

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

RSA-4427-2010(O&M)

Date of decision:-26.2.2019

Smt.Lado

...Appellant

Versus

Karambir Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Manjeet Singh, Advocate
for the appellant.

Dr.Parveen Hans, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Smt.Lado widow of Sh.Chander Bhan had brought a suit against defendants Karambir Singh, Rajender Singh, Raj Kumar and Udai Bir Singh sons of Banwari Lal, residents of village Singhwa Khas, Tehsil Hansi, District Hisar seeking a declaration that decree passed on 19.9.1994 in civil suit No.489-C of 20.7.1994 by the Court of Sh.S.K.Goel, the then Additional Senior Sub-Judge, Hansi was illegal, null and void and it was a result of fraud and

misrepresentation played upon the plaintiff and further the alteration in the revenue record on the basis of the impugned decree were also wrong and liable to be corrected. In addition to that she sought a decree for permanent injunction restraining the defendants from alienating half share of the plaintiff in the suit land.

According to the plaintiff, she is a *PARDA NASHIN* and illiterate woman previously married with Late Sh.Chander Bhan son of Sh.Shankar, who had owned half share in the suit land; however this fact was concealed from the plaintiff; that after demise of Sh.Chander Bhan, the plaintiff succeeded to her share in the suit land, mutation was accordingly entered and sanctioned in her name as is evident from the jamabandi for the year 1989-90; that after death of Sh.Chander Bhan, the plaintiff was got married with Raghbir Singh, a younger brother of Sh.Chander Bhan by way of *KAREVA* marriage; that the plaintiff came to know quite late that half share in the suit land had allegedly been given by her to the defendants by way of a decree, when as a matter of fact she had not suffered any decree in favour of anybody; that the plaintiff was taken aback realizing that a fraud had been played upon her and then approached the Court to get the impugned judgment and decree declared as illegal, null and void and then consequent action to follow.

On notice all the four defendants had appeared.

Defendants No.1 to 3 had filed a joint written statement contesting the suit taking preliminary objections that the plaintiff had no locus standi to file the suit; that no cause of action arose to the plaintiff to bring the suit; that the suit was not maintainable; that the suit was bad for misjoinder and non-joinder of necessary parties; that the plaintiff had suppressed true and material facts from the Court. According to such defendants, Chander Bhan deceased owned 1/3rd share in the suit land and not 1/2 share as claimed by the plaintiff. According to them, son of the plaintiff was well aware of the decree since the date of its inception and plaintiff herself had suffered the decree in favour of the defendants by engaging Sh.Sudhir Singla, Advocate, who had filed written statement admitting the case of the defendants; the plaintiff had appeared in the Court and admitted the claim of defendants, putting her right thumb impressions below the statement, as such, the impugned decree was passed in favour of the defendants, who became owners in possession of the suit land. In the end, such defendants craved for dismissal of the suit.

Defendant No.4 filed a separate written statement admitting the claim of the plaintiff.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the relief of declaration as well as injunction as prayed for by her with respect to the

disputed property on the grounds so mentioned in the plaint?
OPP.

2. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
3. Whether the suit is not maintainable? OPD.
4. Relief.

Both the parties led evidence in respect of their claims.

During the course of her evidence, the plaintiff got her statement recorded as PW1 besides examining Ajmer Singh as PW2 and Sh.Shamsher Singh, Handwriting and Fingerprint Expert as PW3.

On the other hand, the defendants had examined Sh.Vinod Kumar, Reader as DW1, Hoshiara as DW2, Sh.Banwari as DW3 and Sh.Karambir as DW4.

After hearing learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendants, issues No.2 and 3 against the defendants and in favour of the plaintiff. Resultantly, the suit of the plaintiff was decreed with exemplary costs.

Defendants No.1 and 3 were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Hisar, which was assigned to Additional District Judge, Hisar, who vide judgment and decree dated 13.4.2010

accepted the appeal, set aside the judgment and decree passed by the trial.

Now it was turn of the plaintiff to feel dissatisfied and she had filed the present regular second appeal before this Court, notice of which was issued to the respondents/defendants, who appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the judgment and decree passed by the Additional District Judge, Hisar are not sustainable and are liable to be set aside.

The reasoning given by learned Additional District Judge, Hisar is not very convincing. Learned Additional District Judge, Hisar has laid much stress on the fact that PW3 Sh.Shamsher Singh, Handwriting and Fingerprint Expert examined by the plaintiff, who had given his report Ex.PW3/A, had compared the disputed thumb impressions on the proceedings in the previous suit with the standard thumb impressions on the pleadings of the present case and had not compared those with the standard thumb impressions of the plaintiff taken in the Court. Though he observed that science of thumb impression is an absolute science, but then showed deviation by observing that whether report of handwriting and fingerprint expert is genuine or manipulated depends upon facts and circumstances of the case. As science of handwriting and fingerprints

comparison is a perfect science since fingerprints of two human beings cannot tally, there are very little chances to manipulate the report given by handwriting and fingerprint expert by comparison of fingerprints in the form of thumb impressions. Additional District Judge, Hisar has made superfluous observations that handwriting and fingerprint expert is a human being and human being is subject to sway and generally, it has been noticed, the party who engages the handwriting and fingerprint expert, generally, he or she, submitted report favouring to the party, who engaged him/her. All these observations were uncalled for and do not make any sense.

Though there is nothing on the file to show that contesting defendants at any stage had disputed as to why the thumb impressions on the documents of the suit filed had been taken as standard thumb impressions and that they had requested that disputed thumb impressions be compared with the standard thumb impressions of the plaintiff taken in the Court in their presence. The defendants had not examined any handwriting expert of their own after adopting that procedure. The other observations by learned Additional District Judge, Hisar with regard to the suit being within time with respect to its maintainability etc. are also not convincing. It is specific case of the plaintiff that she was a victim of fraud; she had not appeared in the Court; she had not engaged any counsel and not filed any written statement admitting claim of the plaintiffs in that

suit; she had not appeared in the Court to make any statement. Additional District Judge, Hisar did not consider a vital point that service of notice had not been got effected upon defendant in the previous suit i.e. plaintiff Smt.Lado and file was got taken up a day prior to the date of hearing fixed by moving application, which also indicates that something was wrong at the bottom, otherwise appearance of defendant in the Court without service and getting the file taken up prior to date of hearing, filing written statement admitting claim of plaintiffs in such a hurried manner shows that things were not moving in a normal manner. That aspect was totally ignored by the First Appellate Court. Of Course the plaintiff could challenge the decree on gaining knowledge about it and by saying that her son was aware of the same does not make any sense and suit cannot be held to be time barred.

Nevertheless to remove all possible doubts and make the things clear and for the purpose of doing justice between the parties, the judgment passed by Additional District Judge, Hisar and those of the trial Court are set aside and case is remanded to the trial Court. The parties are directed to appear before the trial Court on 27.3.2019. Such Court shall appoint a reputed Handwriting & Fingerprint Expert, who would take the specimen thumb impressions in the Court after giving due notice to the parties through their counsel. Fee of the expert to be determined by the Court shall be shared equally

by both the parties. The copies of reports shall be delivered to both the parties and then he would be examined as a Court witness giving both the parties an opportunity to cross-examine him. No further opportunity of leading evidence is to be given to either of the parties since they have already adduced their evidence. After hearing arguments, the suit is to be decided afresh. The entire exercise be completed expeditiously preferably within a period of three months from the date of receipt of copy of this order in the trial Court.

This appeal stands disposed of accordingly.

26.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No