

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

**(1) RSA No.4181 of 2012 (O&M)
Date of Order:27.11.2018**

Lakhpat Singh and others

..Appellants

Versus

Smt. Nirmal and others

..Respondents

(2) RSA No.4224 of 2012 (O&M)

Lakhpat Singh and others

..Appellants

Versus

Smt. Nirmal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Manoj Kumar Sood, Advocate,
for the appellants (in RSA No.4181 and 4224 of 2012)**

**Mr. Adarsh Jain, Advocate,
for respondent no.7(in RSA No.4181 of 2012)
for respondent no.11(in RSA No.4224 of 2012)**

**Mr. S.K.Garg Narwana, Sr. Advocate, with
Mr. Vishal Garg, Advocate,
for respondent No.1 (in RSA No.4181 and 4224 of 2012)**

**Mr. Sanjay Vashisth, Advocate,
for respondent no.2 (in RSA No.4181 of 2012)
for respondent no.6(in RSA No.4224 of 2012)**

ANIL KSHETARPAL, J.

By this judgment, two appeals i.e. Regular Second Appeal

Nos.4181 and 4224 of 2012 between the same parties represented by common counsels in an inter related suits shall stand disposed of. Counsel for the parties are also agreed that both the appeals can be disposed of by a common judgment.

Defendant no.1-appellant along with others are in the regular second appeal against the judgments passed by both the courts below granting decree for possession by way of specific performance of the agreement to sell and in the second suit decree for permanent injunction. In the considered view of this court, following substantial questions of law arise for consideration:-

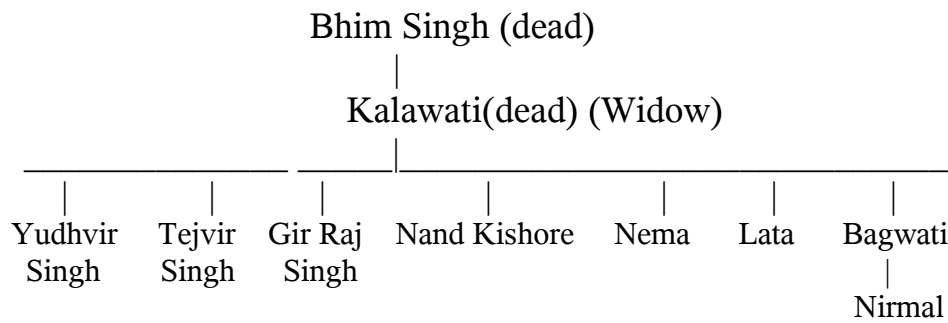
- (i) Whether courts must make sincere attempt to lift the veil and expose the sinister design even in civil litigation?
- (ii) Whether application for amendment of pleadings is allowed, courts can overlook the unamended pleadings part of the record?
- (iii) Whether an agreement to sell followed by execution and registration of the sale deed can be set aside on the basis of alleged suspicion which has no foundation at the time of entering into agreement to sell?
- (iv) Whether the judgment of conviction of a vendees in entirely unconnected cases can be made basis to set aside a registered sale deed?
- (v) Whether a report prepared in police investigation can be made basis to set aside a registered sale deed?

In the present appeals, since both the courts have failed to

appreciate the facts of the suits in proper perspective, therefore, this court has considered it appropriate to notice the facts in proper perspective.

FACTS

A pedigree table of the parties shall be necessary which is drawn as under:-



Bhim Singh was Numberdar and on his death, he had left behind widow Kalawati and his children. Kalawati had executed a registered sale deed in favour of appellant Lakhpat on 13.03.1997 with respect to land measuring 7 kanals and 2 marlas. Three sons of Smt. Kalawati namely, Gir Raj Singh, Yudhvair Singh and Tejvir Singh are marginal witnesses to the aforesaid registered sale deed. Entire effort is to get the sale deed set aside in which the family of Kalawati has remained successful by filing various litigations. Nand Kishore, son of Kalawati filed a separate suit challenging the sale deed executed and registered by Kalanwati on 13.03.1997 in which he failed before the courts below and regular second appeal is being decided by a separate judgment of even date. Present suit was filed on 29.03.1997 by Nirmal, grand daughter of Kalawati. Nirmal is daughter of Bagwati daughter of Kalawati. Thus a grand daughter has filed the suit for specific performance of the agreement to sell against her own maternal grand mother.

Nirmal alleges that her maternal grand mother entered into an agreement to sell with respect to land measuring 12 kanals and 6 marlas and

received an amount of Rs.50,000/- on 13.12.1995 at the time of execution of the agreement to sell and received Rs.30,000/- on 19.04.1996. She claims that since Kalawati is refusing to honor the agreement to sell, therefore, the suit was filed.

In the aforesaid suit, apart from Kalawati, Lakhpatt, the appellant and other family members left by Bhim Singh were also impleaded as party defendants. Smt. Kalawati in the written statement (unamended) admitted execution and registration of the sale deed in favour of Lakhpatt and denied execution of any agreement to sell in favour of Nirmal (her grand daughter).

Defendant no.4 Gir Raj Singh filed a written statement admitting the execution and registration of the sale deed, however denied payment of sale consideration. However, he admitted that Kalawati had entered into an agreement to sell with plaintiff Nirmal. Defendant no.5 filed a separate written statement which was to the same effect. Defendant no.6 also supported the plaintiff. Execution of the sale deed was admitted. However, it was claimed that the total consideration under the sale deed was Rs. 44,00,000/- and no payment has been made.

Since Smt. Kalawati was old, therefore, she filed an application under Order 18 Rule 16 CPC on 16.09.1997 requesting the court to record her statement first of all. Application was opposed by the plaintiff Nirmal. However, the court allowed the application and she was examined as DW1. She admitted execution of the sale deed in favour of Lakhpatt and admitted receipt of total sale consideration. She denied execution of the agreement to sell in favour of Nirmal. On careful reading of her statement which is available at page 563 of the trial court record, it is apparent that she has also

disclosed that the sale deed has been executed with the consent of family members and her three sons were present at the time of registration. She also state that Nirmal is her grand daughter. She further states that her youngest son Nand Kishore had confined her in his house and misbehaved. She further stated that the thumb impressions were taken by him on various blank papers forcibly. She went on to state that she was kept under lock and key and not allowed to meet anybody. She has gone to the extent of saying that Nand Kishore took away her keys and removed all valuables and thereafter started selling the land and even Nand Kishore went to the extent of creating a drama of divorcing his wife so as to usurp the property. She was permitted to be cross-examined by counsel representing the plaintiff, although it has been noticed as he is counsel for defendant.

After recording of this evidence an application is alleged to have been filed on behalf of Kalawati dated 23.04.1999 seeking to amend her written statement while withdrawing her admission with regard to the execution and registration of sale deed and her statement in the court. Before this application could be decided, Kalawati died on 30.07.1999. No doubt, application for impleading her legal heirs remained pending but the court allowed the application for amendment of the written statement vide order dated 27.11.2002, subject to proof of threat and coercion.

In the present case plaintiff Nirmal has not appeared in the evidence, Mange Ram (her husband) has appeared as a General Power of Attorney. He while appearing in evidence admit execution of the sale deed in favour of Lakhpat. It may be noted here that in a sperate suit filed by Nand Kishore three other sons of Kalawati had filed written statement Ex.DW1/26 wherein execution and registration of the sale deed was

admitted by them. In the aforesaid suit Kalawati had also filed a written statement admitting execution and registration of the sale deed. The written statement filed by Kalawati needs to be noticed. Para 13 of the written statement is extracted as under:-

“13. That Para No.13 of the plaint is wrong and is denied. The sale in favour of Deft. No.7 was for a valuable consideration of Rs.4,44,000/- in respect of the land measuring 7 kanals and 2 marlas and there is no question of any fraud in getting the sale deed executed. The sale was consciously executed by the Deft. No.4 and which fact was duly reiterated by her in her statement in court in another case. There is no question of Deft. No.7 hoodwinking or causing any loss of stamp. The submitting defts. is not aware of any such case u/s-47(A) of the Stamp Act. It is also wrong that the sale by Deft. No.4 in favour of Deft. No.7 is without legal necessity and consideration and more than the share of Deft. No.4 as alleged.”

The written statement is dated 06.05.1998, much after the execution of the sale deed. Her 3 sons have also filed written statement to the same effect in the suit filed by Nand Kishore, 4th son.

Kalawati also executed a registered will dated 14.01.1997 in which Lakhpat, the vendee-appellant No.1 is attesting witness. Lakhpat defendant-appellant has also produced agreement to sell in his favour executed on 08.12.1995.

It may be noted here that collusion between the family members

is further apparent because Lata filed an application for framing an additional issue with regard to the agreement to sell and sale deed for forged and fabricated execution of the agreement to sell dated 08.12.1995 and sale deed dated 13.03.1997 in favour of Lakhpat.

Both the courts neither examined the facts in proper perspective nor appreciated and looked into the evil design of Nand Kishore and other family members to get the sale deed in favour of Lakhpat set aside. Both the courts have not even noticed that Nirmal is grand daughter of Kalawati. Both the courts have also overlooked that Kalawati originally had filed written statement admitting the correctness of the sale deed and had denied execution of the agreement to sell. She had also appeared in evidence and suffered a statement as noted above. Both the courts were much impressed by the fact that a police complaint has been filed in which police has investigated and created a doubt about correctness of the agreement to sell dated 08.12.1995. The courts have further held that genuineness of the agreement to sell is also doubtful because Bhim Singh husband of Kalawati died on 29.11.1995 and it is not plausible to expect that old lady would agree to sell the property in less than 10 days from the date of death of her husband. The courts have further held that Kalawati and her three sons were under coercion. The courts have also taken note of the fact that since Kalawati executed a Will on 14.01.1997 in which Lakhpat defendnt no.1-appellant herein had signed as an attesting witness, therefore, the sale deed in his favour on 13.03.1997 is doubtful. The courts have further drawn inference that unamended written statement filed by Kalawati might have been dictated by Lakhpat because she in her written statement had denied pendency of litigation in the civil suit Tejvir etc. v. Kalawati which is

proved to be against record. The courts have also noted that the written statement filed by Lakhpat initially name of Kalawati was typed at the last page of the written statement and then scored off and then Lakhpat was written who had signed the written statement. On these basis the courts have further drawn inference that Lakhpat-appellant was having any undue influence on late Smt. Kalawati. There is some variation in the statement of Lakhpat with respect to time and place of payment of sale consideration. Courts have further held that admission made by Kalawati has been satisfactorily explained by her and therefore withdrawn. Lakhpat is habitual in forging the documents. Courts have further held that since in the amended written statement Kalawati has admitted the agreement to sell therefore, decree for specific performance was require to be passed.

The arguments of learned senior counsels appearing for the parties have been heard at length and with their able assistance this court has gone through the judgments passed by the courts below and the record.

In the considered opinion of this court, the inferences drawn by the learned courts below as noticed in the previous paragraph are without any substance. The courts have erred in being influenced by various different stands taken by family members of Kalawati at various stages.

Let us now discuss and examine each and every reason given by the courts below.

First reason i.e. in a police enquiry, the police has submitted a chargesheet holding that the agreement to sell dated 08.12.21995 is not genuine. In the considered view of this court, report of such police investigation cannot be binding on the civil court. Such police investigation is only a piece of evidence which can be considered by the civil court but the

civil court cannot base its conclusion on the police investigation. The civil court is required to appreciate the evidence available on the file independently and decide the case.

As regards the agreement to sell having been entered into, within 10 days from the date of death of her husband, it may be noted that it would always depend upon facts and circumstances. If one carefully examines the statement of Kalawati in court, when she appeared as DW1 she has stated that on the death of Bhim Singh she was taken to his house by Nand Kishore confined in a locked room, he misbehaved with her and got thumb impression on various papers. In the present case, the courts have drawn a strange inference that since the sale deed in favour of Kalawati is signed by all the three sons as attesting witnesses, therefore, the sale deed is presumed to be result of coercion. In the considered view of this court, the courts were not justified in drawing such inference particularly when parties were into heavy litigation. It has come on record that Bhim Singh had carved out a colony and divided the agricultural land into plots and thereafter sold it. Bhim Singh was Numberdar and all the sons of Kalawati are well educated.

Courts have further erred in drawing inference that since Lakhpat defendant no.1-appellant had also signed the registered will executed by Kalawati dated 14.01.1997 as attesting witness, therefore, the execution of the agreement to sell was doubtful. It may be noted here that copy of the Will is part of the record and Kalawati has not specified the property which she intends to bequeath. On careful reading of the Will, it is apparent that she has stated about misbehavior by her son Nand Kishore, but still she bequeathed the property in favour of all the four sons equally.

Rather this shows that Kalawati was having full faith in Lakhpat and

relationship between them were cordial.

The next reasons assigned by the courts that the written statement might have been dictated by defendant no.1 is also based on conjectures. The courts have further drawn inference that since in the unamended written statement Kalawati had denied pendency of litigation in civil suit-Tejvir etc. vs. Kalawati, therefore, the unamended written statement was on account of undue influence. In the considered view of this court, she was an old lady and if she forgot and stated an incorrect fact which is totally unrelated with the present litigation, therefore, the courts were not correct in drawing the inference as noted above.

Still further the courts have erred in drawing adverse inference even with respect to cutting on the last page in the written statement filed by Lakhpat where initially name of Kalawati was typed but later on it was scored off and Lakhpat was written and he had signed. In the considered view of this court, it is not in dispute that Lakhpat had filed a separate written statement whereas Kalawati had filed a separate written statement. Any error by the typist would not give an occasion to the court to draw inference that Kalawati was under the undue influence of Lakhpat.

As regards the variation in the statement of Lakhpat about the time when the sale consideration was paid becomes insignificant once Kalawati admit the execution of the sale deed and receipt of sale consideration in the unamended written statement as well as her statement on oath before the court. Coupled with that the written statement filed by three other sons in a suit filed by Nand Kishore wherein they admitted the execution of the sale deed as well as receipt of the sale consideration.

Learned courts have further erred in drawing inference that

since various cases have been registered against Lakhpat, therefore, he is habitual in forging the documents. No doubt, there is one judgment of the criminal court where Lakhpat has been convicted for forging the document. However, such inference cannot be drawn and such judgments would not be relevant for considering the validity of the sale deed. The facts available on the file are telling different story than what has been concluded by the courts below. The facts which have been noticed in the previous part of the judgment lead the court only to one conclusion and that is that family of Kalawati is bent upon to get the registered sale deed executed in favour of Lakhpat set aside by adopting all possible means.

Now let us discuss the alleged agreement to sell and whether plaintiff-respondent is entitled to specific performance of the agreement to sell or not?

In the considered view of this court, the courts were in error in granting relief of specific performance of the agreement to sell. The reasons are as under:-

- (i) Smt. Kalawati is maternal grand mother of Nirmal-plaintiff.
- (ii) She had stated in her evidence before the court in this suit that Nand Kishore had got her thumb impressions on various documents when she remained in his confinement.
- (iii) Nand Kishore had produced majority of evidence in the present litigation including various FIRs and other documents.
- (iv) Nirmal did not appear in evidence and face cross-

examination.

- (v) Agreement to sell is not proved to have been scribed by a regular deed writer which can prove that there was any genuine agreement to sell having entry in the register maintained by him.
- (vi) Lakhpat is not a member of the family and he is bonafide purchaser for valuable consideration.
- (vii) Mange Ram, her husband, has appeared as General Power of Attorney on behalf of Nirmal and on reading of his evidence, it is apparent that on the date fixed for execution and registration of the sale deed as per the alleged agreement to sell neither Nirmal visited the office of Sub-Registrar nor she got sent notice or any communication calling upon Kalawati to come and execute the sale deed as per the agreement to sell.
- (viii) The suit was filed one day before the target date fixed in the agreement to sell for execution and registration of the sale deed.
- (ix) He has stated that today he may be having Rs.75,000/- to Rs. 80,000/- in his account and he does not know what was his credit balance since 1995. Rs.50,000/-, the alleged earnest money is said to have been paid kept at house earned from the sale of agriculture produce. He further admitted that neither he nor in the bank account of Nirmal they had a bank balance of Rs.6,15,000/-, the amount of balance sale consideration.

Although, effort was made that he could have brought this amount from his Artia (commission agent).

- (x) On careful reading of the agreement to sell, it is apparent that the description of the land along with its khasra numbers etc. has been given. However, when Mange Ram appeared in evidence and he admitted that before execution of the agreement to sell, the copy of jamabandi had not been obtained from the revenue official.

Now the stage is set for answering the questions of law framed:-

QUESTION NO.(i)

Whether courts must make sincere attempt to lift the veil and expose the sinister design even in civil litigation?

It has been felt that the courts below have started deciding the cases in a perfunctory/cursory manner without making a sincere attempt to lift the veil and try to dig out what are the actual facts and evidence available. The facts of the present case clearly prove that the courts have failed to look into the sinister design of Nand Kishor to get rid of the registered sale deed executed by her mother, which was also signed by his 3 brothers, sons of Smt. Kalawati, the vendor.

Accordingly, Question No.(i) is answered in favour of the appellant.

QUESTION NO.(ii)

Whether application for amendment of pleadings is allowed, courts can overlook the unamended

pleadings part of the record?

It is well settled that merely because the amendment in the pleadings have been permitted, the original pleadings does not lose its significance. The original pleadings and the statements given in evidence before the amendment of the pleadings has to be looked into and considered by the courts while deciding the case. Admission made in the unamended written statement can be used by the court unless it has been successfully explained to be erroneous in the subsequent pleadings and evidence. In the present case, the amendment to the written statement was allowed subject to evidence of coercion or misrepresentation. However, courts subsequently overlooked the order earlier passed by the court while allowing the amendment and proceeded to decide the case only on the basis of amended pleadings, which was clearly erroneous.

Hence, Question No.(ii) is also answered in favour of the appellant.

QUESTION NO.(iii)

Whether an agreement to sell followed by execution and registration of the sale deed can be set aside on the basis of alleged suspicion which has no foundation at the time of entering into agreement to sell?

Once an agreement to sell is followed by execution and registration of the sale deed, the sale deed cannot be set aside only on the ground that there is some suspicion in the execution of the agreement to sell. The sale deed is executed and registered before the Registration Authority. Once a sale deed has been executed, the agreement to sell pales into insignificance. No doubt, in a particular case where unimpeachable evidence has come, the court can examine the validity of the sale deed while

making reference to the agreement to sell. But, normally once a sale deed has been executed and registered, the sale deed cannot be set aside on the basis of alleged suspicion of validity of the agreement to sell. In the present case, the alleged suspicion as inferred by the courts below has no foundation.

The judgments passed by the courts below are based upon non-consideration of material available on the file which has been noticed above.

Accordingly, Question No.(iii) is answered in favour of the appellant.

QUESTION NO.(iv)

Whether the judgment of conviction of a vendees in entirely unconnected cases can be made basis to set aside a registered sale deed?

The judgments passed by the courts in different litigations below are relevant only if such judgments falls within the parameters mentioned in Sections 41, 42 and 43 of the Indian Evidence Act, 1872. Sections 41, 42 and 43 of the Indian Evidence Act, 1872 are extracted as under:-

***41. Relevancy of certain judgments in probate, etc.
jurisdiction***

A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to an specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

That any legal character, to which it declares any such person to be entitled, accrued, to that person to be entitled, accrued, to that person at the time when such judgment,²⁸[order or decree] declares it to have accrued to that person; that any legal character which it takes away from any person ceased at the time from which judgment, ²⁸[order or decree] declared that it had ceased or should cease;

And that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, ²⁸[order or decree] declares that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41

Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A Sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies

The existence of a decree in favor of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgment, etc., other than those mentioned in sections 40 to 42, when relevant

Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter

alleged to be libelous is true, and the circumstances are such that it is probably true in each case, or in neither. A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife. B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife. The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him, B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B, C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

²⁹[(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue."

In the present case, the judgment of conviction passed against Lakhpat in one criminal case which is not at all connected with the present dispute cannot be held to be relevant for the purpose and the decision of the present case. The previous judgments do not fall within the parameters as provided under Sections 41, 42 and 43 of the Indian Evidence Act, 1872. Section 43 clearly mandates that all other judgments are not relevant.

Hence, Question No.(iv) is answered in favour of the appellant.

QUESTION NO.(v)

Whether a report prepared in police investigation can be made basis to set aside a registered sale deed?

A report prepared by the police after investigation can at the most be a piece of evidence but the civil court cannot base its decision on the basis of the aforesaid report. Report by the police official cannot be made even sole basis to convict a person in the criminal case. The prosecution has to lead evidence before a court and prove the guilt of the accused. Similarly, in a civil suit evidence lead by the parties in the civil litigation is to be appreciated by the court in a proper perspective and thereafter decide the case. Report of investigation prepared by the police is not binding on the civil court. Therefore, courts should be careful while basing their judgments on the report of the police in a criminal cases.

Accordingly, Question No.(v) is also answered in favour of the appellant.

In view of the discussion made above, the judgments passed by both the courts below in both the appeals are set aside. Both the appeals are allowed, resulting in dismissal of the suits filed by Nirmal.

Let a copy of the judgment be forwarded to the concerned presiding Additional Civil Judge(Senior Division) and the concerned presiding Additional District Judge.

27th November, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No