

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

RSA No.351 of 1998 (O&M)

Date of Order:11th February, 2019

Smt. Dhakkan and another

..Appellants

Versus

Nathu Singh and others

..Respondents

COCP No.458 of 2007 (O&M)

Bed Wati

...Petitioner

Versus

Dhakkan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K.Garg Narwana, Sr. Advocate, with
Mr. Japjit Singh Johal, Advocate,
for appellant nos.1 and 2 (in RSA No.351 of 1998)
for respondent Nos.4 and 6 (in COCP No.458 of 2007)

Mr. Vikas Mohan Gupta, Advocate,
for appellant nos.3 to 5 (in RSA No.351 of 1998)
for respondent nos.5, 7 and 8 (in COCP No.458 of 2007)

Mr. Adarsh Jain, Advocate,
for respondent no.2(in RSA No.351 of 1998)
for petitioner (in COCP No.458 of 2007)

ANIL KSHETARPAL, J.

By this order, RSA No.351 of 1998 and COCP No.458 of 2007
shall stand disposed of as both are connected.

This court is not intentionally recording any finding lest it may
prejudice any of the party as it has been decided to remit the matter back to
the trial court.

Dispute in the present case is to the correctness and validity of

the judgment and decree dated 28.08.1990 suffered by Nathu Singh in favour of Dhakkan, his sister and sons of another pre-deceased sisters Parkash and Baljit. Nathu was not having any made child. Bed Wati is her daughter, who also got married. The dispute in the present case is whether Nathu Singh appeared and filed written statement admitting the claim of the plaintiff in the previous suit and thereafter also suffered a statement while appearing in the court resulting in the judgment and decree dated 28.08.1990.

Both the courts have recorded following reasons to decree the suit filed by the plaintiff.

- (1) Dhakkan did not appear in evidence and therefore adverse inference is liable to be drawn.
- (2) Lal Singh, the then advocate, but later on inducted into judicial service has not been examined.
- (3) The decree is bad as it results in transfer of the immovable property worth more than Rs.100 being unregistered.
- (4) There could not be any decree dated 28.08.1990 in favour of Parkash and Daljit as they were not party to the aforesaid decree.
- (5) Signatures of Nathu Singh are different, therefore, decree is result of impersonation.

It may be noted here that during pendency of the suit, defendants filed an application for permission to amend their written statement in order to plead that Padam Singh, common ancestor of the parties had died interstate and his property stood inherited in accordance

with Section 8 of the Hindu Succession Act, 1956. Another application was filed before the trial court for permission to lead evidence which has also been dismissed. Before this court also application for additional evidence has been filed in order to produce copy of judgment passed on 25.02.1995 which was suffered by Nathu Singh in favour of his daughter Bed Wati.

As far as first reason, it may be noted that Dhakkan was defendant along with Parkash. Parkash had appeared in evidence. Once Parkash had appeared and there is no finding of the court that the evidence produced by the defendants is insufficient, adverse inference could not be drawn. Further, plaintiff has to stand on his own legs. Therefore, the reason by the court is erroneous.

As regards second reason that Lal Singh, Advocate, who later on joined judicial service has not been examined, the same is also not entirely correct. Application for summoning him was filed and he was summoned. However, there is a letter on the file sent by Sh. Lal Singh for discharge, which was allowed. Therefore, adverse inference on non-examination of Lal Singh could not be drawn. In any case, now the case is being remitted and the court would re-examine this issue.

As regards non-registration, it may be noted that the judgment and decree dated 28.08.1990 is acknowledging a prior family settlement and therefore, do not require registration. Reference in this regard can be made to a judgment passed by this court in the case of **Dhian Singh and others vs. Mohinder Singh and others** (RSA No.2708 of 2005, decided on 26.10.2017).

As regards next two reasons i.e signature of Nathu Singh are different and decree qua 2/5th share in favour of defendants no.2 to 3 could

not be passed as they were not parties to the previous suit, this court is of the view that these issues need to be re-examined. Impersonation in the courts proceedings is a serious matter. Therefore, the court should not normally pass a judgment by recording finding that the judgment has been obtained by impersonation unless the court is convinced beyond any reasonable doubt that the judgment and decree is result of impersonation. In the present case, both the parties have examined Handwriting and Finger Print Expert who have given opinion in favour of their respective clients. The learned trial court as well as first appellate court thereafter concluded by observing that Presiding Judges have themselves seen the signatures of plaintiff Nathu Singh on the Vakalatnama, written statement and statement while appearing in court allegedly signed by Nathu Singh in the previous suit and thereafter compared it with two signatures of Nathu Singh which has put at the time when he appeared in evidence. It may be noted that Nathu Singh when appeared in evidence has initially denied his signatures on the Will which had been executed by him in favour of his own daughter which later on admitted to be correct by him. Similarly Nathu Singh has even denied his signatures on the application filed during pendency of present suit before the District Judge for sealing the record of judgment and decree dated 28.08.1990. The application is part of the record and it has been signed and moved by Nathu Singh on 28.07.1995. It is well settled that the court should not normally venture into the field of comparison of signatures unless these are entirely different. Still further, Nathu Singh's signature before the Court are on 17.04.1996 i.e. there is a gap of 6 years between the signatures. In the present case, it was incumbent on the court to direct the plaintiff to produce his undisputed signatures on document

which has been executed by him in the year 1990, i.e. contemporaneous period which would have made the comparison easy.

Since, this court is not conversant with the Urdu language, therefore official translator of Urdu to English was requested to assist the court. The official translator has stated that in both the signatures Nathu Singh has been written in 'Urdu' language.

Keeping in view the aforesaid fact, the suit is remitted back to the trial court. The trial court would reconsider the application for amendment of the written statement as also the application for additional evidence filed before the trial court as well as before this court. The parties would be granted opportunity to lead further evidence, if they wish to produce and thereafter re-decide the matter without being influenced by the judgments passed on previous occasions.

In COCP No.458 of 2007, complaint made is that this court ordered that the parties to maintain status quo and the courts below held Nathu Singh to be in possession of the property. Prayer in the contempt petition is that the appellants are claiming themselves to be in possession of the property and have alienated the same.

Once the judgment and decree has been set aside, the contempt petition does not survive and is accordingly dismissed as infructuous.

In view thereof, the regular second appeal is allowed.

Parties through their counsels are directed to appear before the trial court on 05.03.2019.

C.M.No.18539-C of 2018

Application is for permitting the applicants-appellants to adduce in evidence the certified copy of judgment and decree dated

25.02.1995 passed in Civil Suit No.714 of 21.12.1994.

Application is disposed of with permission to the appellant to produce the evidence before the trial court as appeal has been allowed and the trial Court has been requested to re-decide the suit.

11th February, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No