

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

**RSA No.2930 of 1996 (O&M)
Date of decision:22.02.2018**

Shanti Devi (since deceased) through LRs ... Appellant

Vs.

Jagan Devi and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Keshav Pratap Singh, Advocate
for the appellant.

Mr. Rohit Ahuja, Advocate
for Lrs of Shanti Devi except Goran Devi.

Mr. C.B.Goel, Advocate
for the respondent(s).

AMIT RAWAL J.

The appellant-defendant is in Regular Second Appeal against the judgment and decree dated 07.10.1996, passed by the Lower Appellate Court, whereby, the suit for permanent injunction has been decreed by reversing the judgment and decree dated 14.10.1991 of the trial Court.

The plaintiffs instituted a suit for permanent injunction restraining the defendant from interfering into the peaceful possession to the extent of of 1/3rd share in the agricultural land measuring 31 kanals 4 marlas situated within the revenue estate of village Bisar Akbarpur, Tehsil Nuh, District Gurgaon; with alternative prayer for joint possession challenging the sale deed dated 14.06.1973 being fraudulent and void qua their share. It was averred that plaintiff was the owner in possession to the extent of 1/3rd

share in the agricultural land mentioned in para 1 of the plaint and defendant wrongly claimed herself to be the purchaser of the land from Ram Saran son of Bhambar and the plaintiff on the basis of the sale deed, *ibid*, which was never executed in favour of defendant continued to be the owner in possession to the extent of her share in the land. The plaintiffs never received any sale consideration and she came to know about the fraudulent transaction when she came to the village to mourn the death of Ram Saran. Resultantly, the suit was filed on 28.02.1984.

The defendant contested the suit by controverting that the plaintiff was neither owner nor in possession of the suit land to the extent of 1/3rd share as she had no right, title or interest in the land in dispute, for , the plaintiff alongwith her brother Ram Saran had already parted with ownership vide registered sale deed dated 14.6.1973 for a sale consideration of Rs.15,000/- which was identified by Sarpanch of the village. Even the mutation on the basis of the sale deed, aforementioned was also sanctioned in favour of defendant no.1. The factum of fraud having been played upon the plaintiffs was emphatically denied. It was also stated that the suit was not maintainable.

On the basis of the aforementioned pleadings, the trial Court framed the following issues:-

- “1. Whether the sale deed dated 14.6.73 is illegal, fraudulent and ineffective on the grounds mentioned in the para no.2 of the plaint? OPP*
- 2. Whether the plaintiff is in joint possession of the suit*

property? OPP

3. *Whether the suit is not maintainable? OPD*

4. *Whether the plaintiff has no locus standi and cause of action to file the suit? OPD*

5. *Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD*

6. *Whether the suit is time barred? OPD*

7. *Relief.”*

The plaintiffs examined Jagan Devi as PW1, Jan Mohd., Registration Clerk as PW2, Jan Mohd as PW3, Som Nath Aggarwal Hand Writing and Finger Print Expert as PW4, Bhag Singh as PW5, Gopi Ram as PW6 and tendered copy of sale deed dated 14.6.1973 (Ex.P1), Muktiarnama dated 30.3.1984 (Ex.P2). Copy of jamabandi for the year 1978-79 (Ex.P3); copy of mutation No.255 (Ex.P5); copy of mutation No.248 (Ex.P6); copy of mutation no.248 (Ex.P8) and report of handwriting and finger print expert alongwith photographs and negative Ex.PW4/1 to Ex.PW4/11.

On the other hand, defendant-Shanti Devi appeared into witness box as DE3 and produced Mohan Lal Clerk HSEB Tauru as DE1, Jaipal Singh as DW2, Bhanwar Singh as DW4, Budh Singh, attesting witness of the registered sale deed as DW3. Yog Dhayan as DW6 and tendered copy of khasra girdawari for the year 1979-81 (Ex.D1). Copy of khasra girdawari for the year 1976-79 (Ex.D2), copy of mutation No.1172 (Ex.D3), copy of jamabandi for the year 1978-79 (Ex.D4), copy of mutation No.1172 (Ex.D5) . Copy of judgment in the civil suit no.220 of 1988 titled

as Amin Ram vs.Shanti Devi decided on 8.12.1988 Ex.D6, copy of decree sheet (Ex.D7) and copy of the sale deed dated 14.6.1973 (Mark A), report of approved valuer alongwith its detailed reasoning Ex.DW6/1 to Ex.DW6/3.

The trial Court on the basis of preponderance of evidence dismissed the suit but the Lower Appellate Court reversed the judgment and decree of the trial Court.

This Court, vide order dated 08.11.1996 while issuing notice of stayed the dispossession. The order reads thus:-

“Present: Mr. Rajmohan Singh, Advocate;

Notice of motion for 5.2.1997.

Stay dispossession.

8.11.1996

(G.C.GARG)
JUDGE”

The appeal was admitted by this Court, vide order dated 05.02.1997 which reads thus:-

“Present: Mr. R.M.Singh, Advocate.

No one appears in spite of service.

Admitted.

*Interim order passed on November 8, 1996 shall
continue till further orders.*

5.2.1997

(Jawahar Lal Gupta)
JUDGE”

Mr. Keshav Pratap Singh, learned counsel for the appellant-defendant submitted that judgment and decree of the Lower Appellate Court

is not only erroneous but perverse as it failed to notice the fact that registered document carried a presumption of truth which has not been demolished by any evidence, for, the sale deed dated 14.06.1973 was proved to have been validly executed by the plaintiff /respondent alongwith her brother Ram Saran. Even the possession of the land was duly given to the appellant which had been proved through khasra girdawari for the year 1979-80 (Ex.D1). The tube well had already been installed in the suit land, much less electric connection was also provided by the electricity department. The statements of DW3 to DW6 have gone un-rebutted on all material aspects. The handwriting expert proved the signatures of the plaintiff, therefore, failed to lead evidence as per the provisions of Order 6 Rule 4 CPC. The Lower Appellate Court abdicated in not noticing the fact that suit was filed after a lapse of 11 years from the date of the execution of the sale deed. During all this period, plaintiff remained silent and did not raise any objection. The sale deed in question was earlier challenged by Amin Lal son of Ram Saran in civil suit no.220 of 1988 titled as Amin Ram vs.Shanti Devi which was dismissed by the trial Court, vide judgment and decree dated 8.12.1988 (Ex.D6 and Ex.D7), wherein, the sale deed was held to be valid. The sale deed could not have been challenged in the manner and mode as indicated above. The report of the handwriting expert was not admissible in evidence as comparison of the impression on the sale deed had not been done with the specimen thumb impression particularly when execution of the same has not been proved. All these factors have not been appreciated in the correct perspective, therefore, the impugned judgment is

liable to be set aside.

He further submitted that respondent-plaintiff did not appear in the Court in the presence of the defendant. As per the Power of Attorney Ex.PW2, she authorized one Siba Singh son of Lal Singh to pursue the case on 20.03.1984 but even Siba never appeared in the witness box.

Per contra, Mr. C.B.Goel, learned counsel for the respondent(s) submitted that the trial Court did not assign any single reason for forming an opinion for dismissal of the suit as the entire judgment is based upon the reference of the evidence without any application of mind but the Lower Appellate Court being the last Court of facts and law rightly appreciated the evidence in decreeing the suit. The defendant for the best known reasons has not examined any handwriting expert in evidence to counter the testimony of PW4. The expert compared the photographs Ex.PW4 to Ex.PW6, who found that they were not of the same person. The trial Court wrongly placed reliance upon the judgment and decree Ex.D6 and Ex.D7 which had not relevancy in the present case as they were not inter party and could not bind the plaintiff in any manner. The possession of the defendant was illegal and thus, urged this Court for dismissal of the appeal.

Mr. Rohit Ahuja, learned counsel appearing on behalf of LR's of Shanti Devi except Goran Devi submitted that all the legal representatives of Shanti Devi except Goran Devi had already compromised the matter.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the

view that there is no force and merit in the submissions of Mr. Keshav Pratap Singh.

In my view, limitation would not come in the way of the plaintiff-respondents, for, the suit can be filed from the date of the knowledge as per the provisions of Article 59 of the Limitation Act, which reads thus:-

59.	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.
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The defendant for the best known reasons has not examined any expert in his evidence to counter and rebut the testimony of PW4. Appellant-defendant Shanti Devi (since deceased) represented through legal representatives made a statement that she was present at the time of execution and registration of the sale deed and one Rasali was also present to whom she knew very well. Rasali had also put her thumb impressions on the sale deed in her presence but in cross-examination, she stated that she was not in a position to identify Rasali Devi. If at all, Rasali was known to Shanti Devi, she could have been very bold to identify Rasali. Endorsement made by Sub-Registrar showed that her husband Bagdawat had appeared on her behalf before the Sub Registrar and the aforementioned document did not carry the thumb impression/signatures of Shanti Devi. The other witness to the sale deed, i.e., Budhu, an attesting witness of the document was none else but the real brother of Shanti Devi, obviously he was expected to make

a favourable deposition. He also admitted that sale deed was thumb marked by Shanti Devi, whereas, as noticed above, it was not. Bagdawat, husband of Shanti Devi, for the reasons best known had not stepped into witness box. The second witness, Sahdev, Sarpanch had died before the statement of Budhu could be recorded. Shanti Devi admitted that Sahdev was well acquainted with his brother Budhu. Thus, defendant failed to prove that there was any impartial witness. Things do not end here. The plaintiffs had moved an application for directing the defendant to produce the original sale deed and answer was that the original had been misplaced. Defendant had admitted that prior to sale deed, there was an agreement to sell but the same has also not seen the light of day. On the contrary, expert compared the disputed thumb impressions found on the Special Power of Attorney Ex.P2 and thumb impressions put by Rasali on her statement recorded by the Court on 20.03.1984. Special Power of Attorney Ex.P2 had been proved through the testimony of PW3, who stated that executant had put her thumb impressions on the said document after it was read over and explained. The defendant failed to put any cross-examination to the aforementioned witness. It is settled law that in case, statement made in examination-in-chief is not subjected to cross-examination, the same would be admitted.

The defendant in the evidence did not dispute that Rasali had not appeared before the Court on 20.03.1984. The handwriting expert also compared the thumb impressions on two affidavits executed by Rasali, i.e., on 27.02.1984 and 28.02.1984. Both the affidavits were duly attested by Oath Commissioner and identified by K.S.Jain, Advocate. The expert also

examined the thumb impressions on the plaint and vakalantnama to form an opinion that they were not of the same person, therefore, there was no occasion for the Lower Appellate Court to discard the report of expert. In my view, evidence brought on record by the plaintiffs un-clinchly proved that Rasali had never executed disputed sale deed.

There is another aspect of the matter, mutation Ex.DE was affected on the basis of the sale deed which also carried a presumption of truth under Section 44 of Punjab Land Revenue Act, unless the same is rebutted. No evidence has been led to rebut the same. Even from perusal of Ex.D3, it was not proved that Rasali at the time of attestation and sanction was there. Defendant miserably failed to prove that document actually executed by Rasali. There is no force in the submission of Mr. Keshav Pratap Singh that improvement made by the defendant was in the knowledge of the plaintiffs, and therefore, suit was barred by law of limitation but fact of the matter is that no such improvement had been proved, therefore, the pleading was beyond evidence. The suit could not be said to be barred by law of limitation as relief of declaration qua joint possession was sought as every owner is owner of each and every inch of land until the same is partitioned.

As an upshot of my findings, I do not find any illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

February 22, 2018

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No