

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

RSA No.1899 of 1995

Date of Decision:21.12.2018

Pritpal Singh (since deceased) through LRs

...Appellant(s)

Versus

Major Singh and others

...Respondent(s)

RSA No.2011 of 1995

Leela Devi widow of Harbhajan Singh

...Appellant(s)

Versus

Janak Singh (since deceased) through LRs and others

...Respondent(s)

RSA No.2186 of 2013

Mohinder Singh and others

...Appellant(s)

Versus

Leela Devi and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Amit Jain, Advocate, and
Mr. M.K.Singla, Advocate,
for the appellants (in RSA No.2011-1995 and
RSA No.1899 of 1995) and
for the respondents(in RSA No.2186 of 2013)
Mr. Dinesh Kumar, Advocate,
for the appellant (in RSA No.2186 of 2013)
Mr. Vikas Singh, Advocate,
for respondent no.3(in RSA No.2011-1995)
Mr. Vivek Suri, Advocate,
for respondents no.1, 2 and 8(in RSA No.2011-1995)
Mr. P.S.Jammu, Advocate,
for respondent no.1 (in RSA No.1899 of 1995)

ANIL KSHETARPAL, J.

By this judgment, three regular second appeals bearing RSA
Nos.1899, 2011 of 1995 and 2186 of 2013 shall stand disposed of. Learned
counsel for the parties have admitted that the decision in RSA Nos.1899 and

2011 of 1995 would also determine the fate of RSA No.2186 of 2013, although arising from a subsequent different suit.

The plaintiff-appellant is in the regular second appeal through her legal heirs against the judgment of the learned first appellate court. Late Smt.Daropti Devi, widow of Sh.Nathu Ram had filed a suit, challenging the judgment and decree passed by the court date 26.9.1978 with her consent under Order 12 Rule 6 of the Code of Civil Procedure. The defendants are children of brother of Late Smt.Daropti Devi. She was a big land owner but having no child. She gifted three acres of land to Smt.Leela Devi, wife of Harbhajan Singh, daughter-in-law of her husband's brother Hira Singh. Thereafter she transferred 8 acres of land in favour of Anil Kumar, who is grandson of Hira Singh, her husband's brother through sale-deed.

Late Smt.Daropti Devi in the present suit claims that the decree passed is on account of misrepresentation. She had admitted that she appointed Didar Singh-defendant No.1 as her general power of attorney on 8.3.1978. Didar Singh is son of brother of Late Smt.Daropti Devi. It is pleaded case of the plaintiff that under the pretext of redemption of mortgage, her thumb impressions were obtained.

Defendant No.1 Didar Singh only contested the suit. It was pleaded that decree suffered by Smt.Dropati Devi of her own sweet will and volition and there was no misrepresentation.

The learned trial court, on appreciation of evidence, decreed the suit by recording the finding that Smt.Dropati Devi did not appear in the previous suit which resulted into decree dated 26.9.1978. However, before the learned first appellate court, application for additional evidence was filed as certain documents which had been produced before the learned trial

court were not exhibited. These documents are: (i) statement of Late Smt.Daropti Devi dated 23.4.1980, wherein she stated that she wants to live with children of her brother and not with the children of her husband's brother as she apprehends that she would be killed by them when she appeared before the court of Judicial Magistrate 1st Class, (ii) mutation proceedings, wherein she made a request for entering the name of defendants in the revenue record in accordance with civil court decree dated 26.9.1978, subject matter of challenge in the present suit and (iii) written statement of Late Smt.Daropti Devi in a suit for recovery, wherein she admitted that she had suffered a decree in favour of defendants.

On the basis of documents, which have been produced in additional evidence, the first appeal was allowed and the judgment of the learned trial court was reversed.

The appeals which were admitted had come up for final disposal and noticing the fact that the plaintiffs have not been granted the opportunity to lead counter evidence, the learned first appellate court was directed to provide opportunity to both the parties to lead their evidence and send a report vide order dated 18.5.2018, which is extracted as under:-

“Vide order dated 18.5.2018 passed by the Hon'ble High Court in 2011 of 1995 (O&M), RSA No.2186 of 2013 (O&M) and RSA No.1899 of 1995 (O&M), this Court was directed to sent report after granting opportunity to both the parties to lead additional evidence. After receipt of this order by this Court, notice was given to both the parties on 04.07.2018. thereafter the case was fixed for respondent evidence and three opportunities were granted to lead evidence but no evidence was led by both the parties.

Budh Singh vide his separate statement has submitted that he does not want to lead any evidence in this case and

closed his evidence.

Hardev Singh attorney of Leela Devi and Major Singh respondent as well as attorney of Gurdev Kaur, Sukhdev Singh and Kamaljit Kaur vide their separate statement have submitted that they do not want to lead any evidence in this case and closed their evidence. As already stated above no evidence was led by any of the parties despite opportunities were granted to them. Parties are represented by their respective counsel. Hence the report is submitted herewith.”

Learned first appellate court has failed to forward a proper report, however, the entire record of the evidence recorded has been forwarded and since the appeal is pending for the last more than 23 years, therefore, this Court has heard the arguments at length and with the able assistance of learned counsel for the parties have gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant in RSA No.1899 of 1995 has submitted that Late Smt.Daropti Devi herself had filed a suit and claimed that the decree was result of misrepresentation and impersonation. He has further submitted that the defendants had taken a plea that they perfected their title by way of adverse possession which is not established from the revenue record. He has also submitted that Late Smt.Daropti Devi was examined in evidence and she has supported her pleadings and it is not proved that Late Smt.Daropti Devi ever appeared in the previous suit which resulted into a decree dated 26.9.1978.

Learned counsel for the appellant in RSA No.2011 of 1995 has adopted the arguments of learned counsel for the appellant in RSA No.1899 of 1995

On the other hand, learned counsel for the respondents have

pointed out that Late Smt.Daropti Devi had already transferred 11 acres of land to the name of family of brother of her husband. He further submitted that thumb impersonations of Late Smt.Daropti Devi have been proved through examination of Fingerprint and Handwriting Expert, who has submitted his report and has also appeared in the evidence and supported the case of the defendants. Learned counsel has further referred to the documents produced in the additional evidence go to prove that Late Smt.Daropti Devi had suffered a decree with her free will and volition, however, later on Late Smt.Daropti Devi had changed her mind and under the influence of children of her husband's brother, she had filed the present suit.

As regards first argument of the learned counsel for the appellant, it may be noted that the plaintiff Late Smt.Daropti Devi filed a suit herself but that itself cannot be a ground to set aside the valid decree passed by the court. The suit was filed on 4.9.1980, i.e. approximately two years after the decree was passed. In the meantime, she had suffered a statement before the Judicial Magistrate 1st Class on 15.3.1978. She had filed a written statement in a separate suit for recovery, admitting the correctness of the decree passed and also appeared before the revenue authorities where her statement was recorded, of course not on oath, but opportunity was given to other party to cross-examine her. On 23.5.1980, she had requested that mutation be sanctioned in accordance with the decree passed. In view thereof, the decree passed by the court in the previous suit cannot be set aside only on the ground that she has herself filed the suit.

No doubt, in the previous suit filed by the defendants-respondents, it was pleaded by the plaintiffs that they have perfected their

title by way of adverse possession. Late Smt.Daropti Devi appeared through counsel and filed the written statement, admitting the claim of the plaintiff in the aforesaid suit. Even on the date of judgment, she was recorded to be present along with her counsel and her counsel admitted the case set up by the plaintiff in the aforesaid suit. In these circumstances, in the subsequent suit, the court cannot go behind the decree unless it is proved on file that the decree is result of fraud and impersonation. No doubt, the revenue record does not support the case of defendants with regard to plea of adverse possession, however, the revenue record has presumption of truth which is rebuttable. In the previous suit, the presumption stood rebutted by admission of Late Smt.Daropti Devi, who was defendant in the aforesaid suit.

Next argument of learned counsel that Late Smt.Daropti Devi has supported her pleadings by appearing in evidence would not also advance the case of the plaintiff. Oral evidence supported the pleadings has to be considered by the court while appreciating the evidence. Merely because the plaintiff, who was an old lady, had appeared in evidence cannot be made the basis to decree the suit itself.

As regards next argument that Late Smt.Daropti Devi did not appear in the previous suit, learned counsel has submitted that her thumb impressions when compared by the Fingerprint and Handwriting Expert examined by the defendants, the same were found beyond comparison and therefore, the opinion of the Expert does not prove that Late Smt.Daropti Devi had appeared in evidence.

This Court has carefully perused the report, which is Ex.DW7/A on the file. In the previous suit, Late Smt.Daropti Devi had filed

an application dated 3.11.1979, which is Ex.P2 relating to the disputed mutation. Her thumb impressions below the statement dated 23.5.1980 were also examined along with the thumb impressions under the statement dated 15.3.1978. Thumb impressions on her statement dated 9.1.1981 were also examined and her thumb impressions on the sale-deed were also compared. On comparison, the Fingerprint and Handwriting Expert found that except DW5/A, which was a thumb impression on the sale-deed at the time of endorsement, remaining thumb impressions were comparable. The aforesaid expert also appeared in evidence as DW7 and proved his report. Opportunity was given to the counsel for the plaintiff to cross-examine that Expert. However, on careful perusal of the report and cross-examination, it is apparent that the evidence of the expert could not be impeached in the cross-examination. Still further, it was Late Smt.Daropti Devi (plaintiff) who had filed the suit, she has to stand on her own legs. In the present suit, the plaintiff did not make any effort to compare the thumb impressions on the written statement as well as on Vakalatnama. Even if it is presumed for the argument sake that the thumb impressions on the written statement and Vakalatnama were not comparable, still there were other thumb impressions available for comparison like the thumb impressions when she appeared before the revenue authorities. She had also filed a written statement in the recovery suit dated 14.1.1980. She had also suffered a statement in the proceedings before the Judicial Magistrate when she apprehended that children of her husband's brother are likely to kill her. That statement also bore her thumb impressions but no effort was made to compare her thumb impressions. In view of overwhelming evidence, it is proved on file that it was Late Smt.Daropti Devi who had suffered a decree.

Learned counsel for the appellant has further submitted that effort was made to summon the record. After the report was sought by this Court, it was found that the record has been destroyed. It may be noted that Fingerprint and Handwriting Expert-Diwan K.S.Puri (DW-7) when made comparison, he had specifically referred to summoned files from the revenue authorities as well as from the civil court and from the court of Judicial Magistrate 1st Class. Once the plaintiff at that time failed to examine that thumb impressions, now the plaintiff cannot take advantage of her own wrong.

Learned counsel for the appellant further submitted that if we read the statement of Late Smt.Daropti Devi in the mutation proceedings, it is apparent that she had stated that no suit had been filed against her and she would remain owner during her life time and she had given land to her nephews for cultivation. No doubt, Late Smt.Daropti Devi when appeared in cross-examination, in the proceedings for sanction of mutation, had stated so but in examination-in-chief has stated that mutation be sanctioned in favour of her nephews (brother's children), in accordance with civil court decree.

No doubt, during the pendency of the appeal CM No1296-C of 2006 has been filed for disposal of the appeal, in terms of compromise except against Jagir Singh. However, learned counsel for the respondents has stated that the settlement which was arrived at has not been honoured by the appellant and therefore, he has now instructions to oppose this application.

Keeping in view the fact that the compromise is not with all the defendants-respondents and application under Order 23 Rule 3 of the Code

of Civil Procedure before this Court is pending for the last 14 years but never pressed, this Court now at this stage when defendants-respondents are denying that any settlement has matured, therefore, no decree thereupon can be passed.

Learned counsel for the appellant has further submitted that Nand Lal, Advocate, who represented Late Smt.Daropti Devi in the suit which resulted into a decree on 26.9.1978, stated that Late Smt.Daropti Devi was approximately of 50 years of age and he was requested to appear on her behalf in the aforesaid suit.

In the considered view of this Court, on these small variations, a judgment and decree passed by the court of competent jurisdiction cannot be set aside. A consent decree under Order 12 Rule 6 of the Code of Civil Procedure is basically a contract between the parties with a seal of the court, of course, it has more credibility than a mere contract because the court has also applied its mind after both the parties have come to a consensus, however, such judgment and decree cannot be set aside on these small variations in oral evidence.

For the reasons recorded above, **RSA Nos.1899 and 2011 of 1995** are dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

As regards **RSA No.2186 of 2013**, it may be noted that counsels have already made a statement that the judgment passed in the aforesaid two appeals would also govern the result of the present RSA.

In the present case, the plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The plaintiffs had filed a suit for declaration that they have become owners in possession of land measuring 27 kanals and 12 marlas by prescription of time on expiry of a period of redemption of mortgage.

Defendant No.1 had contested the suit on the ground that the plaintiffs have never remained in possession and now defendants No.4, 6, 7, 8 and 14 are owners in possession of the property.

The courts have noticed that it was a usufructuary mortgage with no period for redemption of mortgage prescribed, while relying upon a Full Bench judgment of this Court in **Ram Kishan and others Vs. Sheo Ram and others, 2008(1) PLR (P&H) (FB)**. This judgment has been affirmed by the Hon'ble Supreme Court in the case of **Singh Ram Vs. Sheo Ram, (2014) 9 SCC 185**.

In view of the aforesaid discussion, there is no ground to interfere with the concurrent findings of fact. Regular Second Appeal No.2186 of 2013 is also dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

21.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No