

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

**RSA No.4736 of 2016 (O&M)
Date of Decision.27.02.2019**

S. Harpal Singh and others ...Appellants

Vs

Manmohan Kaur and others .Respondents

2. RSA No.4737 of 2016

S. Harpal Singh and others ...Appellants

Vs

Manmohan Kaur .Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shivender, Advocate for
Mr. B.S. Bhalla, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing No.4736 and 4737 of 2016 arising out of common decision rendered in two civil suits i.e. Civil Suit No.143 of 2001 titled as “Manmohan Kaur Vs. Harpal Singh and others” (hereinafter called the 1st suit) seeking declaration of being owner in joint possession of the land measuring 17 kanals 13 marlas and Civil Suit No.463 of 2002 titled as “Harpal Singh and others Vs. Manmohan Kaur” (hereinafter called the 2nd suit) seeking restraint against defendant-Manmohan Kaur and her agents, attorney and relatives from forcible interference and dispossession in respect of few khasra numbers which were common in both the suits.

Plaintiff, Manmohan Kaur, in the 1st suit, claimed to be joint owner in possession of the land measuring 17 kanals 13 marlas

by asserting that she was having 1/4th share and remainder 3/4th share was owned by defendants No.5 to 7 and defendant Nos.1 to 5 by hatching conspiracy forged and fabricated the alleged sale deed dated 12.07.1999 vindicated to have executed by her in favour of defendants No.1 to 4 but in fact it was never executed by her or signed or thumb marked. It was an attempt of impersonation, thus, question of appearing before the Sub Registrar did not arise. The sale deed was forged and fabricated and when the threat was extended, was constrained to claim declaration and injunction.

Defendants in the 1st suit opposed the suit and supported the sale deed executed for consideration of Rs.3 lakhs by the plaintiff. Even mutation bearing No.1728 dated 12.7.1999 was sanctioned. On merits, it was admitted that plaintiff was joint owner in possession of the suit land to the extent of 1/4th share of her father, who owned more than 66 kanals whereas plaintiff's father inherited the land from his forefathers. Plaintiff and defendant No.7 used to live in their in-laws house and their share in the land was regularly cultivated by defendants No.1 to 5.

Since the parties were at variance, the trial Court in the 1st suit framed the following issues:-

“1. Whether plaintiffs are co-owners of suit property?

If so, to what extent? OPP

2. Whether defendants impersonate plaintiff at the time of execution and registration of sale deed dated 12.7.1999? OPP

3. Whether sale deed dated 12.7.1999 is a forged and

fabricated document? OPP

4. Whether defendants No.1 to 4 are threatening plaintiff to alienate, mortgage or transfer suit land?

OPP

5. Whether defendants No.5-7 are trying to sell land more than their share? OPP

6. Whether the plaintiff has filed the present suit in collusion with defendant No.6? OPD

7. Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD

8. Whether plaintiff has not come to the court with clean hands? OPD

9. Whether defendants No.1 to 4 have purchased the suit and from plaintiff for valuable consideration? OPD

10. Whether the plaintiff has not paid ad-valorem court fee? OPD

11. Relief.”

In the 2nd suit, plaintiffs sought permanent injunction against defendant-Manmohan Kaur from dispossessing the plaintiffs or interfering into their peaceful possession in respect of land bearing khasra No.34/3(8-0), 7/1(4-16), 7/2(2-9), 35/10/2(0-15) total 16 kanals.

Manmohan Kaur as defendant taken same stand as the one taken in the 1st suit being plaintiff besides objections qua maintainability and stay of the suit under Section 10 CPC.

In the 2nd suit, following issues were framed:-

- “1. Whether the plaintiff is entitled to injunction as prayed for? OPP*
- 2. Whether the plaintiffs have not come to the court with clean hands? OPD*
- 3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 4. Whether the suit is bad for non-joinder of the necessary parties? OPD.*
- 5. Whether the present suit is liable to be stayed under Section 10 of CPC? OPD*
- 6. Relief.”*

Even FIR bearing No.194 dated 2.7.2002 under Sections 419, 420, 466, 468 and 471 CPC was also tendered into evidence as Ex.P1. Sanjeev Sharma, Finger Print and Handwriting Expert was examined as PW2 and stated that specimen thumb impressions taken from the sale deed were not of Manmohan Kaur. Jambandies, report of the Director Finger Print Bureau pertaining to FIR aforementioned and photographs of finger print were also placed on record.

Defendants brought on record jamabandies for the years 1967-68, 1972-73, 1977-78, 1982-83, 1988-89, 1993-94, 1998-99 and 2003-04, 2008-2009 as Ex.D1 to D9.

The trial Court on the basis of aforementioned evidence decreed the 1st suit of Manmohan Kaur and dismissed the 2nd suit of Harpal Singh and others, defendants in the 1st suit. Against the aforementioned judgments and decrees of the trial Court, two appeals were filed by the defendants in the 1st suit and plaintiffs in the 2nd

suit but the same had been dismissed.

Learned counsel appearing on behalf of the appellants submitted that the report of the expert has not been proved on record, therefore, the defendants prevented to cross-examine to ascertain the truth. Registered document carries presumption of truth, as the plaintiffs in the 2nd suit and defendants in the 1st suit themselves placed on record proof that they had been put into possession by virtue of sale deed and also mutation was sanctioned. The Courts below ought not to have taken into consideration the evidentiary value of judgments in the criminal case convicting the defendants as the matter is sub judice before this Court. Simplicitor suit for declaration in such circumstances was not maintainable.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. Report of the Finger Print Bureau, Phillaur which is of government agency, revealed that thumb impression in sale deeds did not appear to be thumb impression of Manmohan Kaur. No doubt finding of criminal court is not binding but for collateral purpose can be looked into. In fact, defendants failed to prove that Manmohan Kaur, plaintiff herself executed the sale deed and it was not a case of fraud and impersonation. Best possible evidence for the defendants was to lead direct and cogent evidence to controvert the report of the Finger Print Bureau, Phillaur or handwriting expert. No such evidence was brought on record. They were afraid that cat would be out of the bag.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by

the Courts below as the same is based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

February 27, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No