

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

**RSA NO. 1117 OF 2019 (O&M)
DATE OF DECISION : 26.02.2020**

District Social Welfare Officer and another

...Appellants

versus

Dharampal and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashwani Kumar Saini, DAG, Haryana.

Mr. Vivek Sheoran, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

Having suffered concurrent adverse findings by the Courts below, the defendants/appellants herein are before this Court in Regular Second Appeal assailing the trial Court judgment and decree dated 30.05.2017, as upheld by the First Appellate Court vide its judgment and decree dated 05.09.2018.

2. Succinct factual matrix as noticed by the First Appellate Court first. Plaintiffs being senior citizens are getting pension from defendant No.1-District Social Welfare Officer, Sonipat, under the Social Welfare Pension Scheme since July, 2009. The plaintiffs supplied all required documents to defendant No.1 at the time of applying for the old age pension and were found eligible for the said scheme after verification. Pension was being duly paid to them, but defendant No.1 wrongly stopped the

same in April, 2015 without assigning any reason. Furthermore, the plaintiffs were forced to deposit ₹25,000/- with the department on the fear of arrest. Pension of plaintiff No.2 was also stopped on the pretext that age of wife has to be less than that of her husband. Subsequently defendant No.1 sent a letter dated 22.04.2016. The plaintiffs alleged that they are old age persons and have no source of income. They sent legal notice under Section 80 of the Code of Civil Procedure (hereinafter referred to as "the CPC") to the defendants but in vain. Hence, the suit.

3. In the joint written statement filed by the defendants, the allegations of plaintiffs were denied and preliminary objections regarding maintainability of suit; jurisdiction; locus-standi; claim for special costs under Section 35-A CPC and want of valid notice under Section 80 CPC were taken. The defence taken by them was that the plaintiffs gave false declaration regarding their age and obtained old age pension fraudulently. One complaint was received at C.M window by one Mahender Singh wherein it was alleged that plaintiffs are getting old age pension wrongly and illegally. A notice was sent to the plaintiffs directing them to produce cogent proof regarding their age within three days, but they did not respond to said notice. In this regard, one FIR bearing NO.288 dated 17.07.2016 under Sections 420/467/468/471 IPC was also got registered against the plaintiffs at Police Station Ganaur.

4. No replication was filed by the plaintiffs. Based on the rival pleadings, following issues were framed :-

- 1) Whether the plaintiffs are entitled to a decree for declaration to effect that the plaintiffs are eligible for the old age pension and letter No.2173-74 dated 22.04.2016 as prayed for ? OPP
- 2) Whether the plaintiffs are entitled to a decree for permanent injunction to the effect that restraining the defendants from effecting the recovery of the said illegal letter as prayed for ? OPP
- 3) Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
- 4) Whether the plaintiffs have no cause of action or locus standi to maintain this suit in its present form ? OPD
- 5) Whether the plaintiffs have not come in the Court with clean hands ? OPD
- 6) Relief.

5. In order to prove their case and to discharge their onus as per the issues framed, *ibid*, the parties to suit adduce their respective oral as well as documentary evidence.

6. Based on the collective evidence adduced by both the parties and upon appreciation thereof, the trial Court decreed the suit of plaintiffs.

7. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

8. I have heard learned counsel for the parties and have perused the judgments and decrees of both the Courts below. To my mind, these judgments have been passed after due appreciation of evidence adduced by the respective parties in support of their pleadings to discharge their onus to prove in terms of the issues, *ibid*.

9. The relevant extract of the findings and rightly so recorded by the First Appellate Court is hereunder :

"13. After appreciating the rival arguments and the perusal of case file, it is made out that there is no denial of the fact that the plaintiffs were getting pension from the defendants under Social Welfare Scheme, which was issued by the defendants after their due verification. It is also not denial to the fact that the team constituted by the department, which comprised of a medical officer besides others, had opined the age of the plaintiffs as more than 60 years and it is also not denied to the fact that no document of age was supplied by the plaintiffs at the time of applying for pension. Therefore, since the age of the plaintiffs has been verified by the defendants itself by their own method i.e constituting their own team in order to ascertain the age of plaintiffs, now it does not lie to the defendants that their age was not correct. Since the plaintiffs have not given any age of proof documents to the defendants at the time of applying for pension, it cannot be said that any fraud was

committed by the plaintiffs and that the pension was not sanctioned to the plaintiffs after following a due procedure framed by the defendants itself. It was the duty of the defendants as well as the concerned team to scrutinize the documents submitted by the plaintiffs at the time of applying their pension in order to find out whether it was in order, before submitting the necessary documents to them to see that it complied with all the requirements of law. If neither the defendants nor the concerned team took care to scrutinize the said documents then the question of the plaintiffs committing a fraud did not arise. It is well settled that where a person on whom fraud is committed, is in a position to discover the truth by diligence was fraud, is not proved. It was neither a case of suggestion falsi, or suppression very. There was ample time and opportunity for the defendants and concerned team to have found out the defect. In these circumstances if the defendants and the concerned team acquiesced in the infirmities which the said document contained and sanctioned the old age pension to the plaintiffs. Therefore, once the defendants by their own act and conduct have ascertained and admitted the age of the plaintiffs to be more than 60 years, now they cannot be allowed to said contrary to that. The latin maxim "Allegnis contraria non audiendus" which means whosoever had once stated the existence of the fact earlier, shall not be allowed to say contrary to that. The principle of estoppel as defined in Section 115 of the Indian Evidence Act, 1872, applies and the defendants are estopped by their own act and conduct. Reliance can be placed upon the case titled as "Shri Krishana v. The Kurukshetra University, Kurukshetra", AIR 1976

SC 376.

14. Further, the stoppage of the pension of plaintiff No.2 on the ground that she is wife of plaintiff No.1 and a wife is younger to her husband. This act and conduct to stop the pension of plaintiff No.2 on the aforesaid basis show the arbitrariness on the part of the defendants. It is quite unreasonable and highly illogical ground to stop the pension of plaintiff No.2. Further, Aadhar Cards have been placed on the record by the plaintiffs, which are issued by the public authority and, thus, have sanctity in the eyes of law and the same substantiate the claim of the plaintiffs in regard to their age. So far as the FIR against the plaintiffs is concerned, it is submitted that criminal and civil proceedings proceed simultaneously depending upon the facts and circumstances of the case. However, challan in the said FIR has not been filed by the police despite passing of six months period from lodging of FIR. It has also been rightly held by learned lower court that the civil cases are decided on the preponderance of possibilities and in the present case, which inclines in favour of the plaintiffs. Thus, the finding of the learned lower Court does not warrant any interference of this Court and thus, needs to be affirmed."

10. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

11. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. In view of my discussion above and the reasons recorded therein, no interference is called for by this Court. The instant second appeal being bereft of merit is accordingly dismissed.

13. Pending application, if any, also stand disposed of.

14. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 26, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |