

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: May 14th, 2019

RSA No. 5197 of 2012(O&M)

Harbhajan Singh

---Appellant

vs.

Joginder Singh and others

---Respondents

RSA No. 2477 of 2013(O&M)

Harbhajan Singh

---Appellant

vs.

Dial Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Amit Jain, Advocate and
Mr. BPS Virk, Advocate
for the appellant

None for respondent No. 1 in RSA No. 5197 of 2012

Rekha Mittal, J.

This order will dispose of RSA Nos. 5197 of 2012 and 2477 of 2013 as identical questions of law and fact are involved for adjudication.

For facility of reference, facts are taken from RSA No. 5197 of 2012.

The present litigation pertains to sale deed dated 12.2.1981 purported to be executed by the appellant and Amrik Singh his brother through his attorney Joginder Singh, defendant No. 1 in respect of land

measuring 15 kanal 10 marlas but the dispute pertains only to the extent of share of Harbhajan Singh i.e. 7 kanal 15 marlas. The plea of the appellant is that sale deed in question was never executed by him. He migrated to village Rangana Farm Tehsil Karena, District Mujafar Nagar (UP) about 20 years back. He gave land of his share for cultivation to his real brother Salwinder Singh-defendant No. 5 and he (Salwinder) had been paying share of produce of land to the plaintiff regularly. In December 2004, the appellant came to his native village Ram Kahara, Tehsil Patti and asked Salwinder Singh to pay the rent of share of produce. The appellant suspected some foul play and obtained a copy of jamabandi from patwari halqa and came to know about the alleged sale deed dated 12.2.1981 on 27.12.2004. Hence, the suit.

Defendants No. 1 and 5 filed the written statement raising preliminary objections inter alia that the suit is not within limitation; same is not properly valued; bad for non-joinder of necessary parties; not maintainable as the appellant was never in possession and the appellant has suppressed material facts. It is averred that defendant No. 5 is a bona fide purchaser in good faith for consideration and is protected under Section 41 of the Transfer of Property Act. On 12.2.1981, Harbhajan Singh plaintiff and Amrik Singh defendant No. 4 through his attorney Joginder Singh executed sale deed of 15 kanal 10 marlas i.e. 1/5th share each of land measuring 232 kanal 8 marlas for Rs. 8000/-. All other material averments of the plaint assailing the sale deed in question are denied with a prayer for dismissal of the suit.

Some of the other defendants of the suit also filed written

statements but the same are not relevant for deciding the controversy between the appellant and defendant No. 5.

The Trial court framed issues, on 4.8.2005, to the following effect:-

1. Whether the plaintiff is co-sharer in possession of the land measuring 7 kanal 15 marla fully detailed in the head note of the plaint? OPP
2. Whether the suit is within limitation? OPP
3. Whether the defendant No. 3 has died before filing the present suit. If so, its effect? OPD
4. Whether the defendant No. 5 is a bona fide purchaser in good faith for consideration and is protected under Section 41 of the Transfer of Property Act? OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Whether the suit is not maintainable in the present form? OPD
7. Whether the suit is bad for non joinder of necessary parties? OPD
8. Whether the plaintiff is entitled to declaration as prayed for? OPP
9. Whether the plaintiff is entitled to injunction as prayed for? OPP
10. Relief.

The parties were permitted to adduce evidence in support of

their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court decided issues No. 1,4,8 and 9, taken up together, against the appellant-plaintiff. Issue No. 7 was decided against the defendants and issues No. 2, 3, 5 and 6, taken up together, were also decided against the appellant-plaintiff and eventually the suit was dismissed, vide judgment and decree dated 8.2.2011.

The appeal preferred by the appellant did not find favour with the Additional District Judge, Tarn Taran. The Appellant Court affirmed findings of the trial court on all the issues except the question of non-maintainability of the suit but eventually dismissed the appeal, vide judgment and decree dated 30.7.2012.

Counsel for the appellant has assailed the judgments with the submission that the courts committed grave error by failing to consider testimony of Anil Kumar Gupta, Handwriting and Finger Prints Expert while relying upon the oral evidence adduced by the respondent-defendant No. 5 in the shape of testimony of one of the alleged attesting witnesses of the sale deed and Joginder Singh-defendant No. 1 and attorney of Amrik Singh who is also one of the vendors of the sale deed in question. It is vehemently argued that science of comparison of finger prints including thumb is a complete and perfect science. The courts have not given weightage to testimony of Anil Kumar Gupta despite there being no such finding that report prepared by the expert and his testimony is not worthy of credence and reliance. It is further argued that the contesting defendants did not examine an expert to rebut testimony of Anil Kumar Gupta or substantiate their plea that the sale deed in question bears thumb

impressions of Harbhajan Singh. Harbhajan Singh appellant appeared in the witness box but defendant No. 5 failed to bring forth any such facts sufficient to discard or disbelieve his testimony that the sale deed in question does not bear his thumb impressions or the same was not executed by him. It is further argued that Gurmej Singh Nambardar DW3 belongs to a different village. There is no explanation forthcoming from the side of contesting defendants as to why the sale deed was not got attested from an office bearer of panchayat or Nambardar of village Ram Kahara despite the fact that the said village had its panchayat and separate Nambardar. According to counsel, since the sale deed was not thumb marked by the plaintiff-appellant, there was every reason for the attesting witness to depose in favour of defendant No. 5 in order to escape from criminal liability for attesting an impersonator as Harbhajan Singh. The last submission made by counsel is that even the appellant is ready to bear the expenses if the sale deed and specimen/sample thumb impressions of Harbhajan Singh are sent to a government laboratory for comparison, as a measure of corroboration to the report and testimony of Anil Kumar Gupta, examined by the appellant to prove his case.

Counsel would further argue that the courts have wrongly held that the suit is barred by limitation. To bring home his contention, it is argued that it is undisputed position of the case that Harbhajan Singh shifted to U.P. approximately 20 years before filing of the suit in 2005. Nothing has been transpired in cross examination of Harbhajan Singh that prior to December 2004, he ever had knowledge of existence of sale deed in question. It is further argued that since the sale deed has not been executed

by Harbhajan Singh and the same does not bear his thumb impressions, knowledge can not be imputed to the appellant on the basis of inferences, conjectures and surmises, as has been sought to be done by the Appellate Court while deciding the question of limitation.

There is no representation on behalf of respondent No. 1, earlier represented by a counsel.

The appellate court, in para 11 of the judgment, has referred to testimony of Anil Kumar Gupta, Handwriting and Finger Prints Expert PW3 and noticed the opinion/observations made by him to conclude that on detailed examination and comparison, he is of the opinion that thumb impressions Mark Q1 to Q3 on the sale deed Ex. D3 do not tally with specimen thumb impressions Mark L1 to L3 and mark R1 to R3. In the later part of the judgment, there is not even a whisper with regard to testimony of Anil Kumar Gupta or the reasons that weighed in the mind of Appellate Court to discard the report and testimony of Sh. Anil Kumar Gupta. There cannot be dispute about settled position in law that science of finger prints comparison is a perfect science and as such testimony of an expert witness can be relied upon unless there are valid and legal reasons to reject the comparison and opinion made by the expert. In the case at hand, the contesting defendants did not avail services of another expert to counter/rebut the report prepared by Sh. Anil Kumar Gupta meaning thereby that report prepared by Sh. Anil Kumar Gupta remains unrebutted and unchallenged.

Perusal of the judgments passed by the two courts would reveal that even no submissions were made by counsel representing defendant No.

5 to assail authenticity and correctness of comparison made by Sh. Anil Kumar Gupta and his ultimate conclusion that the disputed thumb impressions do not tally with the specimen thumb impressions and thumb impressions available on record. I have myself compared the disputed thumb impressions with sample thumb impressions of Harbhajan Singh with a magnifying glass and of the view that opinion expressed by the expert that the disputed thumb impressions are of ULNAR LOOP TYPE in there basic pattern whereas specimen thumb impressions are of LATERAL POCKET LOOP TYPE (COMPOSITE TYPE) in their basic pattern i.e. thumb impressions are basically different is correct and merits acceptance. I have also gone through the testimony of Sh. Anil Kumar Gupta and find no reason to discredit him. It is surprising rather mystifying that the courts did not bother to consider testimony of expert while deciding the question of validity or otherwise of the sale deed in question. In the given circumstances, it is difficult to give primacy to the oral testimony of Gurmej Singh DW3 and Joginder Singh DW6 examined by the defendant-respondent to counter case of the appellant-plaintiff. As has been rightly argued by counsel for the appellant, Gurmej Singh being one of the attesting witnesses of the sale deed and Joginder Singh signatory of the sale deed being attorney of Amrik Singh another vendor of the land are bound to support cause of the defendant in order to escape criminal liability for attesting an impersonator of Harbhajan Singh and facilitating Salwinder Singh defendant No. 5 for procuring the sale deed in question even in respect of land co-owned by Harbhajan Singh, plaintiff-appellant. This apart, perusal of testimony of Gurmej Singh would reveal that he did not

have any knowledge about the family of Harbhajan Singh. There is no explanation given by defendant No. 5 as to why he called Sh. Gurmej Singh to attest the sale deed in preference to a member of panchayat or Nambardar of his own village. Taking a cumulative view of the discussion made hereinbefore, there is no escape from the conclusion that findings of the courts with regard to correctness and genuineness of the sale deed in question are the result of ignoring material evidence, thus, suffer from perversity, therefore, cannot be allowed to sustain and accordingly set aside.

This brings the court to the question of limitation in filing the suit. Indisputably, the appellant shifted to a village in U.P. sometime in the early 1990's. The plaintiff had five more brothers and some of them including Joginder Singh, Salwinder Singh stayed back in village Ram Kahara Tehsil Patti. The land in village Ram Kahara was jointly owned by Harbhajan Singh and his brothers. The land was cultivated by brothers of Harbhajan Singh when he left State of Punjab allegedly due to terrorism. The appellant has failed to adduce clear evidence with regard to any payment of share of produce being given by Salwinder Singh in respect of the land in question. Even if it is assumed that Salwinder Singh had not paid anything to the appellant in respect of his share in the joint land, keeping in view close relationship between the parties, the same neither invites serious weightage nor an inference that Harbhajan Singh was aware about the sale deed in question three years prior to filing of the present suit. The matter would have been different had Salwinder Singh been a stranger to the family of Harbhajan Singh. There is nothing brought forth in cross examination of Harbhajan Singh that he came to know about the sale

deed in question prior to December 2004. The appellant court in para 19 of the judgment has held that terrorism came to end in Punjab in the year 1992 and there was no question of his (Harbhajan Singh) not coming to Punjab between 1992 to 2004. The court has taken note of entries in jamabandis for the year 1986-87 Ex. D5, 1996-97 Ex. D6 and 2001-02 Ex. D7 to say that name of Harbhajan Singh does not figure in the column of ownership, as such, the court concluded that Harbhajan Singh must be in knowledge of said revenue record by relying upon judgment of this Court **Gajjan Singh vs. Virsa Singh and others 2007(3) Civil Court Cases 312** that says that a registered document is a public document and the same can be challenged within three years of knowledge. In the instant case, this Court has set aside findings of the courts with regard to the sale deed having been executed by the appellant-plaintiff meaning thereby that knowledge to the appellant can not be imputed from the date of registration of the sale deed in view of the provisions of Section 3 of the Transfer of property Act. There is nothing on record suggestive of the fact that Harbhajan Singh ever visited his village from 1992 to 2004 or he ever obtained copies of jamabandis before December 2004 in order to have knowledge of the revenue record or entry of sale deed. The inference drawn by the appellate court is not well founded rather is the result of surmises and conjectures and its failure to appreciate testimony of Harbhajan Singh in right perspective. Accordingly, findings of the appellate court that Harbhajan Singh had knowledge of the sale deed in question are not well based and set aside. Since Harbhajan Singh acquired knowledge of the sale deed in question in December 2004, the suit filed in the year 2005 is clearly within limitation.

The Appellate Court, in para 26 of the judgment, has held that the suit is not properly valued for the purpose of court fee and jurisdiction. In view of findings aforesaid that sale deed in question was not executed by Sh. Harbhajan Singh and the same is the result of impersonation and void ab initio, the appellant cannot be said to be executant of the sale deed requiring payment of ad valorem court fee. As such, findings of the appellate court in this regard are patently erroneous and set aside. In view of the above, the sale deed in question has no adverse affect qua rights of the appellant being co-owner in the joint land to the extent of 7 kanal 15 marlas purported to be sold through sale deed dated 12.2.1981. As a natural corollary, the appellant-plaintiff became co-owner in possession of land measuring 7 kanal 15 marlas and is entitle to seek declaration in the said terms. As the plaintiff-appellant is co-owner in possession of land measuring 7 kanal 15 marlas, respondent-defendant No. 5 is restrained from alienating the suit land to the extent of share of the plaintiff-appellant. Accordingly, suit of the appellant-plaintiff is decreed to the effect that the appellant is co-owner in possession to the extent of land measuring 7 kanal 15 marlas of land, detailed in head note of the plaint and defendant No. 5 has got no right or interest in the suit land and the sale deed dated 12.2.1981 alleged to have been executed by the plaintiff in favour of defendant No. 5 to the extent of his share is illegal, null and void and result of fraud/impersonation and mere paper transaction, thus, ordered to be set aside. Further, defendant No. 5 is restrained from alienating the suit land i.e. 7 kanal 15 marlas belonging to the plaintiff-appellant. The plaintiff-appellant being one of the co-sharers shall be entitle to joint possession of land.

In view of what has been discussed hereinbefore, the appeals are allowed with costs throughout. The judgments and decrees passed by the courts are set aside. The suit filed by the appellant-plaintiff is decreed in the aforesaid terms.

(Rekha Mittal)
Judge

May 14th, 2019
paramjit

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