

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5850 of 2016(O&M)
Date of Decision: 6.10.2018

Hajoor Singh

---Appellant

versus

Ujagar Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Radhe Shyam Sharma, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by Ujjagar Singh (since deceased) through his General Attorney Nirmal Singh son of Jota Singh and later represented through subsequent purchasers added vide order dated 25.11.2005 passed by the District Judge, Hisar to the effect that Ujjagar Singh is owner in possession of agricultural land measuring 100 kanal situated at village Bir Babbran, Tehsil and District Hisar by challenging decree No. 276-C of 1987 passed in civil suit titled "Hazoor Singh vs. Ujjagar Singh" by the Court of the Sub Judge, Hisar dated 4.3.1987 in favour of appellant-defendant No. 1, suffered by defendant No. 2 as Mukhtiar-a-aam of Ujjagar Singh being illegal, null and void, based upon fraud and misrepresentation and mutation sanctioned on the basis thereof is liable to be set aside, was decreed by the trial court vide judgment and decree dated 18.11.2011 whereby the court has set aside collusive/consent

decree dated 4.3.1987 and consequently the mutation sanctioned on the basis thereof. Eventually, the property reverted back to Ujjagar Singh who is declared to be owner in possession of suit land and has rightly transferred suit land in favour of plaintiffs No. 2 to 10 on the basis of sale deeds Exs. P56 and P-57. The appeal preferred by unsuccessful defendant No. 1/appellant came to be dismissed by the Additional District Judge, Hisar on 9.3.2016.

The sole submission made by counsel for the appellant is that the trial court relied upon report Ex. P-39 and testimony of Sh. Yashpal Chand Jain, Handwriting and Finger Prints expert but failed to appreciate that Sh. V.B.Bhatnagar, another expert examined by the appellant on the basis of report Ex. DW3/A has opined that questioned thumb impressions marked Q1 to Q4 on General Power of Attorney dated 7.1.1987 alleged to be of Ujjagar Singh are blurred for want of proper ink pressure and the same cannot be compared with sample/standard thumb impressions S1 to S5 or any other admitted thumb impressions of Ujjagar Singh. It is vehemently argued that in the face of contradictory opinion given by the aforesaid experts, courts have committed serious error rather perversity by upholding plea of the respondents-plaintiffs that power of attorney dated 17.1.1987 was not executed by Sh. Ujjagar Singh and the judgment and decree passed in civil suit No. 276-C of 1987 on the basis of admission by Sh. Charan Singh, attorney of Ujjagar Singh is illegal, null and void and not binding upon rights of Ujjagar Singh and subsequent purchasers.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

Before advertng to the submissions made by counsel for the

appellant, it is pertinent to note that the present case has a chequered history and there are several rounds of litigation that ultimately culminated in judgment and decree dated 18.11.2011. At one point of time, the suit was dismissed having got abated and the order was set aside by Hon'ble the Supreme Court. Later, an ex parte judgment and decree were passed but the same were set aside by this Court in view of an application filed by the appellant to challenge ex parte order and ex parte judgment and decree.

The whole controversy in the present case revolves around the General Power of Attorney purported to be executed by Ujjagar Singh in favour of Charan Singh defendant No. 2 on the basis whereof, Charan Singh admitted claim of Hazoor Singh defendant No. 1 (appellant herein) in Civil Suit No. 276-C of 1987 decreed by the court of Sub Judge Ist Class, Hisar on 4.3.1987. Unfortunately, Ujjagar Singh died during pendency of suit, therefore, could not be examined. However, the plaintiffs examined Yashpal Chand Jain, Handwriting and Finger Prints Expert to substantiate their plea that questioned thumb impressions on General Power of Attorney, wasika No. 1762 dated 17.1.1987 do not tally with the sample thumb impressions taken in the Court on sample sheet Ex. P38. Sh. Yashpal Chand Jain was cross examined at length with the assistance of Sh. Shamsher Singh, Handwriting and Finger Prints Expert engaged by appellant-defendant No. 1.

The trial court in the concluding lines of para 45 of the judgment has noticed that no suggestion was put to Sh. Yashpal Chand Jain that thumb impressions Q1 to Q4 on General Power of Attorney dated 17.1.1987 are blurred for want of proper ink pressure or Ujjagar Singh never appeared in the court for giving his specimen thumb impressions. Once the

expert engaged by the appellant to cross examine another expert examined by the respondents-plaintiffs has not raised any such issue that questioned thumb impressions are not fit for comparison on any count whatsoever much less the same are blurred for want of proper ink pressure, the after thought story brought forth by Sh. V.B.Bhatnagar another expert examined by the appellant cannot be believed. It appears to the court that since the appellant could not successfully assail report Ex. P39 given by Sh. Yashpal Chand Jain despite the witness being cross examined by another expert engaged by the appellant, he got a report from Sh. V.B.Bhatnagar and examined him to say that disputed thumb impressions are not worthy of comparison. In this view of the matter, the courts have rightly rejected report Ex. DW3/A prepared by Sh. V.B.Bhatnagar. That being so, I do not find an error much less perversity in consistent findings recorded by the courts that Ujjagar Singh did not execute power of attorney in favour of Sh. Charan Singh, therefore, judgment and decree dated 4.3.1987 passed in Civil Suit No. 276-C of 1987 on the basis of written statement or admission of claim of the appellant by Charan Singh-defendant No. 2 is not binding upon right of Ujjagar Singh or subsequent purchasers of the suit land.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

6.10.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No