In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2445 of 1994 (O&M)

Babu Lal

... Appellant(s)

Versus

Lal Chand and Another

... Respondent(s)

AND

2. Regular Second Appeal No. 4073 of 2001 (O&M)

Babu Lal

... Appellant(s)

Versus

Mukh Ram (Died) through his LRs and Others

... Respondent(s)

DATE OF DECISION: 04.07.2022
RESERVED ON: 16.05.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. V.K.Jain, Senior Advocate
with Mr. Anil Bansal, Advocate and Ms. Sonika Garg,
Advocates for the appellant(s).

Mr. Sunil Chadha, Senior Advocate
with Ms. Swati Verma, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The regular second appeals in the States of Punjab, Haryana and Union Territory OF Chandigarh are filed under Section 41 of the Punjab Courts Act, 1918 (hereinafter referred to as "the 1918 Act"). Hence, it is not mandatory to frame a substantial question of law. A five Judges Bench in ***Pankjakshi (Dead) Through L.Rs and Others v. Chandrika and Others (2016) 6 SCC 157*** has interpreted the aforesaid position of law.

These two appeals are connected though arising from two

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separate suits. However, the property in dispute is common and the plaintiffs in both the suits are the members of one family. The learned counsel representing the parties are also common and they are *ad idem* that both the appeals can conveniently be decided by a common judgment.

3. Two independent suits were filed from which these appeals have arisen. Late Sh. Mangtu Ram filed a suit on 09.06.1987 for grant of decree of permanent injunction on the basis of a registered lease deed dated 04.07.1987 allegedly executed by Sh.Omkar Singh for a period of 80 years at the lease amount of ₹500/- per annum. Late Sh. Mangtu Ram claimed that he is in possession of the property as a lessee and the defendants have no right to interfere in his possession. Late Sh. Mangtu Ram is the paternal uncle of Sh. Lal Chand (the respondent in both the appeals and central figure in the litigation). Late Sh. Mangtu Ram, in fact, was unmarried and died after the filing of the suit. Sh.Lal Chand's father, namely Sh.Mukh Ram was impleaded as legal representative of Late Sh. Mangtu Ram. In this suit, defendant No.1 (Sh.Omkar Singh) was proceeded against *ex parte*, whereas, the suit against the defendant No.2 was dismissed and the defendant No.3 to 19 were given up. The suit was decreed *ex parte* on 02.12.1998. The appeal filed by the appellant claiming to be the legal representative of Sh.Omkar Singh, who had also died on 06.07.1991, was dismissed as not maintainable. This is how the Regular Second Appeal No. 4073 of 2001 has been filed.

4. Importantly, there is another suit filed by Sh.Lal Chand on 11.11.1998 for grant of decree of possession by way of specific performance of the agreement to sell against Sh.Omkar Singh. He claims that Sh.Omkar

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Singh agreed to sell the land measuring 26 kanals and 8 marlas vide agreement to sell dated 19.01.1984 for a total amount of ₹60,000/-. Sh.Omkar Singh received ₹28,000/- as earnest money and the sale deed was to be executed and registered on 31.01.1985 on receipt of balance sale consideration of ₹72,000/-, which was subsequently extended by a writing to 31.12.1985. Sh.Lal Chand claimed that he was present in the office of the Sub-Registrar on 31.12.1985 along with balance amount, however, the defendant failed to show up to perform his part of the contract. Hence, after marking his presence, he repeatedly requested Sh. Omkar Singh to execute the sale deed. The cause of action in favour of the plaintiff, firstly, accrued on 19.01l.1984 when the agreement to sell was executed and subsequently, on 31.12.1985 when the defendant did not attend the office of the Sub Registrar to execute the sale deed.

5. The defendant, while contesting the suit, asserted that neither any agreement to sell was executed between the parties on 19.01.1984 nor the amount of ₹28,000/- was received. It has been asserted that the defendant is an illiterate, old, sick and weak person. His only son is in Army. He has four grandchildren, whereas the plaintiff is a very clever and dishonest person. It is submitted that the plaintiff intends to usurp his entire property by taking undue advantage of the weakness, old age, illiteracy and sickness. The plaintiff assured him that he would get his joint land partitioned as there was a dispute between the co-owners. Under that pretext, he was taken to the office of the Tehsildar (Sub Registrar) on several times occasions, wherein the plaintiff got the thumb impression of the defendant on various documents on the pretext that they are required for filing the

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application for partition. Thereafter, the plaintiff fabricated an agreement to sell as also scribed the agreement for extension of time. It is submitted that the plaintiff, in similar manner, has got fabricated a lease deed dated 04.07.1984 in favour of Sh.Lal Chand's paternal uncle late Sh.Mangtu, though late Sh. Mangtu was confined, being unable to walk. Similarly, a receipt of ₹40,000/- has also been fabricated. The plaintiff has also fabricated his alleged power of attorney dated 04.07.1984, which has been proved to be a false document. It is claimed that if there was any agreement, there was no necessity of filing an application for partition. Similarly, if the plaintiff had handed over a sum of ₹28,000/- to the defendant, then what was the necessity of executing the lease deed on payment of ₹40,000/- for a period of 80 years on 04.07.1984 in favour of late Sh.Mangtu. The defendant further claimed that the writing dated 31.01.1985 is also a result of fabrication.

6. Sh.Lal Chand has filed replication while reiterating his stand in the plaint. He did not deny the existence of a lease deed executed by Sh.Omkar Singh in favour of late Sh.Mangtu, but he has no connection with the same.

7. On the appreciation of pleadings, the trial Court has culled out the following issues:-

"1. Whether parties executed an agreement to sell dated 19.1.1984? OPP

2. If so, whether defdt. is bound to comply with that agreement? OPP

3. Whether plaintiff forged and fabricated the said

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agreement to sell dated 19.1.84? OPD

4. *Whether the plaintiff has got nolocus standi to file the present suit? OPD*

5. *Whether present suit is not maintainable in the present form? OPD*

6. *Whether plaintiff is estopped from his act and conduct from filing the present suit? OPD*

7. *Whether the present suit is time barred, if so, its effect? OPD.*

8. *Relief".*

8. Initially, the defendant was proceeded against *ex parte* resulting in an *ex parte* decree against him. Pursuant thereto, the sale deed was executed. However, on an application under Order IX Rule 13 CPC, 1908, the *ex parte* decree was set aside and the trial of the case commenced.

9. The plaintiff, in order to prove his case, examined the following witnesses:-

i) PW.1 Narinder Kumar, Scribe of the alleged agreement to sell dated 19.01.1984.

ii) PW.2 Sita Ram, Scribe of the writing (Ex.P2), which is extension of the date for performance of the agreement to sell.

iii) PW.3 Kaushalya Devi, Registration Clerk in the office of the Sub Registrar in order to prove the application moved by the plaintiff on 31.12.1985 before the Sub Registrar.

iv) PW.4 Subhash Chand, the marginal witness of the

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agreement to sell.

v) PW.5 Ram Singh, the marginal witness of the writing dated 31.01.1985.

vi) PW.6 Tara Chand who proved his signatures on the writing dated 31.01.1985.

vii) PW.7 Vijay Rastogi, Handwriting and Fingerprint Expert.

viii) PW.8 Lal Chand (the plaintiff appeared as his own witness).

10. On the Other hand, the defendant examined DW.1 Ram Chand, who stated that Sh.Omkar Singh has expired and before his death, he executed a registered Will dated 13.06.1991 in favour of Sh.Babu Lal. He is one of the attesting witnesses to the registered Will dated 13.06.1991 executed by Sh.Omkar Singh in favour of his grandson Sh.Babu Lal. DW.2 Krishan Chand is the Scribe of Will dated 13.06.1991. DW.3 Babu Lal, legal representative of the defendant, had appeared in evidence.

11. The trial Court recorded a finding that the execution of the agreement to sell, the agreement of extension of time dated 31.01.1985 and presence of the plaintiff in the office of the Sub Registrar, is proved. Consequently, the trial Court held that the plaintiff is entitled to decree for specific performance. The first Appellate Court also affirmed the aforesaid findings.

12. The appeal was admitted for regular hearing. During the pendency of the appeal, two separate applications under Order XLI Rule 27 CPC, 1908 were filed seeking permission of the Court to prove the copy of receipt dated 04.07.1987 for ₹40,000/-, Collector rates of the agricultural

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land of the village on the date of filing of the application, special power of attorney dated 04.07.1984 executed by Sh.Omkar Singh in favour of Sh.Lal Chand and a copy of the lease deed dated 04.07.1984 executed by Sh.Omkar Singh in favour of late Sh. Mangtu Ram (paternal uncle of Lal Chand) for a period of 80 years w.e.f. 04.07.1984 till 31.07.2064. Both the applications were allowed on 05.05.2022 as it was noticed that a copy of the receipt and a copy of the lease deed is hitherto a part of the record in the connected case and special power of attorney dated 04.07.1984 has already been pleaded by the defendant in his written statement. The learned counsel representing the plaintiff was granted an opportunity to lead counter evidence, if any, while adjourning the case to 16.05.2022 on which date, the learned senior counsel representing Sh. Lal Chand stated that he does not wish to lead any evidence in response to the documentary evidence produced by the defendant. With the consent of the learned counsel representing the parties, the arguments were heard. While reserving the judgment, an opportunity was given to the learned counsel representing the parties to file the written arguments, if any, within the next seven working days. The written arguments, as already noticed, have been filed. This Court has also carefully examined the judgments passed by both the Courts below as well as the record, which was requisitioned in both the regular second appeals.

13. Let us first take up the Regular Second Appeal No. 4073 of 2001. It is evident that the First Appellate Court dismissed the appeal without examining the case on merits. The defendant-Sh.Omkar Singh was proceeded against *ex parte* before the trial Court. Sh.Babu Lal claiming to be the legal representative and grandson of late Sh.Omkar Singh filed the

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appeal. The Appellate Court dismissed the appeal only on the ground that Sh.Babu Lal was not party to the suit and since no application for impleading the legal representative was filed by Sh.Babu Lal during the pendency of the suit, therefore, the appeal is not maintainable. The learned counsel representing the respondent has failed to address any significant argument in order to defend the aforesaid order passed by the Appellate Court.

14. It is unfortunate that the First Appellate Court has overlooked Rule 2 of Part-C, Chapter-I of Volume-V of the Rules and Orders of Punjab and Haryana High Court which reads as under:-

> *"2. Whenever by a decree or order which appealable to the High Court the interest of-*
>
> *(a) a beneficiary in property which at the date of such decree or order was vested in or in the possession of a trustee, an executor, an administrator, or a receiver or manager appointed by a court who as such was a party to such decree or order; or*
>
> *(b) a legal representative as such of a deceased party to such decree or order; or*
>
> *(c) an assignee of a party to such decree or order by assignment subsequent to the date of such decree or order; or*
>
> *(d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest, by, through, or from any*

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party to such decree or order is affected;

and such beneficiary, legal representative, assignee, or person was not or has not been made a party to such decree or order or to proceedings thereunder or thereon and desires to present to the High Court for admission a memorandum of appeal from such decree or order, he may name himself therein as an appellant if at the time when he presents such memorandum of appeal for admission he along with such memorandum of appeal presents an application for leave to make himself an appellant, and, except as hereinafter provided, an affidavit stating such facts as may be necessary in support of his application : Provided always, that a Judge of the High Court may, by an order allow in his discretion a reasonable time in that behalf for the presentation of such an affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the memorandum of appeal".

15. It is crystal clear that a legal representative of a deceased party to such decree or order is entitled to present a memorandum of appeal along with an application for leave to implead himself as the appellant. Although, this Rule is applicable to the High Court, however, in view of amendment in Order XXII Rule 3 and 4 CPC, 1908 carried out in the States of Punjab, Haryana and Union Territory, Chandigarh, which provides that there is no abatement of the case on account of failure to file an application by the legal representative due to the death of any party, the Court should have permitted

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Sh.Babu Lal to file the appeal. The Appellate Court despite taking a note of the assertions made by Sh.Babu Lal claiming to be the legal representative of late Sh.Omkar Singh on the basis of the registered Will dated 13.06.1991, has dismissed the appeal.

16. Keeping in view the aforesaid facts, the order passed by the learned Additional District Judge dated 07.05.2001 dismissing the appeal as not maintainable is perverse, therefore, set aside. The next course of action shall be decided after discussing the other two appeals.

17. On a careful reading of the impugned judgments, it is evident that both the Courts below have decided the case in a casual, mechanical and superfluous manner. Both the Presiding Judges have failed to analyze the case in a proper perspective and in depth. A Presiding Judge is expected to analyze the pleadings and the evidence in a judicious manner and in his pursuit to do substantial justice, he is expected to critically appraise, evaluate and examine in depth the entire evidence in the background of the facts and circumstances before him. A mechanical approach while deciding the disputes which does not serve the rule of law and justice, is not expected from the Presiding Judges of the Courts. In the considered view of the Court, the following facets have not been appreciated by both the Courts below:-

I) There is no reason forthcoming for extending the time/period of nearly one year for execution of the sale deed on 31.01.1985.

II) There is no reason forthcoming from the plaintiff to explain the delay of nearly three years from the alleged extended date agreed upon between the

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parties in filing the suit. Neither in the pleadings nor in the evidence, the plaintiff has furnished any explanation whatsoever to explain the delay of two years and 11½ months, precisely.

III) On 04.07.1987, three documents are alleged to have been thumb marked/executed/registered by late Sh.Omkar Singh. The first is lease deed for a period of 80 years @ ₹500/- per year executed on 04.07.1987 in favour of late Sh.Mangtu (Lal Chand's paternal uncle). As per the lease deed, the possession of the land has been handed over to late Sh.Mangtu w.e.f. 04.07.1984. In other words, the lease deed is stated to have commenced three years prior to the execution of the lease deed. Late Sh.Mangtu is stated to have remained unmarried till his death and died issueless. On the death of Sh.Mangtu, Sh.Lal Chand's father (Sh.Mukh Ram) was impleaded as his legal representative. Sh.Mukh Ram also died and now Sh. Lal Chand along with his mother and brother are the legal representatives of late Sh.Mangtu Ram.

IV) A receipt dated 04.07.1987 has been executed by late Sh.Omkar Singh acknowledging the receipt of total lease money of ₹40,000/- as advanced lease money for a period of 80 years. Both the documents i.e. lease deed as well as the receipt are

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signed by same witnesses Sh.Amar Singh and Sh.Ram Singh.

V) On 04.07.1987 itself, late Sh.Omkar Singh is alleged to have executed a registered special power of attorney in favour of Sh.Lal Chand. In the aforesaid special power of attorney, Sh.Lal Chand was authorized by late Sh.Omkar singh to prosecute/defend the partition proceedings pending before the authorities. However, the partition proceedings had come to an end much before that date. The execution of the aforesaid document is not disputed by Sh.Lal Chand while filing his replication. The assertion made to that effect has not been denied by Sh. Lal Chand, the plaintiff. The aforesaid document has been placed on file in additional evidence. The lease deed as well as the special power of attorney is scribed by the same Scribe namely late Sh.Mangat Ram Saini.

18. Evidently, on a careful perusal of the agreement to sell (Ex.P1), it is crystal clear that it has been scribed on three non judicial stamp papers worth ₹4/-. The first non-judicial stamp paper bears No. 2282 dated 19.01.1984. It has been issued by Sh.Kishan Chand Yadav, Stamp Vendor, Kosli, Rohtak. It has been issued for execution of the agreement to sell. The second non-judicial stamp paper is for ₹ 50 paisa. It has been issued by Sh.Dharam Singh Saini, Stamp Vender, Jhajjar (Rohtak) vide serial No. 8048

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dated 16.01.1984. it was issued to Sh.Dharam Singh for execution of the documents. Similar is the third leaf of the non-judicial stamp paper. There is no *inter se* connection between the first leaf and the second and third leaf. There is no explanation by the plaintiff in this regard. Further, there is no justification as to why two stamp papers for 50 paisa each were purchased by Sh.Dharam Singh on 16.01.1984 from Jhajjar (Rohtak), when the property in dispute is situated in village Bawa, Tehsil Kosli. There is no explanation as to who is Sh. Dharam Singh

19. The aforesaid agreement to sell is alleged to have been scribed by a professionally licensed Scribe namely Sh.Narinder Kumar Gupta. He has appeared in evidence, however, failed to produce his notebook/diary in order to prove that the agreement to sell was scribed on 19.01.1984. He did not produce his note book where an entry to that effect, duly thumb marked or signed, is required to be entered into.

20. Despite failing to deny the special power of attorney executed on 04.07.1987, the plaintiff neither disclosed this fact in the plaint nor furnished any explanation while appearing in the evidence. If late Sh.Omkar Singh had entered into an agreement to sell on 19.01.1984 and the sale deed was to be executed on 31.01.1985 which was extended upto 31.12.1985, then Sh.Lal Chand would have got the sale deed executed on 04.07.1987 in his favour instead of a special power of attorney from late Sh.Omkar Singh.

21. It is evident that from the very beginning, it is the stand of late Sh.Omkar Singh that Sh.Lal Chand, who was working as a teacher, was helping him in the proceedings for partition of the joint land. It is evident from perusal of the file that on 01.08.1984 the partition proceedings were

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still pending which were finally decided on 16.10.1986. Hence, there was no occasion to execute a special power of attorney as apparent from the partition deed (Ex.P6) on 04.07.1987. The deed of partition, which is Ex.P6, proves that the partition proceedings stood finalized on 16.10.1986.

22. Pursuant to the *ex parte* decree for specific performance of the agreement to sell, the sale deed was executed through the Court official on 17.05.1989. The Court official, in the written statement itself, has recited that the possession of the land has been handed over to Sh.Lal Chand, though there was no occasion for the same.

23. There is neither any allegation nor any evidence to prove that late Sh.Mangtu (paternal uncle of Sh.Lal Chand) who was unmarried and issueless, was residing separately from the family of Sh.Lal Chand. Once there was an agreement to sell in favour of Sh.Lal Chand on 19.01.1984 on receipt of ₹28,000/- out of total sale consideration of ₹60,000/-, then there was no occasion for late Sh.Mangtu to pay ₹40,000/- on execution of the lease deed, particularly when the total balance payable amount as per the agreement to sell comes to ₹32,000/- only. On 04.07.1984, all the three documents were scribed by the same Scribe i.e. Sh. Mangat Ram Saini.

24. It is also evident that Sh.Ram Singh is a stock witness of Sh.Lal Chand. He is a witness of the writing dated 31.01.1985 which extended the period of execution of the sale deed and the lease deed in favour of late Sh.Mangtu as well as the receipt executed in favour of late Sh.Mangtu. The learned counsel representing the appellant has pointed out certain discrepancies in the oral evidence, however, this Court finds that such discrepancies are not required to be discussed in view of the facts already

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noticed above.

25. From the facts narrated above, it is evident that the entire case set up by the plaintiff in both the suits is surrounded by the various irreconcilable circumstances. The various documents which have been executed not only to defy logic, but are also full of suspicion. Late Sh.Omkar Singh has claimed that he is poor, weak, ailing and illiterate person. The Court was expected to be more considerate towards him, particularly when he was pitted against an educated person (teacher) who appears to be extra clever. Before the amendment of the Specific Relief Act, 1963 (hereinafter referred to as "the 1963 Act"), brought in by the Parliament in April, 2018, the relief of specific performance of the agreement to sell in terms of Section 20 of the 1963 Act was discretionary which has now been substituted. However, this case pertains to the period prior to the amendment. In these circumstances, particularly when the execution of the agreement to sell and subsequent conduct of the plaintiff and various other circumstances noticed above, this Court does not find it appropriate to exercise its discretion in favour of the plaintiff. Unfortunately, both the Courts below have failed to notice the aforesaid facts. There is no explanation to the fact that initially, the date for execution of the sale deed was fixed after a period of more than one year and thereafter, the same was further extended for another year.

26. Keeping in view the aforesaid discussion, both the Courts below have erred in granting decree of specific performance of the agreement to sell, however, there is a contract signed by the parties while admitting receipt of ₹28,000/-. Hence, the suit is decreed for alternative

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relief and the plaintiff shall be entitled to decree of ₹28,000/- along with the interest @ 9% per annum from the date of payment till its realization.

27. Now, the question is that what order should be passed in Regular Second Appeal No. 4073 of 2001, particularly when there is no evidence to prove that there was any delivery of possession. Late Sh.Mangtu has died. Sh.Lal Chand, plaintiff in the suit for specific performance is one of the legal representatives. The leasehold rights, if any, had merged with the ownership rights on execution of the sale deed. However, now the decree has been reversed. Further, there is no evidence to prove that the lease deed was ever acted upon.

28. Keeping in view the aforesaid facts, this Court is of the considered view that Regular Second Appeal No. 4073 of 2001 also deserves to be allowed. The judgment and decree, passed by both the Courts below, is set aside. If the possession in execution of the decree of specific performance has been delivered to the plaintiff-Sh.Lal Chand, the same shall be restored to Sh.Babu Lal, in the restitution proceedings.

29. With the observations made above, both the appeals are allowed.

30. The miscellaneous application(s) pending, if any, in both the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 04, 2022
"DK"

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

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