

RSA-942-1987 (O&M)

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

RSA-942-1987 (O&M)

Date of decision : 22.02.2019

Gurcharan Kaur (deceased) through LRs

... Appellant

Versus

Balwant Kaur (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the plaintiff-appellant for specific performance of the agreement to sell dated 24.08.1981, decreed by the trial Court, confined to the alternative relief of refund of ₹20,000/-

The plaintiff-appellant-Gurcharan Kaur, instituted the suit claiming specific performance of the agreement to sell, aforementioned, in respect of land measuring 17 kanals 6 marlas, agreed to be sold by Balwant Kaur/defendant No.1, for a total sale consideration of ₹43,250/- against the receipt of payment of ₹10,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 20.06.1982. Since the defendant No.1 did not come forward, the suit, aforementioned was filed on

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26.06.1982. It was also averred that the plaintiff had always been ready and willing.

Defendant Nos.1 and 3 were none-else, but Balwant Kaur and Bachan Kaur, mother and daughter. They filed the separate written statement and contested the suit by denying the execution of the agreement to sell and in alternative, if proved, was a result of fraud and misrepresentation and without consideration.

Defendant No.3 stated that defendant No.1 was not the owner of the property as she never sold the property, in dispute, to defendant No.1 and in such circumstances, defendant No.1 was not competent to enter into an agreement to sell.

Since the parties were at variance, the following substantial questions of law were framed by the trial Court:-

- 1. Whether the defendant No.1 executed any agreement to sell the suit land with the plaintiff on 24.8.1981? OPP*
- 2. If issue No.1 is proved, whether the plaintiff has been and is still ready and willing to perform her part of the contract/ OPP*
- 3. Whether the alternative the plaintiff is entitled to the return of earnest money? If any also as damages? If so to what extent? OPP*
- 4. If issue No.1 is proved whether the agreement is without consideration and is the result of fraud and mis-representation as alleged? OPD*
- 5. Whether the suit is liable to be stayed as alleged in para No.1 of the written statement of defendant No.1? OPD*
- 6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 7A. Whether defendant No.3 is the owner of the suit land and what effect? OPD*
- 7-B Whether the suit between the plaintiff and defendant No.1*

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is collusive and to what effect? OPD

7C. Whether defendant No.1 and 3 have colluded? If so its effect? OPP

7. Whether amount on account of principal and interest is liable to be adjusted for payment to defendant No.2, in case the decree for specific performance is passed? OPD

8 Relief.

The plaintiff in support of the aforementioned pleadings, examined herself Gurcharan Kaur as PW1, Joginder Singh, attesting witness of agreement to sell as PW2, Kishori Lal, deed writer as PW3 and brought on record various documents i.e. jamabandi, mutation etc.. On the other hand, defendant No.1-Balwant Kaur examined herself as DW1 and Bachan Kaur as DW2.

Bachan Kaur had also independently filed the suit challenging the alleged sale deed dated 13.08.1975.

The trial Court, on the basis of the evidence brought on record, dismissed the suit of Bachan Kaur and decreed the suit of the appellant/plaintiff-Gurcharan Kaur. In the suit of Bachan Kaur, some expert was also examined to eradicate the suspicious circumstances, as to whether Bachan Kaur had appended the thumb-impressions on the agreement to sell or the sale deed.

The appeal was preferred by Bachan Kaur as an appellant against the plaintiff-Gurcharan Kaur and Balwant Kaur, her mother, was arrayed as respondent No.2. The lower Appellate Court relied upon the evidence of the expert tendered in the other case, without noticing the fact that Expert was not independently examined by Bachan Kaur, held Balwant Kaur to be not owner and confined the decree to alternative relief.

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Mr. Sarju Puri, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgment and decree of the lower Appellate Court is totally preposterous and perverse. The trial Court had dismissed the suit of Bachan Kaur. The lower Appellate Court had only relied upon the report of finger expert in the suit of Bachan Kaur. Mutation dated 06.01.1976(Ex.P4), on the basis of the sale deed, was entered in favour of Balwant Kaur as duly entered in the jamabandi.

There is no representation on behalf of the respondents, despite service. The appeal is of the 1987, accordingly, I proceed to decide the appeal on merits.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Puri, for, against the judgment and decree, whereby the suit of Bachan Kaur was dismissed, Bachan Kaur had preferred an appeal before the lower Appellate Court and vide judgment and decree dated 27.10.1986, the suit was decreed. Regular Second Appeal was filed by the present appellant-plaintiff, in this Court, bearing **RSA No.1566 of 1987** titled as **“Gurcharan Kaur V/s Balwant Kaur and another”** and the same has been dismissed on 26.03.2014. For the sake of brevity, the relevant findings recorded by this Court read as under:-

"I have considered the rival contentions of learned counsel for the parties.

The lower Appellate Court has recorded findings of fact with regard to thumb impressions of the plaintiff over the sale deed dated 13.08.1975. The said findings read as under:

“12. The main piece of evidence in this case is report of Finger Print Bureau Ex.P-3 and statement of fingerprint

expert Ex.P-4. Report of the finger print expert leaves nothing in doubt that thumb impression marked ABCD and E on Ex.D2 are otherwise comparable and these are different from the right and left thumb impression of Bachan Kaur on her sample papers as the ridge characteristic details of the case, do not tally with those of the said sample thumb impression. However, thumb impression marked ABCD and E are identical with each other which means that those were affixed by one and the same person but the identity of the said person cannot be affixed as Bachan Kaur.

*13. The learned counsel has referred to **Jaspar Singh vs. State of Punjab** AIR 1979 Supreme Court 1708 wherein it has been held that science of identifying thumb impression is an exact science and does not admit of any mistake of doubt.*

*I have also been referred to **Mohan Lal and another Vs. Ajit Singh and another** AIR 1978 Supreme Court 1183 wherein it has been held as follows:-*

“Majority of finger prints found at crime scenes or on crime articles are partially smudged and it is for the experienced and skilled finger print expert to say whether a mark is usable as fingerprint evidence. Similarly it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristic in an appropriate case.”

*It has been held in **Hukam Singh and others vs. Smt. Udham Kaur** 1969 Punjab Law Reporter 908 as follows:*

“That evidence, of a thumb impression expert has an important bearing and is bound to be of great value in determining the issue regarding the validity of document which purports to bear thumb impression if an executant when those thumb impressions are denied. It is a matter

of common knowledge that science of finger-print is more exact than that relating to handwriting. In case of comparison of finger-prints the points of similarity and difference are easily discernible and the courts must apply their mind properly to the evidence of expert in such case.”

The trial Court has observed that it was obligatory on the part of the plaintiff to lead cogent and convincing evidence on the file or to produce the document as to what fraud was actually made. Fraud in this case is very clear and the best way to prove the fraud was to get thumb impression compared from the expert which has been got done from the Finger Print Bureau, Phillaur. It has been observed that these are partly smudged but at the same time the expert has stated that these are comparable. It is quite clear that ridge characteristic on ABCD and E on Ex.D2 are different from sample thumb impressions. The report of the Finger Print Expert cannot be brushed aside in the light hearted manner. Rather, this is best piece of evidence. Accordingly finding of the trial Court on issues no.2, 3 and 4 are reversed.”

The evidence of finger print expert has an important bearing and great value. It is an established fact that science of finger print analysis is an exact science and even the thumb impressions of twins do not tally. There is a categoric finding on the basis of report of Finger Print Bureau, Phillaur on record that thumb impressions on the sale deed dated 13.08.1975 are not of the plaintiff, but of a different person and the same stands unrebutted.

Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or misappreciation of the material evidence on record. Consequently, findings of fact recorded by the lower Appellate Court do not warrant interference in regular second appeal. No question of law, much less substantial question of law, as

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alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed.

No order as to costs."

In view of such matter, I am of the view that judgment and decree and of the lower Appellate Court cannot be said to be suffering from any illegality and perversity, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the present regular second appeal is dismissed.

22.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**