

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

**1. RSA-3202-2011
Date of decision: 23.03.2022**

SUKHDEV SINGH AND ANR.

..Appellants

Versus

NASEEB KAUR AND ORS.

..Respondents

2. RSA-4828-2013

SUKHDEV SINGH AND ANR.

..Appellants

Versus

NASEEB KAUR AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pankaj Bhardwaj, Advocate
for the appellants (in RSA-3202-2011)

Mr. Pawan Kumar, Advocate
for the appellants (in RSA-4828-2013)

Mr. R.B.S. Chahal, Advocate
for respondents.

ANIL KSHETARPAL, J.

The appellant, in both the appeals, is a defendant in a suit for grant of decree of declaration to the effect that the plaintiff is the owner in possession of the property and the alleged power of attorney executed on 21.08.1990, (registered on 22.08.1990), by Mohinder Singh in favour of Sukhdev Singh, is a result of forgery. Consequently the sale deed dated 13.05.1995, executed by Sukhdev Singh, in favour of his wife, is not binding on the rights of the plaintiff. Late Sh. Mohinder Singh is the original plaintiff, whereas, Sukhdev Singh and Darshan Kaur are the defendants. The defendants filed a counter claim for grant of decree of

possession by way of specific performance of the agreement to sell dated 11.03.1989.

In the considered opinion of the Court, the following question arises for adjudication:-

“Whether a report containing the opinion of a handwriting and fingerprint expert, prepared during the pendency of a criminal case, can be relied upon in a civil suit without ensuring examination and cross-examination of the author?”

Some admitted facts are as under:-

- 1. Mohinder Singh son of Swaran Singh was owner in possession of the land located in village Gill on 11.03.1989, he on receipt of Rs.50,000/- out of a total agreed sale consideration of Rs.6,30,000/-, on 11.03.1989, executed an agreement to sell in favour of Sukhdev Singh with respect to land measuring 6300 square yards, at the rate of Rs.100 per square yard. The vendor agreed to execute the sale deed of the land in parts.*
- 2. It was agreed that Rs.1,50,000/- shall be payable on 20.04.1989. Thereafter, Sukhdev Singh shall pay Rs.1,50,000/- after a period of every four months from 20.04.1989, in order to pay the entire balance amount. The sale deed was to be executed and registered within a period of 20 months from the date of agreement to sell. After harvesting the crops, the possession of the land shall be handed over to the vendee on 20.04.1989.*
- 3. In other words, the sale deed was to be executed on or before 10.11.1999.*
- 4. Mohinder Singh received Rs.5,94,000/- out of total sale consideration of Rs.6,30,000/-. Mohinder Singh executed a registered General Power of Attorney in favour of Sukhdev Singh on 03.10.1989, with respect to land measuring 1000 square yards. Receipt of Rs.50,000/-, dated 18.04.1989, executed by Mohinder Singh on receipt specifically recites about delivery of physical possession.*

Now, the disputed facts are that late Sh. Mohinder Singh

claimed that he never executed the registered General Power of Attorney

The trial Court, after examining the pleadings of the respective parties, framed the following issues:-

- “1. Whether the plaintiff is owner in possession of the property fully detailed in the head note of the plaint?
OPP
2. Whether the sale deed executed by the Ist defendant in favour of defendant No.2 dated 16.5.94 is illegal null and void? OPP
3. Whether general power of attorney dated 21.8.90 is illegal, null and void? OPP
4. Whether the plaintiff is entitled to claim the relief of permanent injunction regarding alienation and possession qua the suit property? OPP
5. Whether Ist defendant is entitled to counter claim by way of specific performance of agreement dated 11.3.89?
OPD-1
6. Whether Ist defendant is entitled to possession of the suit property? OPD
7. Whether the counter claim is not maintainable in its present form? OPP
8. Whether counter claim is time barred? OPP
9. Relief”

Jaswant Singh, PW-2 Atma Singh, P-3 Navdeep Gupta (handwriting and

MOHD AYUB (fingerprint expert), PW-5 Parminder Singh Sidhu (legal representative of
2022.04.02
I attest to the accuracy and
authenticity of this document.

the plaintiff) and produced documentary evidence. Late Sh. Mohinder Singh (the plaintiff) appeared as PW-4 and his cross-examination was deferred. However, before he could be cross-examined he died. On the other hand, the defendants examined DW-1 Sukhdev Singh (defendant himself), DW-2 Ranbir Singh, DW-3 Inderjit Singh (handwriting and fingerprint expert), DW-4 Kamlesh Kumar (deed writer), DW-5 Beant Singh (nambardar), DW-6 Jasbir Singh (Ahlmad), DW-7 Darshan Kumar (Patwari) and produced various documents in evidence.

The trial Court, on appreciation of evidence, dismissed the suit as well as the counter claim. Two appeals were filed before the First Appellate Court- One by the plaintiff and second by the defendants. The First Appellate Court has accepted the appeal filed by the plaintiff (late Sh. Mohinder Singh), whereas, dismissed the appeal filed by the defendants. Resultantly, the suit filed by the plaintiff has been decreed while granting decree of declaration that the registered General Power of Attorney dated 21.08.1990, is forged and consequently, the sale deed executed on 15.05.1994, is not binding on the rights of the plaintiff.

The defendants have filed these two afore-referred appeals assailing the correctness of the judgment and decree passed by the Courts below.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the judgments passed by the Courts below along with the photocopy of the record of the lower Courts which was requisitioned. They have also filed their respective written submissions.

The learned counsel representing the appellants contends that

the First Appellate Court has erred in giving preference to the opinion of a handwriting and fingerprint expert employed by the Government while ignoring the direct evidence. He further contends that the First Appellate Court has erred while observing that the agreement to sell could not be performed in parts and there occurred some error while recording mutation of the purchased property.

Per contra, the learned counsel representing the (respondent-plaintiff in cross-suit) (late Sh. Mohinder Singh) while defending the judgment of the First Appellate Court contends that it is proved on the file that the registered General Power of Attorney dated 21.08.1990, was never signed by late Sh. Mohinder Singh and from the conduct of the defendant it is sufficiently proved that he did not come to the Court with clean hands.

Before proceeding further, let us carefully examine the reasons recorded by the First Appellate Court. The First Appellate Court records that pursuant to sale deed dated 16.05.1994, alleged to be executed on the basis of a General Power of Attorney dated 21.08.1990, the revenue authorities sanctioned two different mutations for land measuring 1 bigha and 5 bighas, respectively, and thereby, raised a suspicion about the correctness of the sale deed. The signatures of late Sh. Mohinder Singh on Ex.DW-1/X and agreement to sell Ex.D1, do not match and as per the report submitted by the Forensic Science Laboratory, the alleged signatures of late Sh. Mohinder Singh on Power of Attorney dated 21.08.1990, Ex.DW-1/X, are a result of the process of tracing a document. Since such report is *per se* admissible, therefore, the trial Court has wrongly ignored the same. The Court further goes on to record that on scrutiny it is evident that the signatures on Power of Attorney dated 21.08.1990, Ex.DW-1/X are a result

of tracing. The conduct of Sh.Sukhdev Singh creates a doubt with regard to the genuineness of the document as on the one hand, he alleges that the agreement to sell was executed with respect to 6300 square yards of land, whereas, on the other hand, he claims that late Sh. Mohinder Singh executed Power of Attorney in his favour and again, seeks relief of specific performance of agreement to sell. The Court goes on to observe that the conduct of Sh. Sukhdev Singh does not seem to be bona fide. The operative part of the finding of the First Appellate Court reads as under:-

“Even otherwise the conduct and activities of the respondent that on the one hand he is alleging that agreement to sell was executed with regard to 6300 sq. yards and on the other hand he is getting power of attorney and again seeking the relief that since the appellant has not performed his part of contract and is not ready to execute the sale deed with regard to 2800 sq. yards of land does not seem to be bonafide. If the agreement to sell was executed with regard to 6300 sq. yards then he should have get executed sale deed only and not power of attorney with regard to the property. There is no reference in the power of attorney executed in the year 1989 and disputed power of attorney regarding the execution of any agreement executed by Mohinder Singh in favour of Sukhdev Singh regarding the property measuring 6300 sq. yards.

Once the power of attorney was never given, the sale deed executed on the basis of this power of attorney is also held not to be genuine document. The appellant appeared in the witness box in the year 2002 and his examination-in-chief was deferred and thereafter he died. He could not come to the Court. It is settled law that in such circumstances the statement of the appellant cannot be thrown away merely on the ground that he did not appear for cross-examination as it was not possible to bring him and the Ld. lower court has erred in holding that examination-in-chief of the plaintiff was recorded in the year 2002 and there is no reason as to why the plaintiff did not step into the witness box earlier. Merely on this ground that he did not step into the witness box before his death, does not debar a person to get justice from the court when the person before the decision and closure of his evidence expired. Thus, the Ld. lower court has erred in holding that document Ex.P-1 is genuine document and the Ld. lower court has also erred in holding that Mohinder Singh executed

document Ex.D-1 with his free consent whereas in statement given by Mohinder Singh before the police in FIR wherein he has specifically alleged that he has never executed any power of attorney. The Ld. lower court has erred in holding that in the report given by the expert in criminal case cannot be relied upon as the witness has not been examined.”

The Court, again, observed that the agreement to sell appears to have been forged.

It may be noted here that the mutation of a sale deed by the Revenue Authorities is an administrative function of the Revenue/Municipal Authorities. Such mutation has no connection with the execution of the sale deed. If the Revenue Authorities while sanctioning the mutation of the sale deed, made two different entries, that, by itself, would not affect the validity of the sale deed. Furthermore, the First Appellate Court has committed an error while returning the finding that the signatures of late Sh. Mohinder Singh on the General Power of Attorney and the agreement to sell do not match. This aspect shall be examined in the later part of the judgment. On a careful reading of the judgment of the First Appellate Court, it is evident that the judgment of the First Appellate Court is incoherent and incomprehensible. There is a lack of clarity in the judgment of the First Appellate Court. The execution of the agreement to sell between the parties is an admitted fact. The Court goes on to observe that such agreement has been fabricated.

Now, the stage is set for examining the core issue involved in the present case.

Section 45 and 73 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”), being relevant, are extracted as under:-

an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting, 2 [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, 3 [or in questions as to identity of handwriting] 2 [or finger impressions] are relevant facts.

Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

73. Comparison of signature, writing or seal with others admitted or proved. — *In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.*

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[This section applies also, with any necessary modifications, to finger impressions.]

It may be noted here that Section 45 is in Part I of the Evidence

Act, 1872, which deals with relevancy of facts. Section 45 provides that the

opinion of experts including that of handwriting and fingerprint expert is a relevant fact. Section 73 is in Part II of the Evidence Act, 1872, which deals with the evidence required to be led to prove facts. In other words Part II provides the mode of proof of a document. Section 73 is in Chapter V which provides for the documentary evidence.

It is observed here that normally, it is not safe to rely, solely, upon expert's opinion as to handwriting or fingerprint while deciding the case. Expert opinion must always be received with great caution, especially the opinion of a handwriting experts. Further, the report may be of a private or Government expert but it is only an opinion and thus, it is not binding on the Court. It is considered to be a weak type of evidence. By virtue of Section 60 which provides that the evidence must be direct, if the signatures of a person are appended in the presence of another person, then, the later person is required to be examined as witness in the Court to prove such signatures as this is the direct evidence and if it is available, the evidence of any other kind may not be necessary or of much relevance. No doubt, the opinion of a handwriting expert is relevant if the person who allegedly signed the document disputes that fact. Further, under Section 47 of the 1872 Act, the handwriting or signatures may be proved by leading evidence of a person who is familiar with the handwriting or signatures of the individual which will fall in the domain of oral evidence. However, when such a fact is proved by examining the handwriting and fingerprint expert, then, such report submitted by the expert falls in the category of documentary evidence. In the absence of deposition of the alleged expert, such report cannot be said to have been proved. The attention of the Court has not been drawn to any provision in the Evidence Act, 1872, or in the

Code of Civil Procedure, 1908, which may provide for *per se* admissibility of the report of handwriting and fingerprint expert employed by the Government. The First Appellate Court appears to have erred on that account. No doubt, Section 293 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”), do provide for admissibility of such opinion in the absence of examination of the Government scientific expert. However, even Section 293 of the Cr.P.C. gives a discretion to the Court to summon and examine any such expert as to the subject matter of his report. Moreover, on a careful examination of Section 293 of Cr.P.C. itself, the words used are that such report may be used as evidence in any enquiry, trial or other proceedings under this Code. This explicitly and unequivocally makes this provision non-applicable to the civil matters, thus, Section 293 of Cr.P.C. is limited in its scope and is applicable to the matters pertaining to Cr.P.C. only.

Further, testing it on the parameters of Section 33 of the 1872 Act, the report cannot be admitted even under this provision as the parties to the case are different, no opportunity of cross-examination has been given and further, it has not been shown how the rule of necessity can be applied as no justification for non-examining the expert has been provided.

Further when both direct evidence and expert opinion are available, the direct evidence shall be preferred being the best evidence. However, Code of Criminal Procedure, 1973, is not applicable to the Civil Court. No doubt, under certain enactments, provisions have been made to accept the documents in evidence without formal proof thereof. Under Section 50A of the Land Acquisition Act, 1894, certified copy of a document registered under Registration Act, 1908, may be accepted as

evidence of the transaction recorded in such document without further proof thereof. However, the applicability of such a provision is limited to the proceedings under the Land Acquisition Act, 1894, itself and does not change the established mode of proof.

This aspect can be examined from yet another angle. The report of a Government employed handwriting and fingerprint expert is only an opinion which has little more weight than the opinion of a privately engaged expert. Nonetheless, it remains only an opinion. Further, without granting an opportunity to the opposite party to cross-examine the author of the report, such document cannot be said to have been proved. The exhibition of a document is only admitting the document in evidence. It does not necessarily lead to a fact that it has been proved. For proving the opinion, it is incumbent on the party who relies upon the same to examine the author in evidence. In the absence thereof, it is very dangerous to rely upon the same.

Now, let us analyse the evidence.

There are two Power of Attorneys, allegedly, executed by late Sh. Mohinder Singh. The first registered General Power of Attorney is dated 03.10.1989. It is scribed by Kamlesh and there are two witnesses to the aforesaid power of attorney namely Sh.Beant Singh (Nambardar) and Sh. Sukhdev Singh son of Sh. Bachan Singh. The execution of this document is admitted by late Sh. Mohinder Singh. The next registered General Power of Attorney was executed on 21.08.1990, which was registered on 22.08.1990. This is also scribed by the same Sh. Kamlesh who has deposed as DW-4. The two witnesses of the General Power of Attorney dated 21.08.1990, are Sh. Beant Singh (Nambardar) and Sh. Rajinder Kumar. Sh. Beant Singh (Nambardar) is the same person who was witness to the previous General

Power of Attorney dated 03.10.1989. He has deposed as DW-5. This Court has read the deposition of Sh. Beant Singh (Nambardar) as well as Sh. Kamlesh Kumar. Despite facing searching questions during his cross-examination by the learned counsel representing the plaintiff, Sh. Beant Singh (nambardar) has stood his ground and proved the execution of the Power of Attorney dated 21.08.1990. The attention of the Court has not been drawn to any part of the statement of Sh. Beant Singh (Nambardar) which may lead the Court to the conclusion that his credibility has been impeached. Similarly, Sh. Kamlesh Kumar (scribe) has deposed as DW-4. He has also proved entry at serial No.1600, in his notebook which is again signed by late Sh. Mohinder Singh. Sh. Kamlesh Kumar was also cross-examined by the learned counsel representing late Sh. Mohinder Singh at length but the learned counsel failed to impeach his credibility. There are various other circumstances which lead the Court to draw an inference that the Power of Attorney dated 21.08.1990, was executed by late Sh. Mohinder Singh. Firstly, the Power of Attorney was executed with respect to land measuring 2500 square yards. As per the agreement to sell, late Sh. Mohinder Singh agreed to sell land measuring 6300 square yards @ Rs.100 per square yard. It is the admitted case of late Sh. Mohinder Singh that by this time, he has received Rs.5,94,000/-. Thus, late Sh. Mohinder Singh received a price of 5940 square yard. The first Power of Attorney dated 03.10.1989, was only with respect to 1000 square yards. The second General Power of Attorney dated 21.08.1990, was with respect to 2500 square yards. Thus, the price of the aforesaid parcel of the land has already admittedly, been paid to late Sh. Mohinder Singh. Furthermore, the General Power of Attorney was scribed by the same scribe who had also scribed

Power of Attorney dated 03.10.1989. One of the witness i.e. Beant Singh (nambardar) was also same. Moreover, it was executed on 21.08.1990, whereas, it was registered on 22.08.1990. Late Sh. Mohinder Singh went to the office of Registrar on 21st and 22nd. Additionally, Sh. Sukhdev Singh never misused the attorney allegedly executed on 21.08.1990, by late Sh. Mohinder Singh during the period of nearly 4 years. Had it been a case of forgery, in normal circumstances, Sh. Sukhdev Singh would have misused/used the attorney, immediately, to transfer the property. Sh. Sukhdev Singh executed a sale deed on 16.05.1994, in favour of his wife on the basis of the Power of Attorney dated 21.08.1990.

Furthermore, the conclusion of the Court that the signatures on the General Power of Attorney dated 21.08.1990, are traced is also erroneous. As per the opinion of the Government handwriting and fingerprint expert, the signatures of late Sh. Mohinder Singh have been traced. The report Ex.P-3 dated 24.10.1990, does not disclose the reasons as to how the scientific expert came to such a conclusion. Late Sh. Mohinder Singh has also examined a private handwriting and fingerprint expert (PW-3) Navdeep Gupta. In his cross-examination, he has stated that it was not a case of tracing the previous signatures. He has specifically stated that there is no sign of tracing. Furthermore, Sh. Sukhdev Singh has also examined Dr. Inderjit Singh, another handwriting and fingerprint expert as DW-1, who has opined that late Sh. Mohinder Singh had signed the Power of Attorney dated 21.08.1990. His report is consistent. He has also been cross-examined by the expert examined by late Sh. Mohinder Singh, however, he has stood his ground.

Further Section 73 empowers the Court to draw a comparison

of signatures, by itself, although, it is not safe for the Court to draw comparison between the signatures, by itself, however, there are microscopic enlargements of the signatures produced by both the experts examined by both the parties which are a part of the record. On a careful examination thereof, it is not possible to conclude from naked eye that the disputed signatures on power of attorney dated 21.08.1990, are not similar to the admitted signatures of late Sh. Mohinder Singh on the agreement to sell dated 11.03.1989 as well as on the General Power of Attorney dated 03.10.1989. Furthermore, Ex.P3 i.e. the opinion of the Government handwriting and fingerprint expert is given under Section 293 of the Cr.P.C. The expert, in its opinion, has himself observed that he is unable to express any definite opinion regarding the common authorship or otherwise on the red enclosed questioned signatures stamped at and marked Q1 to Q5 in comparison with the standard writing similarly stamped and marked S89 to S130.

Keeping in view the aforesaid discussion, the findings of the First Appellate Court to the effect that late Sh.Mohinder Singh did not execute the Power of Attorney dated 21.08.1990, is set aside. The plaintiff has failed to prove his case.

Now, the next question is as to whether Sh. Sukhdev Singh-counter claimant is entitled to specific performance of the agreement to sell. The counter-claim was filed on 21.05.1996. As per the agreement to sell, the deal was to be completed within a period of 20 months from the date of execution of the agreement to sell. In other words, the deal was to be completed on or before 10.11.1990. Since, the counter-claim was filed on 25.05.1996, therefore, the learned trial Court has correctly held that the

counter-claim for relief of specific performance was barred by the law of limitation. On a perusal of Article 54 of the schedule attached to the Limitation Act, 1963, it is clear that the time from which the period of limitation begins to run is the date fixed for the performance of the agreement to sell. Thus, in the present case, the time began to run from 10.11.1990. The limitation for filing the suit for specific performance of the agreement to sell is three years. Hence, the trial Court correctly held that the counter claim was filed beyond the prescribed period. Consequently, Sh. Sukhdev Singh is not entitled to the relief of the specific performance.

Sequally, the suit as well as the counter-claim shall stand dismissed. The judgment passed by the First Appellate Court is set aside and that of the trial Court is restored. Resultantly, Regular Second Appeal No.3202 of 2011, is allowed, whereas, Regular Second Appeal No.4828 of 2013, shall stand dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

23rd March, 2022

Ay

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No