passed by the learned First Appellate Court, that of learned trial Court is restored.

Regular second appeals are allowed.

16.05.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

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