

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

**RSA No.3684 of 2008 (O&M)
Date of Decision:26.06.2018**

Mangat Ram and others

...Appellants

Versus

Gian Singh (deceased) through LRs and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Rai Singh Chauhan, Advocate and
Ms. Jaspreet Kaur, Advocate
for the appellants.
Mr. N. K. Banka, DAG, Punjab.
Mr. Avnish Mittal, Advocate
for respondent Nos.2 and 3.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment and decree dated 13.7.1992 passed by the learned trial court, while deciding a suit for specific performance of the agreement to sell dated 13.7.1992.

In the considered opinion of this Court, following substantial questions of law arise for consideration of this Court:-

- (i) Whether the judgment passed by the learned first appellate court is a result of misreading and non-reading of evidence available on the file?
- (ii) Whether a previous judgment passed by the court inter parties with regard to finding as to which party is in possession, can be ignored by the court in a subsequent suit?

The plaintiffs filed a suit for specific performance of the agreement to sell dated 13.7.1992 while asserting that the land measuring 131 kanals and 16 marlas was agreed to be sold being 3/4th share of the total land measuring 174 kanals and 8 marlas and in the alternative for recovery of an amount of ₹2 lacs with consequential relief of permanent injunction.

Defendants No.1 and 2, who are owners, asserted that the agreement to sell dated 13.7.1992 is forged and fabricated. They pleaded that the agreement to sell has been prepared while tracing their signatures from the sale-deeds executed on the same day in favour of the plaintiffs and thus the agreement to sell is forged and fabricated. Defendants No.1 and 2 further pleaded that in fact they had entered into an agreement to sell with defendant No.3, brother of plaintiffs No.1 and 2, on 17.5.1993 regarding 88 kanals of land for a sale consideration of ₹10,45,000/- and also executed another agreement to sell for remaining land measuring 43 kanals and 4 marlas also in favour of defendant No.3 @ ₹95,000/- per acre. Defendants No.1 and 2 further pleaded that they have appointed Smt.Surjit Kaur wife of Ram Singh as their attorney for execution of the sale-deed. The defendants further asserted that the scribe of the alleged forged agreement to sell dated 13.7.1992 is a man of doubtful integrity.

Defendant No.3 filed written statement and reiterated the assertions made by defendants No.1 and 2 and pleaded that he is in possession of the property.

On appreciation of evidence, the learned trial court found that the agreement to sell is result of forgery. Hence, the suit filed by the plaintiffs was dismissed. However, as noticed earlier, learned first appellate

court chose to reverse the aforesaid findings.

It will be significant to note that defendants No.1 and 2 had sold the land measuring 43 kanals and 12 marlas in favour of the plaintiffs vide two sale-deeds dated 13.7.1992, correctness whereof is not being disputed. The two marginal witnesses of the afore-said two sale-deeds are Pale Singh, Nambardar and Hansraj, Municipal Councilor, Ferozepur. The afore-said sale-deeds were scribed by Shri Ramesh Chawla.

In the present case, admitted signatures of defendants No.1 and 2-appellants put on the same date, i.e. 13.7.1992 on the original sale-deeds are Ex.DW1/D and Ex.DW1/E. Apart therefrom, two admitted agreements to sell executed by defendants No.1 and 2 in favour of defendant No.3 are also available on the record.

Both the parties have examined Fingerprint and Handwriting Expert, who have given contradictory opinions. Hence, it is left to the court to decide the case.

Now, the stage is set for consideration the above-mentioned substantial questions of law, which have framed in the earlier part of the judgment.

The alleged forged agreement to sell is Ex.P2. Signatures of defendants No.1 and 2 are on page 2 of the agreement to sell. If one carefully examines more than 10 signatures put by defendants No.1, who is a Retired Lieutenant Colonel from Indian Army with signatures on the alleged agreement to sell dated 13.7.1992, it is apparent that an attempt has been made to copy the signatures. All the signatures of defendants No.1 and 2 available on sale-deeds Ex.DW1/D and Ex.DW1/E executed on the same

date, it is apparent that defendant No.1 used to sign in free flow of the pen. All the signatures are with good speed of the pen and are in running, whereas the alleged signatures on the alleged agreement to sell, Ex.P2 are with much stress of the pen and with very slow movement of the pen. At the cost of repetition, it will be significant to note that the signatures on the sale-deeds and alleged disputed signatures on the agreement to sell are of the same date.

Still further, Fingerprint and Handwriting Expert examined by defendants No.1 and 2, while preparing a report, has very aptly projected the difference between the signatures. He has found that formation of the first word/character of the signature on the alleged agreement to sell is entirely different when compared with the standard admitted signatures. The expert has further found that internal writing characteristics like turnings, curvings, junctions, eyelet formation, staff formation, hook formation, all are different.

On the other hand, the expert examined by the plaintiffs, when appeared in the evidence, has made significant admission. He admits that it is correct that the small letter 'a' formation in the disputed signature at the first stage is completely present and the same are not present in signatures (admitted) in complete form. He further admits that it is correct that there is pen lift and wide curve stroke in the beginning of the disputed signatures. Further, it is correct to suggest that the letter 'e' in D-1 has no eye-let or twisting of strokes on the upper side of the staff.

Similar is the position with regard to signatures of defendant No.2-Tilak Raj. On close scrutiny of the alleged signatures of Tilak Raj-
defendant No.2 on alleged agreement to sell and sale-deeds, it is apparent

that on the agreement to sell, the signatures are with shaky hand. Even formation of the first word/character of Tilak Raj is entirely different. The aforesaid difference is also very aptly pointed out by the expert examined by the defendants, who has enlarged those signatures and analysed each small part of the aforesaid signatures.

However, the learned first appellate court ignored these significant admissions of the Fingerprint and Hand Writing Expert, while reversing the finding arrived at by the learned trial court.

Still further, as per the alleged agreement to sell dated 13.7.1992, defendants No.1 and 2 had paid ₹1,00,000/- as earnest money against total sale consideration of ₹9,83,000/-. Out of earnest money of ₹1,00,000/- in the alleged agreement to sell, ₹65,000/- is said to have been paid by way of two bank drafts. It is the case of the plaintiffs that one day prior to the agreement to sell, talk for selling the remaining land was also finalized. On the same day, two sale-deeds were executed by defendants No.1 and 2 in favour of the plaintiffs depicting the total balance sale consideration paid ₹1,64,000/-. Out of the two bank drafts, bank draft of ₹65,000/- was got prepared on 11.7.1992. It is not explained if the talks for selling the land in dispute took place on 12.7.1992, how the bank draft was prepared a day prior for payment of the earnest money. Obviously the draft was prepared for paying the sale consideration which was payable on 13.7.1992 itself with respect to sale deeds executed and registered.

Still further, as per agreement to sell dated 13.7.1992, defendants No.1 and 2 are alleged to have delivered possession. Defendants No.1 and 2 filed a suit for permanent injunction on 30.3.1993, claiming that

they continued in possession and the plaintiffs in this suit (defendants in the previous suit) be restrained from interfering in their possession. The trial court recorded a finding that the possession is with defendants No.1 and 2 herein (who were plaintiffs in the previous suit). The aforesaid suit was with respect to the land measuring 174 kanals and 8 marlas, which included the land measuring 131 kanals and 16 marlas subject matter of dispute in the present litigation.

No doubt, the plaintiffs in the present suit and the defendants in the previous suit, pleaded about agreement to sell with respect to land measuring 131 kanals and 16 marlas, however, neither the date of the agreement was pleaded nor copy of the agreement to sell was produced in the previous suit. The aforesaid previous suit was decided against the plaintiffs herein. The court found that it is the plaintiffs in the previous suit and defendants herein, who are in possession of the property. Decree was also passed accordingly. The previous suit was decided on 7.6.1994, Ex.DA and Ex/DB on the trial court file. Therefore, the assertions of the plaintiffs in the present suit that they were delivered possession at the time of execution of the agreement to sell also stands falsified. The aforesaid judgment and decree inter parties has become final between the parties.

It has been noted by this Court that admitted sale-deeds dated 13.7.1992 executed by defendants No.1 and 2 are scribed by Sh.Ramesh Chander and attested by two marginal witnesses, who are respectable of the area, one Municipal Councilor and second Namberdar. However, the alleged agreement to sell of the same date executed in the same premises, the scribe as well as marginal witnesses are different.

It is the case of the plaintiffs that after registration of the sale-deed, the alleged agreement to sell was executed. Non-judicial stamp papers for execution and registration of the sale-deed are marked with Sr.Nos.2321 and 2320, whereas stamp paper on which the alleged agreement to sell has been written bears Sr.No.4487. If the case set up by the plaintiffs is examined, the plaintiffs submitted that on the previous date, i.e. on 12.7.1992, the deal for sale of land measuring 131 kanals and 16 marlas had also been finalized. Had that been the position, non-judicial stamp papers would have been purchased by the parties in one go and they would have been entered in the register of the stamp vendor in continuation. The difference of more than 2000 entries clearly creates a doubt about its genuineness. The stamp papers for alleged agreement to sell have not been purchased by defendants No.1 and 2.

The learned first appellate court has erred in not only ignoring the previous judgment and decree passed by the court on 7.6.1994 but has also ignored these material aspects as noticed by the learned trial court. The learned first appellate court has wrongly placed onus of every aspect on the defendants. The plaintiffs are to stand on their own legs. In case of allegations that the agreement to sell is forged and fabricated, it was the duty of the learned first appellate court to examine the evidence carefully. No doubt, normally the private expert gives opinion in favour of the party who engages him, however, in the present case, significant admission made by the private expert engaged by the plaintiffs themselves establishes beyond any reasonable doubt that the agreement to sell was the result of forgery.

Still further, the plaintiffs have not filed the suit with clean hands. The plaintiffs filed the suit on 23.12.1993, however, the plaintiffs did not disclose in the plaint that they had purchased the land measuring 43 kanals and 12 marlas vide sale-deed executed on the same date, i.e. 13.7.1992 from defendants No.1 and 2. The Plaintiffs further did not disclose that defendants No.1 and 2 had filed a previous suit on 30.3.1993, which was pending at that time.

No other arguments were raised.

In view of the abovesaid discussion, Regular Second Appeal is allowed. The judgment passed by the learned first appellate court is reversed and the judgment passed by the learned trial court is restored while accepting the appeal.

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

26.06.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No