

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

RSA No.6450 of 2018(O&M)

Date of Decision:06.12.2018

Surta and others

Vs.

.....APPELLANTS

Kanwar Singh and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Devender Singh, Advocate
for the appellants.

DR. RAVI RANJAN, J.(Oral)

I have heard learned counsel for the appellants.

This appeal is directed against the judgment and decree dated 11.09.2018 passed by learned Addl. District Judge, Jhajjar in Civil Appeal No.RBT-57 of 2016, by which learned Judge has affirmed the judgment and decree dated 12.09.2016 passed by Civil Judge (Jr. Divn.) Jhajjar in Civil Suit No.RBT-85 of 2015 in part with the only modification that the judgment and decree has been made operative only with respect to the defendants No. 7 and 8 and to the plaintiffs. The defendants are the appellants.

The plaintiffs instituted the suit for declaration that the judgment and decree passed in "Surta etc. Vs. Laxmi etc." by the Civil Judge (Jr. Divn.), Jhajjar dated 14.12.1996, where the plaintiffs were arrayed as defendants No. 2 and 3, is illegal, null and void and not binding on the rights of the plaintiffs on the ground that the plaintiffs never received any summons in that suit, neither appeared nor engaged any counsel and nor had given any statement before the Court. Plaintiffs have sought consequential relief of permanent injunction also.

Admittedly, the previous suit was disposed of in terms of the compromise arrived at between the parties. It appears that in the suit, the plaintiff had examined hand writing expert Mr.V.B.Kashyap, who has given an opinion that the signature of the plaintiff does not match with the signatures which were put on the alleged statements made in the previous suit. The hand writing expert was examined as PW-3. He tendered his affidavit and categorically testified that the disputed signatures, when compared with the specimen signatures, were found to be product of forgery by impersonation. The Trial Court in its judgment had noted that this witness was cross-examined at length by the counsel for the defendants but he firmly stood his ground as his testimony could not be shaken. He categorically testified that there is no dissimilarity in his report and the photographs of the specimen.

The plaintiff has also got himself examined as PW-2 and fully supported his case to the extent that he never appeared before the Court in the earlier proceedings and never gave assent to any consent decree. The Trial Court has observed that he also firmly stood to his ground in cross-examination as his testimony could not be shaken. The trial Court has also taken note in its judgment that defendant No.1-Surta did not have courage to get himself examined as a witness. Although, attempt was made at a belated stage to get him examined after the defendant finished his evidence and after final arguments of the both sides were already placed, but that was rejected as the same clearly suffered from mala fide, as it was a calculated move to prejudice the rights of the plaintiff and to take them by surprise.

Jitender Kumar, Record Keeper of judicial record room was examined as PW-1. He also categorically testified that no notice/summons were issued to the defendants (Kanwar Singh and Mariya) in Civil Suit No.886 of 1996. Had the notices been issued to the defendants(plaintiffs in the case in hand), the case set up

by the plaintiffs would have been clearly on the loose footing, defeating their plea that they never appeared in the Court.

The Trial Court has also noted that there are two alleged eye-witness to the said consent decree of 1996, Ravinder son of Samjo, who has been examined as DW5 and Laxmi, who has been examined as DW4. However, the Trial Court has observed that in the testimony of DW-4 and DW-5 regarding presence of certain persons including the plaintiffs at that point of time, there is marked variation and contradiction. Therefore, the testimony of both would not inspire confidence. It is also noted by the trial Court that DW-4, while appearing in the witness box, had testified that Mariya and Kanwar Singh had signed on the statement whereas perusal of the record would reveal that there are alleged thumb impression of Kanwar Singh and Mariya and no signatures are there. Thus, it has been finally observed that they are being interested witnesses, their testimony does not carry much weight in view of the contradiction also and admission that they are not in good terms with Kanwar Singh and Mariya.

Upon such appreciation of the aforesaid evidence and materials available on record, the Trial Court had come to the conclusion that the judgment and decree dated 14.12.1996 suffers from the vice of illegality as mentioned above and, thus, the suit was decreed. As a consequence thereof, decree of permanent injunction was also passed in favour of the plaintiffs and against the defendants, restraining the defendants from alienating or changing the nature of the suit properties qua the share of the plaintiffs.

The aforesaid judgment and decree was put to challenge by the defendants in *Civil Suit No.RBT-57 of 2016*, which was also decided against them. However, there was partial modification of the decree as stated above. The Lower Appellate Court also took notice of the fact that the handwriting expert was examined as PW-3 and has stated that the disputed signatures are product of

forgery by impersonation and despite subjecting him to lengthy cross-examination by the defendant, the witness stood firmly upon his views and could not be shaken.

The plea taken by the defendants that the suit filed by the plaintiffs-appellants is barred by limitation was also found devoid of any merit for the reason that the plaintiffs have succeeded in proving the impugned decree Ex.P6, so far as it relates to the share of the plaintiffs, to be void *ab-initio*, which could be challenged at any point of time. Ultimately, this appeal was decided by modifying the decree holding that the impugned judgment and decree dated 14.12.1996 is illegal and void *ab-initio* so far as it relates to the shares of the plaintiffs.

Learned counsel appearing for the appellants has submitted before this Court that merely on the basis of an opinion of the handwriting expert, the entire suit has been decided and the earlier consent decree has been thrown away by both the Courts below which is highly improper, thus, the decree of the Trial Court as well as Appellate Court is required to be set aside.

Learned counsel has placed reliance upon several judicial pronouncements. The first and foremost is a decision of Hon'ble Supreme Court of India rendered in **Ishwari Prashad Misra Vs. Mohammad isa**, 1963 AIR (SC) 1728, in which, he particularly refers to para 26.

However, upon perusal of the aforesaid passage from the judgment, I am of the view that this judgment is not applicable in the present case as in the case which was being examined by the Apex Court, there were two contrasting reports of the experts, one examined by the plaintiff and second examined by the defendants. Therefore, it was necessary on behalf of the concerned Court to apply its mind on both and then come to conclusion. The Apex Court has, thus, held that expert evidence given by the concerned expert would not really help the respondent in that case. The facts are clearly distinguishable here. In the present case, only one expert has been examined by the plaintiffs who was cross-examined in detail by

the defendants-appellants and he withstood the test. Now, the question would be as to who prevented the defendants from examining their own expert? The non-examining would definitely mean that they did not have courage to get their signatures or thumb impression examined even by their own expert.

The second judgment relied upon by learned counsel is also of the Hon'ble Apex Court rendered in **Lalit Popli Vs. Canara Bank and others, 2003 AIR (SC) 1795**, in which, he particularly refers to para 12.

This Court regrets to note that it does not appear from any angle that the aforesaid judgment is also applicable in the present case. The Hon'ble Supreme Court has stated in para 12 of the aforesaid judgment that, even if there were adverse remarks, that would not affect the credibility of the evidence to treat it as totally irrelevant and to be no evidence in the eye of law. What was required was a careful analysis of evidence. That apart, that is also a judgment relating to a criminal case where a matter is required to be proved beyond all reasonable clouds of doubt.

The next decision which is relied upon by him is a decision of a Single Judge Bench of this Court rendered in **Mangat Ram and others Vs.Om Parkash and others, 2016(1) Law Herald 95**, in which, he particularly refers to para 5 to impress upon this Court that the opinion of the expert is not binding upon the Court and the Court itself can look into the document and compare it with the acknowledged signatures to come to a conclusion with regard to the genuineness or otherwise of the said disputed signatures.

In my considered view, such plea taken by the counsel for the appellants can be noted only to be rejected for the reason that on perusal of the aforesaid judgment, it appears that in that case, no expert was examined and that is why the Court has come to such conclusion. There is no doubt that even after the expert opinion, the Court can form its own view and differ from the opinion of

expert. In the case in hand also, the Court has formed a view, however, that view is not in support of the defendants-appellants.

Apart from above, I make it clear, as I have noted above, that the opinion of the expert was not the only material available on record upon which the Trial Court and the Lower Appellate Court has based its findings. There are several other witnesses and other materials also which have been noted as above. Above all, the defendants did not have courage to examine their own expert and defendant No.1-Surta did not have courage to get himself examined as a witness.

Having considered all the materials on record, I am of the view that the issue stands concluded by concurrent findings of both the Courts below and does not warrant any interference by this Court.

In a result, this appeal, being devoid of any merit and since is not fit to be admitted, is dismissed.

(DR. RAVI RANJAN)
JUDGE

06.12.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No