

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

1. RSA No.4147 of 2006 (O&M)
Date of decision : 20.03.2018

Jaswant Singh

...Appellant

Versus

Chhindo

...Respondent

2. RSA No.4148 of 2006 (O&M)
Date of decision : 20.03.2018

Jaswant Singh

...Appellant

Versus

Chhindo

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gursimran Singh Madaan, Advocate for the appellant.

Mr. H.S. Batth, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

This order of mine shall dispose of the present appeals bearing RSA Nos.4147 and 4148 of 2006. A consolidated judgment is being passed with the consent of the learned counsel for the parties as the issues which require determination are common and the parties to both the appeals are same.

The respondent-plaintiff filed two suits for declaration claiming that he is owner in possession of land measuring 11 kanals 10 marlas in Civil Suit No.792/04.06.1994 and 32 kanals in Civil Suit No.793/04.06.1994. In both the cases, the plaintiff claimed that the plaintiff has not executed registered sale deeds with respect to the suit land and if there is any, the same is result of fraud and impersonation. The plaintiff further pleaded that he has not received any sale consideration.

On the other hand, the defendant-appellant in both the suits claimed that the plaintiff with free will and volition had executed two sale deeds First on 11.03.1994 transferring land measuring 11 kanals 10 marlas and second with respect to 32 kanals vide registered sale deed dated 11.03.1994 and thereafter, it is the defendant-appellant who is owner in possession. The defendant-appellant further claimed that the entire sale consideration has been paid.

Learned trial Court after appreciating the evidence available on the file, dismissed both the suits whereas learned First Appellate has chosen to reverse the judgments passed by the trial Court in both the cases.

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

1. Whether the First Appellate Court is justified in reversing the judgment of the trial Court without reversing the finding of the trial Court?
2. Whether opinion given in the report of a private expert with respect to the thumb impressions is binding on the Civil Court?
3. Whether non-payment of the sale consideration before the Sub-

Registrar is sufficient to set aside the sale deeds particularly when it is recorded in the sale deeds that the entire sale consideration has already been received?

Now the stage is set for considering the questions of law:-

1. Whether the First Appellate Court is justified in reversing the judgment of the trial Court without reversing the finding of the trial Court?
2. Whether opinion given in the report of a private expert with respect to the thumb impressions is binding on the Civil Court?

Learned trial Court after appreciating the evidence available on the file has recorded about the conduct of the plaintiff, which reads as under:-

“Conduct of the plaintiff is such that he has denied thumb impression over point A B on the plaint, over affidavit and over the application U/o 39 Rule 1 & 2 read with Section 151 CPC at point C and D. From these lines, of the plaintiff is can be very well assumed that when plaintiff Gurnam Singh is denying his thumb impression over the documents available on the file, it is possible for him to deny the factum of scribing of sale deed in favour of Jaswant Singh, defendant. It is pertinent to mention that this instant civil suit was filed/instituted at the instance of Gurnam Singh himself but while deposing in witness box he is denying his signatures on the very first base of the suit i.e. plaint and on this score only, the suit of the plaintiff can be dismissed because from his cross-examination, it can easily be held that suit is not instituted by plaintiff Gurnam Singh. Not going into such extreme step. I would like to hold that plaintiff/Gurnam Singh is habitual of denying his signatures/thumb impression and this habit on the part of plaintiff would have compelled him to file suit for

declaration regarding 11K-10 Marlas of land which he has previously sold to Jaswant Singh defendant vide sale deed dated 9/3/1994 (Ex.D1).”

Learned First Appellate Court has not discussed the findings arrived at by the learned trial Court. In both these cases, the plaintiff filed a suit by putting his thumb impressions on the plaint. Alongwith the plaint, the plaintiff filed affidavit and also filed an application for temporary injunction under Order 39 Rules 1 and 2. These pleadings bear the thumb impressions of the plaintiff-respondent. However, when the plaintiff appeared in evidence, he denied that he has thumb marked his pleadings, affidavit or application for grant of temporary injunction.

Learned trial Court further noticed that the plaintiff-Gurnam Singh is habitual of denying his thumb impressions or signatures. However, the First Appellate Court has overlooked the same. In order to prove the execution of the registered sale deeds, the defendant has examined both the marginal witnesses i.e. Major Singh and Harbhajan Singh. Major Singh and Harbhajan Singh are Sarpanch and Numberdar of the village where the plaintiff resides. Both these witnesses have stated that the sale deed was executed by the plaintiff voluntarily. The plaintiff has even gone to the extent of denying that he does not know the marginal witnesses who are Sarpanch and Numberdar of his village. Both the parties examined their private Finger Print and Hand Writing Experts. The opinion by both the experts is contrary to each other.

Learned First appellate Court has relied upon an opinion given by the expert examined by the plaintiff on the ground that he is more

qualified and experienced.

In the considered opinion of this Court, first of all an opinion of the expert is not binding on the Court. Secondly, in the present case, the plaintiff has examined Dewan K.S. Puri as a Handwriting and Finger Print Expert. It is not disputed that the plaintiff had denied his thumb impressions on the pleadings of these suits. Dewan K.S. Puri himself did not come forward to take photograph of the disputed thumb impressions or standard thumb impressions. The photographs were taken by a Photographer who had thereafter supplied these photographs to Dewan K.S. Puri, on basis whereof the report was prepared.

In the considered opinion of this Court, once the plaintiff had went to the extent of denying his own thumb impressions on the plaint supporting the affidavit and application for temporary injunction, the Court should have dismissed the suit there and then. It is clear that the suit was not instituted by the plaintiff.

In this case, the direct evidence i.e. two marginal witnesses had been examined. Both the witnesses have supported the execution of the sale deed. In view of the direct evidence being available, the First Appellate Court committed an error in relying upon the opinion of the expert. Learned First Appellate Court further committed an error in giving preference of one opinion of the private expert on the ground that he is better qualified. It is the quality of the report which has to weigh with the Court rather than qualification of the expert.

The original record has been summoned. This Court with the help of magnifying glass has tried to compare the thumb impressions. The

thumb impressions available on the registered sale deed, original whereof is part of the record, are comparable with the thumb impressions of the plaintiff on the plaint, affidavit and application for temporary injunction. The Courts below have not even compared the thumb impressions which the plaintiff had put when he appeared in the evidence. Such being the position, the First Appellate Court has committed an error in relying upon the report of the Handwriting and Finger Print Expert to arrive at a finding that sale deeds are not executed by plaintiff.

It is well settled that the opinion of the expert is not binding on the Civil Court as it is only an opinion.

Hence, the question of law Nos.1 and 2 are answered in favour of the appellant.

3. Whether non-payment of the sale consideration before the Sub-Registrar is sufficient to set aside the sale deed particularly when it is recorded in the sale deeds that the entire sale consideration has already been received?

It is not in dispute that in both the registered sale deeds dated 11.03.1994, it has been narrated that the entire sale consideration has already been received. The sale deeds have been executed on a non-judicial stamp papers. In both the cases, the sale deed is spread over 4-5 non-judicial stamp papers. All the pages have been thumb marked by plaintiff-Gurnam Singh. Even before the Sub-Registrar, Gurnam Singh has put his two thumb impressions. The registered sale deed has a presumption of having been executed and registered, in accordance with law. Merely because there was no payment before the Sub-Registrar, the registered sale deed cannot be set aside. Before the Sub-Registrar, the plaintiff while getting the sale deed

registered, has admitted that he has already received the payment.

In these circumstances, the First Appellate Court committed an error in overlooking the aforesaid piece of evidence. Still further, non-payment of the sale consideration cannot be made a ground to set aside the sale deed. As per Section 55 of the Transfer of Property Act, the Vendor only has a right to recover the unpaid sale consideration and such amount would be a charge on the property. The plaintiff while appearing in the witness-box has admitted that it is the defendant-appellant who is in possession of the property. This fact also proves that there was a sale deed executed pursuant whereof the defendant has been put in possession.

Hence, question of law No.3 is also answered in favour of the appellant.

Learned First Appellate Court has also drawn adverse inference as the defendant has not appeared in the witness-box while leading his evidence. In the considered opinion of this Court, non-appearance of a party entitles the Court to draw adverse inference. However, adverse inference can only be drawn when the other party is able to prove the same prejudice caused on account of non-appearance. In all the cases, adverse inference on account of non-appearance of the party cannot be drawn. Here is a case where the registered sale deed had been executed in favour of the defendant. The defendant had examined both the marginal witnesses to prove the due execution of the sale deeds. Once sufficient evidence was available, adverse inference could not be drawn against the defendants. Reference in this regard, can be made to the judgment passed by Hon'ble the Supreme Court in *(1981) 4 SCC 569 titled as Pandurang Jivaji Apte Vs. Ramchandra*

Gangadhar Ashtekar (dead) by LRs and others.

No other argument was addressed.

In view of the discussions made above, the judgments passed by the First Appellate Court in both the suits are set aside and that of the trial Court are restored.

Both the Regular Second Appeals are allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

20.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No