



RSA-2169-1992(O&M) 1

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-2169-1992(O&M)
Date of decision : 28.08.2024

Sadhu Singh (since deceased) through his LR

... Appellant

Versus

Jit Singh (since deceased) through his LR

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Deepali Puri, Advocate
for the appellant.

Mr.L.S. Sidhu, Advocate
for the respondent.

Mr.Amit Arora, Advocate
for the applicant in CM-4898-C-2024.

VIKAS BAHL, J.(ORAL)

1. The plaintiff (presently represented by his LR) has filed the present appeal against the judgment and decree dated 30.05.1992 passed by the Ist Appellate Court vide which the appeal filed by the respondent-defendant (presently represented by his LR) has been allowed and the suit filed by the plaintiff has been dismissed and the judgment of the trial Court dated 16.02.1987 has been set aside. The present appeal has been filed under Section 41 of the Punjab Courts Act, 1918.

2. Brief facts of the present case are that the appellant (hereinafter referred to as “the plaintiff”) had filed a suit for declaration to the effect that

**RSA-2169-1992(O&M)****2**

he was owner in possession of 1/12th share of land measuring 611 kanals 8 marlas, the details of which have been given in the plaint situated at village Warian, Tehsil Tarn Taran, District Amritsar, and a further prayer for permanent injunction for restraining the defendant from interfering in the peaceful possession of the plaintiff as owner had also been made. It was the case of the plaintiff in the plaint that the plaintiff was owner of the suit land and the same was reflected in the jamabandi, which was attached along with the plaint. It was averred that the defendant was denying the title of the plaintiff and had stated that he had a civil court decree dated 19.09.1983 passed in a collusive suit between the plaintiff and the defendant and the said fact was incorrect inasmuch as the plaintiff had never appeared in any Court and never made any statement relinquishing his title in favour of the defendant. It was further averred that in case any such judgment and decree regarding the suit land was produced, the same was illegal, void, fictitious and not binding on the rights of the plaintiff. It was further specifically averred that the plaintiff had never thumb marked any statement in the Court nor appeared before any Court of law for such purpose and that a big fraud had been played upon the Court as well as the plaintiff in the present case. It is also pleaded that the defendant was requested by the plaintiff not to interfere in the peaceful possession of the plaintiff but the defendant was regularly threatening to do the same and accordingly, the present suit was filed.

3. The defendant had filed a written statement and in the said written statement, it was pleaded that the suit land was ancestral property of

**RSA-2169-1992(O&M)****3**

the plaintiff and the plaintiff had no son and thus, the decree dated 19.09.1983 was suffered by the plaintiff in favour of the defendant and thereafter, the defendant had become owner of the property by virtue of the said decree. It was also pleaded that the plaintiff had appeared in the Court and even filed a written statement admitting the claim of the defendant and no fraud was ever played in passing of the decree dated 19.09.1983 and the same was valid and deserves to be upheld.

4. The trial Court on the basis of the pleadings of the parties, had framed the following issues:-

- “1. Whether the plaintiff is owner of the suit land. If so its effect ?OPP*
- 2. Whether the plaintiff gave the suit land to the defendant vide civil court decree dated 19.9.83. If so its effect? OPD.*
- 3. If issue No.2 is proved whether the said decree is illegal, forged and fictitious and not binding on the rights of the plaintiff. If so its effect ?OPP.*
- 4. Whether the plaintiff has locus standi to file the present suit ?OPP*
- 5. Whether the plaintiff is in possession of the suit land?OPP.*
- 6. Whether the plaintiff is entitled to the declaration prayed for? OPP.*
- 7. Whether the plaintiff is entitled to the injunction prayed for?OPP*
- 8. Relief.”*

5. Under issue no.1, it was observed that a perusal of the copy of jamabandi Ex.P1 as well as the evidence of the plaintiff, who appeared as PW-1, in addition to the admission made by the defendant Jit Singh, who appeared as DW-1, all lend credence to the fact that the plaintiff was the

**RSA-2169-1992(O&M)****4**

owner of the property in question. It was observed by the trial Court that the ownership of the suit land was of the plaintiff as per the admitted case of the parties and thus, the said issue was decided in favour of the plaintiff. With respect to issues no.2 and 3, the trial Court had observed that the said decree was false and fictitious and that there was no evidence in support of the said decree and accordingly, the trial Court decided the said issues in favour of the plaintiff and against the defendant. Issue no.4 as well as issues no.5 and 6 were also decided in favour of the plaintiff. Under issues no.5 and 6, it was observed that in khasra girdawari Ex.P2, the possession was shown to be of Sadhu Singh plaintiff and in rebuttal, no evidence had been led by the defendant to prove his possession and the said fact along with evidence of the plaintiff as PW-1 and jamabandi Ex. P1 were considered and it was found that the plaintiff was in possession of the suit land and accordingly, issues no.5 and 6 were decided in favour of the plaintiff. Issue no.7 was also decided in favour of the plaintiff and it was held that the plaintiff had every right to protect his possession over the suit land and the defendant had no right to dispossess the plaintiff from the suit land. On the basis of said findings, the suit of the plaintiff was decreed and declaration was granted to the effect that the plaintiff was owner in possession of 1/12th share of the land measuring 611 kanal 8 marlas detailed in the head note of the plaint and the consequential relief of injunction was also granted.

6. The defendant filed an appeal before the Ist Appellate court and the Ist Appellate Court in paragraph 9 of its judgment had observed that since no hand writing expert had been produced by the plaintiff nor it was



shown that the thumb impression of the plaintiff on the statement, before the Court was forged, the plaintiff had failed to prove that there was forgery and on the said premise by making further observations, the learned Appellate Court had set aside the judgment of the trial Court. It was observed that merely on the plea raised by the plaintiff that he had not suffered the statement before the Court, the decree of the Court cannot be set aside and by taking into consideration the said fact along with other facts including the evidence of Kirpal Singh, Advocate, had set aside the judgment of the trial Court. With respect to the aspect of possession, it was observed by the Ist Appellate Court that even khasra girdawari Ex.P2 which is in favour of Sadhu Singh also does not conclusively show that the defendant had never got into possession of the land in question. It is the said judgment of the Ist Appellate Court, which is challenged before this Court.

7. Learned counsel for the appellant-plaintiff has submitted that the judgment and decree of the Ist Appellate court is illegal and deserves to be set aside. It is argued that in the present case, the plaintiff had examined R.S. Bal, Handwriting and Fingerprint expert as PW-2 who had duly proved his expert report dated 04.03.1986 Ex.P4. It is argued that there is no evidence produced by the defendant in rebuttal to the said expert report and that a perusal of the zimni order dated 29.01.1987 would show that although an expert was produced by the defendant on the previous date but without examining the said expert, he was given up. Reference was also made to the zimni order dated 03.02.1990 of the Ist Appellate Court, where in spite of opportunity being given to the respondent, the expert was not examined by

**RSA-2169-1992(O&M)****6**

the respondent. It is submitted that on the said ground alone, the present appeal deserves to be allowed and on account of the perverse finding of the Ist Appellate Court to the effect that no expert was examined by the plaintiff, the judgment of the Ist Appellate Court deserves to be set aside. Further reference has been made by the learned counsel for the plaintiff to the evidence of PW-1 to highlight the fact that even the statement made by PW-1 in the examination-in-chief to the effect that he did not make any statement before any Court has gone un rebutted. Reference has also been made to the khasra girdawari Ex.P2 and jamabandi Ex.P1 to prima facie show that it is the plaintiff, who was in possession and continued in possession even after the passing of the alleged consent decree dated 19.09.1983. It is argued that in the Ist Appellate Court, AW-1 Kirpal Singh had been examined, who in his cross-examination specifically stated that he did not know Sadhu Singh at the time of being engaged as a counsel. It is submitted that thus, the said Advocate could not identify the plaintiff as he even did not know the plaintiff at the time he was allegedly engaged. It is argued that since the material evidence of PW-2 handwriting and fingerprint expert has not been taken into consideration by the Ist Appellate Court and even the report Ex.P4 was not taken into consideration, thus, the judgment of the Ist Appellate Court is perverse, illegal and contrary to law and deserves to be set aside. On 10.12.1992, a Coordinate Bench of this Court was pleased to pass the order that status quo regarding possession be maintained, which order has continued till date.

8. Learned counsel for the defendant, on the other hand, has

**RSA-2169-1992(O&M)****7**

opposed the present appeal and has prayed for its dismissal. It is argued that the judgment of the Ist Appellate Court dated 30.05.1992 is in accordance with law and deserves to be upheld. It is submitted that a perusal of the decree dated 19.09.1983 would show that even the statement of the plaintiff herein was recorded and written statement was also filed by the plaintiff herein admitting the claim of the defendant herein and thus, declaration was granted in favour of the defendant herein. It is further submitted that in the present written statement, it has been pleaded by the defendant that the property in question was ancestral and thus, even on the said count, the suit of the plaintiff deserves to be dismissed. It is argued that even the report of the handwriting and fingerprint expert PW-2 i.e. Ex.P4 cannot be made the basis for allowing the suit inasmuch as the said expert had to give evidence in support of the party producing him. It is argued that even the examination-in-chief of PW-1 would show that the necessary evidence required so as to set aside the decree has not been forthcoming and thus, keeping in view all the factors, the judgment of the Ist Appellate Court deserves to be upheld.

9. This Court has heard the learned counsel for the parties and has perused the record of the trial Court as well as the Ist Appellate Court and is of the opinion that the present appeal is meritorious and the judgment of the Ist Appellate court is contrary to law and thus, the appeal deserves to be allowed and the judgment of the Ist Appellate Court deserves to be set aside for the detailed reasons given hereinafter.

10. The Ist Appellate Court in paragraph 9 of its judgment had



RSA-2169-1992(O&M)

8

observed that it was for the plaintiff to produce a handwriting and fingerprint expert, which he did not do. Paragraph 9 of the judgment of the Ist Appellate Court is reproduced hereinbelow:-

*“9. The decree passed by the civil suit has to be presumed to be correct. He who challenges it has to disprove the decree by cogent evidence. Onus was thus on the plaintiff disprove his thumb impression which he affixed in the court on statement dated 16.9.1983. **It was in fact for him to examine hand writing expert and disprove his thumb impression. He did not do so.** The trial court erred in holding that the thumb impression was to be proved by the defendant and he had failed to prove the same.”*

11. The said finding of the Ist Appellate court is perverse, illegal and contrary to record. A perusal of the record would show that the plaintiff had examined PW-2 R.S. Bal, Handwriting and Fingerprint Expert, who had duly produced on record his report Ex.P4. In his evidence, he had specifically stated that the disputed thumb impressions on the alleged statement and the written statement in the collusive suit and the specimen thumb impressions were not of the same person. The relevant portion of the evidence of said PW-2 is reproduced hereinbelow:-

“P.W.2 Sh.R.S. Bal, Examiner of Question documents, Amritsar on SA.

I am diploma holder in scientific crime detection from the institute of applied science, Shicago (U.S.A.). I got the diploma from the above-said institute in the year 1973 and after I have appeared in numerous courts of Northern India. I also took training from my father Sh.A. S. Bal, handwriting and Finger Print expert Amritsar who also remained incharge



Scientific laboratory of handwriting which was attached to the CID Police Punjab at Lahore.

*In the present case I have examined the alleged disputed signatures of Sh. Sadhu Singh Plff on Power of attorney, on written statement and its verification and a thumb impression on the statement in court. The above-said alleged disputed thumb impressions are in the summoned file title Jeet Singh Vs. Sadhu Singh, case No.246 of 1984 decided on 19.9.83, goshwara No.434/84. I have compared the same with the right and left hand specimen thumb impressions of Sadhu Singh in the present file taken on 5.11.85 for the purposes of comparison. On the specimen thumb impression sheet Ex.P3. I am of opinion that the thumb impression on power of attorney in the above-mentioned summoned file is not comparable however, **the thumb impression on the statement, written statement and its verification are comparable.** The thumb impression in dispute in the above mentioned file are of double loop type whereas the right and left hand specimen thumb impression stated above are of whorl type. Therefore, I am of opinion that the person who marked the alleged disputed thumb impression in the summoned file is not the one and the same person who marked the specimen thumb impression. Details reasons are given in my report Ex.P4. It is correct and signed by me.”*

12. The said witness has produced on record the expert report dated 04.03.1986, which was duly exhibited as Ex.P4. In the said report, the detailed reasons have been given for showing the distinction between the thumb impressions on the disputed statement / written statement and on the specimen thumb impressions. The relevant portion of the said report is

given hereinbelow:-



“The thumb impressions in dispute on written statement and on the statement in the court are of double loop whorl type thumb impressions. A double loop whorl is a pattern consisting of two separate and distinct loop formation. One of the loops surrounds or overlaps the other. Besides the two loop formations, a double loop whorl must have two sets of shoulders, one for each loop. There are two double deltas in each double loop, whorl, And there would be two core points.

The left hand specimen thumb impressions of Shri Sadhu Singh is a whorl type thumb impressions. A plain whorl is a pattern in which there are two deltas and in which at least one ridge makes aturn through one complete circuit. In other words the ridges around the centre of the pattern whirl about the core as water whirls around the outlet at the bottom of a wash bowl.

The type pattern of the disputed and left hand specimen thumb impressions of Shri Sadhu Singh is different i.e. double loop and whorl type thumb impressions respectively. According to instructions in the books when the type pattern of the thumb impressions in question is different there is no need of further comparison.

As stated above when the type pattern of the thumb impressions in question is different there is no need of further comparison. But all the same I have marked three points of dissimilarity on the photographs. Thus on the basis of above mentioned facts and reasons I am of opinion that the person who marked the thumb impression in dispute stated above is not the one and the same person who marked the left hand specimen thumb impression.



I have also examined the right hand specimen thumb impression of Shri Sadhu Singh. The right hand specimen thumb impressions of Shri Sadhu Singh is a whorl type thumb impressions but on the other hand the above said disputed thumb impressions are of double loop whorl type thumb impressions. Therefore there is no need of further comparison.

Intercee comparison of the disputed thumb impressions reveals that the left hand shoulder and core point in the disputed thumb impressions on the written statement has not been recorded but in the disputed thumb impressions on the statement the left hand shoulder and core point has been recorded.”

13. Thus, the finding of the Ist Appellate Court to the effect that the Handwriting and Fingerprint expert has not been examined by the plaintiff is perverse and contrary to record. The evidence of said PW-2 as well as report Ex.P4 was the most important piece of evidence and the determining factor to decide the disputed aspect as to whether the plaintiff had appeared and given a statement in favour of the defendant in the earlier suit which resulted in the passing of the consent decree. In the entire judgment of the Ist Appellate Court, no reference has been made to either the evidence of PW-2 or to the report Ex.P4 and thus, the entire basis of the judgment of the Ist Appellate Court is flawed. In a case where one party alleges impersonation / forgery and the other party opposes the said plea, the evidence of the Handwriting and Fingerprint expert and its report is of much importance. In the present case, apart from the fact that the evidence and report of the expert produced by the plaintiff has not been taken into



RSA-2169-1992(O&M)

12

consideration, it would be relevant to note that even the expert who was to be examined by the defendant, had been given up as unnecessary as was reflected in the zimni order dated 29.01.1987. The zimni order dated 29.01.1987 is reproduced hereinbelow:-

“Present: Counsel for the parties.

Dewan K.S. Puri, given up as unnecessary. Now for arguments, case to come up on 3.2.87.

SJ, 29.1.87.”

14. Before the Ist Appellate Court, the defendant had moved an application under Order 41 Rule 27 CPC for examining the said expert and vide order dated 04.06.1988, the said application was allowed and the defendant was permitted to examine the said expert but as is apparent from the order dated 03.02.1990, even the said opportunity was forsaken as P.F. was not filed and dasti summons had not been taken. The order dated 03.02.1990 passed by the Additional District Judge, Amritsar closing the evidence of the defendant on the said aspect is reproduced hereinbelow:-

*“Present: Sh.J.S. Pannu, counsel for the appellant.
Counsel for the respondent.*

P.F. has not been filed and dasti summons of K.S. Puri has not been taken by the appellant as ordered by me on 11.1.1990. As such , I order that the evidence of the appellant stands closed by order. To Come up for arguments on 1.3.1990.

Announced.

3.2.1990.

*Addl.District Judge,
Amritsar.”*

15. Thus, from the above, it is apparent that apart from the fact that there is no Handwriting and Fingerprint expert report / evidence to counter

**RSA-2169-1992(O&M)****13**

the oral evidence and the report submitted by the plaintiff, an adverse inference is required to be drawn against the defendant because in spite of the fact that an expert was sought to be produced and as per the case of the defendant, even the report of the said expert had been prepared but neither the said report was exhibited on record nor the said expert was examined. It would be further relevant to note that even a perusal of the report of the expert which is produced on record at page 67 would show that the same has not been signed by the expert. The said aspect of non signing of the report by the expert (at page 67) could not be disputed by learned counsel for the defendant during the course of arguments.

16. In addition to the above, it would be relevant to note that the specimen thumb impressions of Sadhu Singh had been taken in the Court and the said fact is apparent from a perusal of Ex.P3. It is the said specimen thumb impressions which have been compared by PW-2 with the disputed thumb impressions on the statement and the written statement filed in the earlier proceeding resulting in the consent decree. Details and valid reasons showing that the said thumb impressions are not of the same person, have been given in the said report Ex.P4. Moreover, nothing has been highlighted to show that the said report suffers from any illegality. At any rate, the Ist Appellate Court has not even remotely considered the evidence of PW-2 and the said report Ex.P4.

17. In addition to the above, it is relevant to note that PW-1 in his examination-in-chief has specifically stated that he had never given the suit land to the defendant and he did not appear in the Court in any suit filed by

**RSA-2169-1992(O&M)****14**

the defendant nor did he make any statement before any Court and the decree obtained by the defendant was false and fictitious and that the defendant was his nephew and that he had one daughter although his son had died. A perusal of the cross-examination of the said PW-1 would show that although some suggestions had been put to said PW-1 but no specific suggestion had been put to PW-1 with respect to the fact stated by him in the examination-in-chief that he “did not make any statement before any Court” nor any such statement had been put to him during his cross-examination. Even a perusal of the plaint would show that it was the specific case of the plaintiff that the plaintiff never thumb marked any statement in the Court nor appeared before any Court of law for any such purpose nor made any statement relinquishing his right in favour of the defendant. Reliance sought to be placed upon the statement of Kirpal singh, who, as per the case of the defendant, was an Advocate, who had appeared on behalf of Sadhu Singh and was examined as AW-1 after the application for additional evidence filed by the defendant under Order 41 Rule 27 CPC was allowed by the Ist Appellate Court, also does not further the case of the defendant as said AW-1 in his cross-examination had specifically stated that he did not know Sadhu Singh at the time he engaged him as a counsel. Even the reliance on the fact that Lambardar Gurmej Singh had given his statement at the time of passing of the earlier decree also does not further the case of the defendant as the said Gurmej Singh has not been examined. Thus, issues no.2 and 3 have been wrongly reversed by the Ist Appellate Court. Even the findings with respect to issue no.5 as well as other issues



also deserve to be set aside. Under issue no.5, the observation with respect to possession is also perverse. In paragraph 14 of the judgment of the Ist Appellate Court, the Ist Appellate Court had taken into consideration the khasra girdawari which is the most relevant document to consider possession and as per the entries in the said khasra girdawari which were for a period beyond the date of the alleged consent decree dated 19.09.1983, the possession of Sadhu Singh is depicted and the same has been wrongly discarded by the Ist Appellate Court. The relevant portion of paragraph 14 and 15 of the Ist Appellate Court is reproduced hereinbelow:-

*“14.....Khasra girdawari Ex.P2 starts from Sauni 1979. The decree in question was however, passed in September, 1983 and although **entries continue in favour of Sadhu Singh upto Hari 1984** these do not conclusively show that the defendant-appellant never got into possession of the land in respect of which he obtained the decree from Sub Judge Tarn Taran on 19.9.1983. I, therefore, reverse the finding of the trial Court on issue No.5.*

15. In view of my findings on issues No.2 and 3, I reverse the finding of the trial Court issue No.6. Consequently I also reverse the finding of the trial court on issue No.7.”

18. It is a matter of settled law that for considering the possession, the entries in the khasra girdawari are the most relevant piece of evidence and since till “Hari” 1984, the possession of the plaintiff Sadhu Singh was reflected in the record and no correction of the said khasra girdawari was carried out at the instance of the defendant, thus, the finding of the trial Court which was based on the documents and the evidence on record, has been wrongly set aside by the Ist Appellate Court and thus the finding of the

**RSA-2169-1992(O&M)****16**

Ist Appellate Court on the said issue also deserves to be reversed.

19. The argument of the respondent to the effect that he had taken a plea in the written statement stating that the property was an ancestral one would not in any way further the case of the defendant. A perusal of the judgment of the Ist Appellate Court would show that no finding on the property being ancestral property has been given by the Ist Appellate Court while deciding the case in favour of the defendant. No issue has been framed on the said aspect and rather under issue no.1, the trial Court had found that the property was owned by the plaintiff. While recording the said finding, reference was also made to the cross-examination of DW-1 (defendant) to the effect that he had stated that the suit land was owned by the plaintiff. The said finding has not been shown to be perverse or illegal. The Ist Appellate Court has not set aside the finding of the trial Court on issue no.1. Moreover, nothing has been shown from the record to show that the property was inherited by Sadhu Singh from his father or great grand father or that Jit Singh, as per his own case, who is nephew of Sadhu Singh, had any right in the property, except by placing reliance upon the alleged consent decree.

20. It would be relevant to note that even the trial Court had not taken into consideration the evidence of the expert witness of the plaintiff and thus, one of the option available to this Court was to remand the matter to the trial Court. However, in view of the fact that the present appeal is pending since 1992 and on account of the fact that with the able assistance of the counsel for the appellant as well as the respondent, this Court has



considered the evidence produced by both the parties before the trial Court and has come to the conclusion that the evidence of the expert as well as the report Ex.P4, which is the most material and vital evidence in the present case has been illegally missed out and after considering the said evidence and report as well as other evidence and pleadings of the parties and also the aspect of the defendant having given up the expert as being unnecessary, this Court is of the opinion that the plaintiff has been able to prove that he did not appear before the Court which passed the consent decree dated 19.09.1983.

21. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of ***Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters*** reported as ***(2016) 6 Supreme Court Cases 157***, it was observed that Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, which provision would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e. ground No.(a) is the decision being contrary to law or to some custom or usage having the force of law. This Court is of the opinion that the Ist Appellate Court had proceeded on



RSA-2169-1992(O&M) 18

the premise that there was no report of the expert, whereas the plaintiff had duly produced and proved the report of the expert as Ex.P4 and had also examined the expert witness as PW-2 and thus the basis of the judgment of the Ist Appellate court is flawed and has resulted in a perverse finding which is against settled law.

22. Keeping in view the above said facts and circumstances, the present appeal is allowed and the judgment and decree of the Ist Appellate Court dated 30.05.1992 is set aside and the judgment and decree of the trial Court dated 16.02.1987 is upheld and the suit filed by the plaintiff is decreed with costs.

23. Pending application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

August 28, 2024
Davinder Kumar

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