

RSA No. 4139 of 2016 (O&M)

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

**RSA No. 4139 of 2016 (O&M)
Date of decision: 9.5.2018**

Sowaran Singh and others

... Appellants

Versus

Amrik Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Dheeraj Mahajan, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Vide judgment and decree dated 6.11.2012, the trial court decreed the suit filed by the respondents, and the counter-claim preferred by the defendant-appellants, however, was dismissed. As even the appeal preferred against the said decree failed, and was dismissed on 20.8.2015, the appellants are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs filed a suit for injunction, restraining the defendants from causing interference in their peaceful possession in respect of the land measuring 44 kanal 11 marla, situated in village Vain Poin, Tehsil Khadoor Sahib, District Amritsar. In brief, the case set out by the plaintiffs was that Balwant Singh happened to be the owner of the suit land, and through his duly constituted attorneys i.e. namely Nirmal Singh and Sarabjit Singh, vide a registered sale deed dated 23.5.1997, he sold the suit land to the plaintiffs for a valuable consideration. And, thus, the plaintiffs were owners in possession thereof. But, as the defendants threatened to

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dispossess the plaintiffs, the suit.

In the written statement filed on behalf of the defendants, it was pleaded that Balwant Singh died on 3.1.2000, and post his death, his sons and grandsons inherited the suit property. It was denied that the deceased executed any power of attorney in favour of Nirmal Singh and Sarabjit Singh, and transferred the suit land, pursuant to the sale deed dated 23.5.1997. In fact, by way of counter-claim, defendants prayed for a decree for possession, for, they had inherited the suit land, on the basis of testamentary succession: a Will dated 4.3.1999, executed by late Balwant Singh in their favour.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that there was not any dispute that originally the suit land was owned by late Balwant Singh, and defendants No. 1 to 8 were his heirs. But the plaintiffs had set up a title on the basis of sale deed 23.5.1997, that was executed by the duly constituted attorneys of deceased. A certified copy of the power of attorney (Ex.P4) was proved on record. Though the defendants questioned the veracity of the said document (Ex.P4), but a perusal thereof revealed that it bears the thumb impressions of late Balwant Singh. Further, the thumb impressions at the back page of the power of attorney also showed that Balwant Singh had, affixed his thumb impressions even in the presence of Sub Registrar, Khadoor Sahib. Even though, the ink used for affixing the thumb impressions of Balwant Singh was dim, but the plaintiffs examined an expert to prove his thumb impressions. Further, even upon comparison of the photographs of the disputed thumb impressions with standard thumb impressions of the deceased, it was proved that there was a cut mark on the

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thumb impressions of late Balwant Singh and the same mark could also be seen on all the four thumb impressions on the photographs from Ex.PW9/2 to Ex.PW9/5. Not just that, the defendants never examined any expert in rebuttal to dispute this position. Thus, it was duly proved that power of attorney (Ex.P4), was thumb marked by the deceased. That being so, even the sale deed, dated 23.5.1997, executed by the attorneys of late Balwant Singh, was also proved. It was not disputed that the sale deed in question was a duly registered document for a valuable consideration. Even though, the defendants had alleged that a fraud was played upon the deceased by the plaintiffs, but the said plea remained unsubstantiated, for lack of cogent evidence. Not just that, the sale deed was executed on 23.5.1997, whereas, late Balwant Singh died on 3.1.2000, i.e. almost three years thereafter. Concededly, Balwant Singh never questioned the transfer of the suit land to the plaintiffs during his lifetime. Since the plaintiffs proved their title to the suit property, the trial court decreed the suit, and as a necessary consequence, the counter-claim was dismissed. On being pointedly asked, learned counsel for the appellants could not show as to how, the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

9.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO