

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.323 of 1998 (O&M)

Date of Decision:22.11.2018

Kulbir Singh

...Appellant(s)

Versus

Ram Sarup (since deceased) through LRs

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Bhatia, Advocate for the appellant.
Mr.Vivek Aggarwal, Advocate for respondents No.1 to 3 & 5

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ANIL KSHETARPAL, J.

The defendant-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment of the learned trial court.

The plaintiff-respondent Ram Sarup was allotted the land, which was declared surplus in the hands of a big land owner Shiv Charan Goswami, as per the provisions of Ceiling Law as applicable on the agriculture land holdings. Ram Sarup, the plaintiff-respondent, filed this suit, challenging the alleged sale-deed executed with respect to land allotted to him dated 9.1.1983 on the ground that the aforesaid sale-deed is a result of impersonation and he never executed the aforesaid registered sale-deed. It is rather the case of the plaintiff-respondent that he never came to know about the aforesaid allotment of land in his favour and thereafter sale of the land and the moment he learnt he filed the present suit.

The defendant-appellant contested the suit and pleaded that in fact Ram Sarup had agreed to sell the property and thereafter executed the

sale-deed on receipt of consideration but now he has become greedy because the prices have increased.

The original sale-deed is part of the record as Mark 'A', whereas its photocopy has been exhibited. The plaintiff in order to prove examined a Fingerprint and Handwriting Expert Shri Y.P.Jain, who has opined that the standard thumb impressions of the plaintiff do not match/tally with the thumb impressions existing and affixed on the sale-deed. It may be noted that the Fingerprint and Handwriting Expert has also opined that although on some of the thumb impressions existing on the sale-deed have been superimposed, however, the fundamental and basic pattern of the standard thumb impressions as well as the thumb impressions as compared to the alleged thumb impressions of Ram Sarup-plaintiff-respondent do not match at all.

During the trial of the suit, the plaintiff filed an application on 13.8.1993, offering to give his thumb impressions to the Expert engaged by the opposite party so that he can also make a comparison. The aforesaid offer made was not in either way responded to by the learned counsel for the defendant-appellant. The statement recorded by the learned court on 13.8.1993 is extracted as under:-

“While Sh.Gian Chand Sharma, Fingerprint and Handwriting Expert was cross-examining my witness Sh.Yashpal Chand Jain, Fingerprint expert, the offer was made orally and, thereafter, on the directions of the court, the same offer was repeated in writing. The simple offer is that the plaintiff is ready to give his RTI and LTI samples to the expert of the opposite party for the latter's satisfaction beyond doubt. Since the opposite party has not responded with the offer either way, the case may not be lingered on and the offer would stand lapsed today itself.

Below the above reproduced statement suffered by Sh. Ram Sarup had put two thumb impressions one of right hand and second of left hand.

Although the learned trial court dismissed the suit, however, the learned first appellate court on reappreciation of evidence found that the suit filed by the plaintiff is entitled to be decreed in view of the evidence available on the file to prove impersonation of Ram Sarup.

Learned counsel for the appellant has submitted that the first appellate court has misread the statement of Kulbir Singh. He has further submitted that the suit filed for merely seeking possession was not maintainable, because cancellation of the sale-deed has not been sought for. He has further submitted that the learned first appellate court erred in recording a finding that since two attesting witnesses have not been examined by the defendant, therefore, the sale-deed is not proved.

As regards the first argument, no doubt, the learned first appellate court has committed a small error in reading the statement of Kulbir Singh, however, that is not material and hence does not result in reversal of a well reasoned judgment.

As regards the second argument with regard to maintainability of the suit, submission of learned counsel for the appellant is not correct. The plaintiff, while filing the suit, has specifically stated in para 2 of the plaint that he belongs to a Scheduled Caste and the aforesaid sale-deed is a result of impersonation. No doubt, in the prayer clause, the plaintiff did not seek setting aside of the sale-deed. However, once the plaintiff has been successful in proving that the sale-deed is result of impersonation, he was not required to seek cancellation of the sale-deed. In any case, the nature of the suit has to be determined by reading entire pleadings and not only by

reading the prayer clause. In the plaint, it has been pleaded by the plaintiff that the sale-deed is result of impersonation.

As regards the next argument of the learned counsel, no doubt, the cross-examination of attesting witnesses of the sale-deed not required to prove a registered sale, however, in the facts of the present case particularly when the plaintiff has pleaded that the sale-deed is result of impersonation, the plaintiff should have been well advised to examine the attesting witnesses. However, as a rule, it cannot be said that the attesting witnesses are required to be examined to prove execution of the sale-deed.

Learned counsel has also submitted that the first appellate court has also misread the sale-deed, wherein detail of the payment, as pleaded, has been given. He has referred to the statement and the argument of the learned counsel to that effect is correct.

In view of the aforesaid discussion, although, there is small misreading of the evidence of Kulbir Singh, however that would have no effect on the result of the case. Hence, the judgment and decree passed by the learned first appellate court is upheld, dismissing the appeal.

The regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

22.11.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No