

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

RSA No.2324 of 1999 (O&M)

Date of decision : 24.01.2019

Karam Singh

...Appellant

Versus

Joginder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the appellant.

Mr. B.R. Mahajan, Sr. Advocate with
Ms. Vrinda Gupta, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

In the considered view of this Court, the question which requires consideration is “whether it is incumbent on the vendee to examine the Handwriting and Finger Print Expert in case attesting witnesses of the registered sale deed have not been examined?”

The plaintiff filed a suit for possession of land measuring 24 kanals claiming that he is owner and has come to know from the revenue official that the entry of the land has been mutated in favour of the defendant.

The defendant contested the suit and pleaded that the plaintiff had sold the land vide registered sale deed dated 01.02.1980 for a sum of ₹7,500/- out of which ₹2,500/- was paid as earnest money and ₹5,000/- was paid at the time of registration which was received as a grant from the Government. It was further pleaded that the payment was made by Welfare Department to the purchaser. It was pleaded that the land was *barani* (uncultivable) and, therefore, there was scheme for sale of the land to ensure development.

The suit was filed on 06.09.1991 i.e. after a period of 11 years. Initially, the trial Court decreed the suit as the sale deed was not produced and in fact the defendant did not lead any substantive evidence, however, learned First Appellate Court remanded the case back to the trial Court while granting opportunity to the defendant to lead evidence. After remand, the defendant led following evidence:-

1. DW1-Tarsem Lata, Registration Clerk, who produced the record of the registration and it was found that one counterpart of the sale deed which bears thumb impressions/signatures of the parties and witnesses as well as Registering Authority, is available.
2. Vendee-defendant appeared in evidence as DW2, who had also signed the sale deed and deposed that the sale deed was executed by the plaintiff in his presence and he had also signed the same in the presence of the witnesses.
3. Bachan Singh-DW3, Scribe of the sale deed, was produced.
4. Mohan Singh, Tehsil Welfare Officer, was examined as DW4 who proved that the sale deed was executed in his presence by Karam

Singh-plaintiff and he paid ₹5,000/- to the plaintiff.

Even after remand, the trial Court decreed the suit, however, the learned First Appellate Court has reversed the findings.

Learned Senior Counsel appearing for the appellant while referring to Section 67 of the Indian Evidence Act, 1872 has submitted that it was necessary for the vendee defendant-respondent to prove that the sale deed is in his handwriting and, therefore, it was incumbent on the defendant to produce Handwriting and Finger Print Expert to prove the thumb impressions of the vendor. He further referred to the order of remand wherein the Court had made observations while remanding the case back to the trial Court that the sale deed would be permitted to be proved through secondary evidence and the thumb impressions of the vendor can be proved by examining the Handwriting and Finger Print Expert, since science of comparing finger print is cent percent.

On the other hand, learned counsel for the respondent has submitted that the sale deed has been proved by examining four witnesses. He further submitted that the Tehsil Welfare Officer who was Government official having no personal interest, has supported the case of the vendee-respondent who stated in his deposition that the payment of ₹5,000/- at the time of execution and registration of the sale deed was paid by him. He further submitted that no suggestion was given to the Tehsil Welfare Officer by counsel for the plaintiff that the Tehsil Welfare Officer does not know the plaintiff-vendor personally or the payment as alleged was not handed over by him.

In rebuttal, learned counsel for the appellant has submitted that

the Tehsil Welfare Officer has not stated that he knew vendor personally.

Learned counsel for the appellant has referred to a Division Bench judgment of Assam and Nagaland High Court reported as **AIR 1972 Assam 15, Bhutkani Nath and others Vs. Mt. Kamaleswari Nath and another**, a Division Bench judgment of Nagpur High Court reported as **AIR 1973 Bombay 242, Ramkrishan Ganpat Futane and others Vs. Mohammad Kasam and others**, and a judgment passed by the Himachal Pradesh High Court reported as **AIR 2003 Himachal Pradesh 23, Khushi Ram and others Vs. Smt. Findhi and others**, in support of his contention.

Let us first analyze “what is the requirement of law”.

The sale deed is not required to be attested by marginal/attesting witnesses. Therefore, the sale deed which is a registered document has to be proved by other evidence. Section 67 of the Indian Evidence Act, 1872 requires that signature and handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. The Handwriting and Finger Print Expert can only give opinion and such opinion is not binding on the Court. Still further, once direct evidence is available, the Court should not in normal circumstances rely upon the opinion given by private experts who most of the time given opinion in favour of the party who engages them. In such circumstances, the argument of the learned counsel for the appellant that examination of Handwriting and Finger Print Expert was necessary, has no substance.

As noticed above, the examination of the sale deed has been proved through examination of the various witnesses including the Scribe,

Tehsil Welfare Officer and defendant himself. Once, the sale deed is not required to be attested by marginal witnesses, it was not necessary that the attesting witnesses must be examined in the Court to prove the execution and registration of the sale deed.

The judgment passed by the Assam and Nagaland High Court in the case of Bhutkani Nath and others (Supra), is with reference to the case where the Executor had not signed or thumb marked the document. It was in fact signed by Udit Chandra Das on behalf of the Executant. Hence, the judgment of the Assam and Nagaland High Court cannot taken to be laying down as a ratio decidendi to the effect that examination of the attesting witnesses or examination of the Handwriting and Finger Print Expert was necessary.

As regards judgment passed by the Nagpur Bench in the case of Ramkrishan Ganpat Futane and others (Supra), the aforesaid case has been decided on the facts of that case and the Court has found that no other evidence was produced to prove the documents whereas in the present case the other evidence has been produced.

Next judgment relied upon by the learned counsel is of the Himachal Pradesh High Court in the case of Khushi Ram and others (Supra). The Himachal Pradesh High Court has culled out the questions of law in para 8 of the judgment, which were required to be answered and none of the question is dealing with the issue propounded before this Court.

Still further, it was the plaintiff who had come to the Court asserting that he had never signed or thumb marked the sale deed. Once initial onus was discharged by the defendant, the plaintiff-appellant was

required to lead some evidence to rebut the evidence led by the defendant-respondent. However, no substantive evidence in this regard was led.

Learned Senior Counsel appearing on behalf of the appellant has submitted that onus to prove the issue was on the defendant and, therefore, the plaintiff was not required to lead evidence. No doubt, the onus was placed on the defendant but once initial onus has been discharged, the onus shifted on the plaintiff to rebut the evidence.

In view thereof, there is no ground to interfere with the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

24.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No