

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

RSA-5058-2011(O&M)

Reserved on:-5.5.2023

Date of Pronouncement:-12.5.2023

Smt.Beero alias Bheero and another

...Appellants

Versus

Balwinder Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: None for appellant No.1.

Mr.Brij Mohan Vinayak, Advocate
for appellant No.2.

Mr.Anil Chawla, Advocate
for respondent No.1

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Balwinder Singh had brought a suit against defendants Beero @ Bheero aged about 60 years, resident of Jalalpura, Tehsil & District Amritsar as well as five others, seeking possession of land measuring 7 kanals 8 marlas situated at village Jalalpura, Tehsil and District Amritsar, fully detailed in the head note of the plaint, after declaring the sale deed 9.4.1996 allegedly executed by Beero in favour of defendant No.2 as null and void being a forged and fabricated document, without consideration, not binding upon

the rights of the plaintiff; in addition to that seeking a decree for permanent injunction restraining the defendant No.2, his agents and persons claiming under him from transferring, selling, alienating, mortgaging the suit land in any manner.

2. As per the case of the plaintiff, defendant No.1 Beero along with defendants No.3 and 5 was owner of the land measuring 7 kanals 8 marlas besides some other land at village Jalalpura, Tehsil and District Amritsar; defendant No.1 Beero had entered into an agreement to sell the suit land with the plaintiff on 14.2.1996 for a consideration amount of Rs.90,000/-, receiving Rs.30,000/- as earnest money on the date when that agreement was executed; the remaining consideration amount was to be paid on the date of execution of sale deed; in pursuance of agreement the sale deed was executed by Beero in favour of the plaintiff on 22.4.1996, which was got duly registered in the office of Sub Registrar, Amritsar; the possession was also delivered to the plaintiff at that time, however, defendant No.2 Kuldeep Singh along with other witnesses forged and fabricated a sale deed on behalf of Beero on 9.4.1996 regarding the suit land and on the basis of that document, defendant No.2 started proclaiming himself to be owner of the suit property; on strength of the said sale deed defendant No.2 along with some other persons threatened to take forcible possession of the suit land from the plaintiff, which attempt was warded off by the plaintiff; the plaintiff had got registered an FIR for the offences under Sections 420, 467 IPC at Police Station Civil Lines, Amritsar on 15.9.2000. Ultimately, the plaintiff had filed the suit in the Court.

3. On being put to notice, defendants No.1 and 2 put in appearance and filed a joint written statement raising various legal objections, on merits denying the assertions in the plaint though admitting that defendant was owner of the land in question. According to such defendants, defendant No.1 had executed a legal and valid sale deed in favour of defendant No.2 on the basis of which mutation was sanctioned by the revenue authorities. In the end, such defendants prayed for dismissal of the suit.

4. Defendant No.3 had not appeared despite service, as such was proceeded against ex-parte. Whereas suit against defendants No.4 and 5 was dismissed as withdrawn on 3.1.2005 as per the statement made by the plaintiff and suit against the defendant No.6 was dismissed as withdrawn on 3.9.2008 as per the statement of learned counsel for the plaintiff.

5. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

6. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the possession of the land measuring 7 kanals 8 marlas comprised of khasra no.28//15/2(7-8) situated at village Jalalpura, Tehsil and District Amritsar? OPP.
2. Whether the plaintiff is entitled to the declaration as prayed for? OPP.
3. Whether the plaintiff is entitled for permanent injunction as prayed

for? OPP.

4. Whether the plaintiff has got no locus standi to file the present suit?

OPD.

5. Whether the plaintiff has not come to the Court with clean hands?

OPD.

6. Whether the suit is time barred? OPD.

7. Relief.

7. The parties were afforded opportunities to lead evidence in support of their respective claims.

8. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Amritsar gave issue-wise findings and vide judgment and decree dated 4.9.2008, suit of the plaintiff was decreed with costs holding that the plaintiff is entitled to the possession of the suit property as detailed in head-note of the plaint and that sale deed dated 9.4.1996 allegedly executed by Beero in favour of defendant No.2 is null and void being a forged and fabricated document not binding upon rights of the plaintiff. Further a decree for permanent injunction was passed in favour of the plaintiff restraining defendant No.2 from further alienating the suit property in any manner to any one else.

9. Feeling aggrieved by the said judgment and decree, the defendants No.1 and 2 had filed an appeal in the Court of District Judge, Amritsar, which was assigned to Additional District Judge, Amritsar, who vide judgment and decree dated 12.9.2011 dismissed the appeal upholding the judgment and decree passed by the trial Court.

10. Being dissatisfied with the judgments and decrees passed by

the Courts below, the defendants No.1 and 2 have filed the present regular second appeal before this Court.

11. Notice of the appeal was given to the respondents and respondent No.1 has put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. Both the Courts below on proper appraisal and appreciation of evidence and correct interpretation of law have found merit in the claim of the plaintiff. The trial Court while deciding issues No.1 to 3 and 6 has observed that it has come on record during evidence of the parties that Beero – defendant No.1 is an illiterate lady and both the sale deeds i.e. one set up by the plaintiff and other by defendant No.2 bear her thumb impressions and accordingly after taking the thumb impressions of Beero in the Court, the same were got compared by the plaintiff from PW6 Sukhjinder Singh, Handwriting Expert and from his statement, it comes out that alleged thumb impressions marked Q1 to Q7 on the sale deed in favour of defendant No.2 do not tally with the specimen thumb impressions of Beero, rather the questioned thumb impressions of Beero on the sale deed in favour of plaintiff duly match with specimen thumb impressions of Beero.

14. Furthermore, the objection raised by contesting defendants with regard to plaintiff not challenging the sale deed dated 9.4.1996 claimed by defendants No.1 and 2 and suit having been filed on 23.9.2004 being time bared, the trial Court has rightly observed that the plaintiff has filed the suit for possession of suit property on the ground that he was

dispossessed from the suit property by defendant No.2 in the month of October, 2003 and consequential relief was sought by plaintiff to declare the sale deed in favour of defendant No.2 as null and void meaning thereby the main relief sought was of possession and limitation for possession being 12 years from the date when a person is dispossessed, the suit is certainly not time barred. With the evidence being there that sale deed dated 9.4.1996 does not bear thumb impressions of defendant No.1 Beero, the alleged executant/seller, the same is a forged and fabricated irrespective of claim of defendant No.1 Beero that she had executed that sale deed in favour of defendant No.2. With sale deed in favour of the plaintiff executed by defendant No.1 Beero having been found to be duly executed, plaintiff became owner of the suit land and he having been wrongly dispossessed by defendant No.2 therefrom in October, 2003 has got a right to get the possession back.

15. The claim of the contesting defendants that mutation has been sanctioned in favour of defendant No.2 on the basis of sale deed dated 9.4.1996 and appeals filed against that order have been dismissed does not help such defendants in advancing their case because as per settled law mutation does not confer any title. The purpose of mutation is to update the revenue record with regard to ownership and possession of the land bearing khasra numbers and it does not result in creating any title in favour of any particular person. In case of any contradiction the judgment of Civil Court is to prevail and take precedence over the orders passed by the revenue authorities in mutation proceedings.

16. While disposing of the appeal against judgment and decree

passed by the trial Court, learned Additional District Judge, Amritsar vide a detailed discussion and giving convincing reasons had found himself in agreement with the observations made by the trial Court and findings given on the issues.

17. As regards the judgment referred to by learned counsel for the appellant No.2 i.e. **Prem Chand Versus Smt.Phulma, 2003(1) RCR(Civil)302** by a Single Judge of this Court wherein evidentiary value of handwriting expert was discussed holding that evidence of such expert is not a substantive piece of evidence but it can certainly be looked into for the purpose of corroboration of other evidence, this judgment does not help the appellants much because here the handwriting expert by comparison of questioned and disputed signatures of Beero has concluded that the specimen thumb impressions of Beero match with the thumb impressions purportedly appended by her on the sale deed in favour of the plaintiff but it is not so with regard to sale deed in favour of the defendant. The science of comparison of handwriting is a perfect one since finger prints of two persons do not tally in any case. Furthermore, corroborative evidence was there considering which the Courts below have found merit in the claim of the plaintiff and rejected the version of the defendants.

18. With regard to the second judgment i.e. **Ajmer Singh and others Versus Nishi Kumar and another, 2004(1) RCR(Civil) 270** by a Single Judge of this Court wherein it was observed that finding of facts can be interfered in second appeal in two situations (i) when material or relevant evidence have not been considered which, if considered, would have led to an opposite conclusion (ii) where a finding has been arrived at

by the appellate court by placing reliance on inadmissible evidence which if omitted, an opposite conclusion was possible.

Again this judgment does not help the appellants in advancing their case because none of the situations arises here so as to interfere in the findings of the facts recorded by the Courts below. In this very judgment weightage is to be given to handwriting expert opinion was discussed but in view of the detailed discussion above, the observations made are not helpful to the appellants.

19. Learned counsel for the respondent No.1 has also referred to judgment ***Gursharan Kaur Versus Kuldip Kaur and another, 2011(2) PLR 742*** wherein it was observed that when a property was transferred on the basis of power of attorney which was never executed by the plaintiff, the plaintiff is not required to seek declaration regarding power of attorney and sale deed being null and void and if plaintiff is not a party to the documents then said documents are non-existent documents insofar as rights of the plaintiff in the suit property are concerned.

This judgment was referred to by learned counsel for the respondent No.1 in support of his contention that so far as the sale deed dated 9.4.1996 set up by defendants No.1 and 2, which has been proved to be forged and fabricated document and plaintiff being not a party to the same, it is to be taken as a non-existing document and ineffective qua rights of the plaintiff and plaintiff was not required to challenge it even and there is no question of the suit being time barred.

20. With the concurrent findings having been recorded by the Courts below against the appellants/defendants, which are based on

proper appraisal of evidence and correct interpretation of law and there being no illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned judgments and decrees in regular second appeal.

21. No substantial question of law arises in this appeal.

22. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

12.5.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No