

RSA-2447-1999 (O&M)

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2024:PHHC:008248

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

RSA-2447-1999 (O&M)

Date of decision: 19.01.2024

Reserved on : 09.01.2024

Pargat Singh and another

....Appellants

Versus

Sh.Darbara Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Kanwaljit Singh, Sr. Advocate with
Mr. K.S.Brar Advocate for the appellants

Mr. R.V.S.Chugh, Advocate for respondents no. 1 and 6

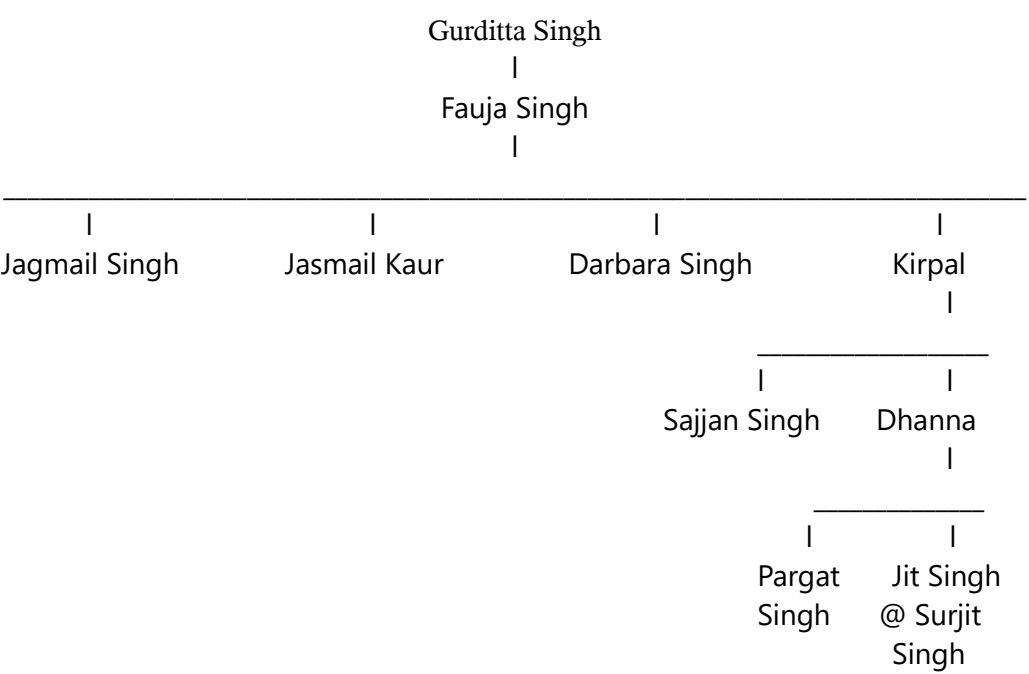
Mr. Arun Bansal, Advocate for respondent no.2 and 3

ANIL KSHETARPAL, J

1. This is defendants' Regular Second Appeal to challenge the correctness of judgment and decree passed by the First Appellate Court, which in turn, reversed the judgment and decree passed by the trial court. In the opinion of the Court, the following question/ issue/ point arises for consideration

“What is the evidentiary value of an opinion given by a Doctor with respect to a patient's mental health, without physically examining him?”

2. In order to comprehend the issue involved, some relevant facts, in brief, are required to be noticed.
3. The relevant part of the Pedigree table of the family is extracted as under:-



4. On 30th January, 1987, a civil suit No. 82 was for grant of decree of declaration that the plaintiffs are owner in possession of 9/10th share in equal share out of the land measuring to 274 kanals 14 marlas situated within the revenue limits of village Pero, filed by Surjit Singh @ Jit Singh & Pargat Singh (minor) sons of Sh.Dhanna Singh son of Sh.Kirpal Singh against Jagmail Singh and Darbara Singh sons of Sh.Fauja Singh son of Sh.Gurditta. Sajjan Singh, Dhana Singh sons of Sh.Kirpal Singh son of Sh.Gurditta alleging distribution of the family property on the basis of a family settlement arrived at about a year back before the date of filing of the suit. While admitting the claim of the plaintiffs, filed their written statement which was duly signed or thumb marked by all the

defendants alongwith their counsel. A statement of the counsel representing the defendants was also recorded to this effect resulting in decree passed by the Court on 9th February, 1987 in terms the prayer made in the plaint. Sh.Darbara Singh through his sister Jasmail Kaur filed a suit on 20th April, 1987 seeking decree of declaration that he is a co owner in the land measuring 276 kanals 14 Marlas along with defendant No. 3 to 5 and the decree obtained by defendant No. 1 and 2 on 9th February, 1987 is illegal, null and void, where it was claimed that the plaintiff (Sh.Darbara Singh) is a lunatic and therefore, not competent to suffer the decree. It was claimed that the decree results in transfer of immovable property worth more than Rs.100/- and unless it is registered, it it will have no effect. Moreover, plaintiff and defendant No. 3 to 5 never gave suit land in partition in favour of defendant No. 1 and 2 (the plaintiffs in the previous suit) as he had no connection with them. The trial court dismissed the suit. The First Appellate Court culled out the additional issues and sought report from the trial court while allowing two applications filed by the plaintiffs; one for amendment of the plaint and second for culling out additional issues. Before the trial court, Dr. Ravinder Mohan Sharma was examined by the plaintiff, who produced the plaintiff's record from the Punjab Mental Health Hospital from 5th July, 1959 to the year 1977. After receipt of the report, the First Appellate Court has reversed the judgment and decree passed by the trial court, while declaring that in the year

1987 the plaintiff was lunatic, and thus, not competent to give concession in the previous suit. The court has also held that the decree passed in the year 1987 is unregistered and therefore, is not resulting in transfer of the property and there was no written compromise between the parties.

5. Against the aforesaid judgment of the First Appellate Court, the defendants have come up in appeal, which was admitted for regular hearing.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith requisitioned record and their respective synopsis with the gist of their arguments.

7. On one hand, the learned counsel representing the appellant while drawing the attention of the Court to the deposition of PW 4 Dr. Ravinder Mohan Sharma submits the following:-

a) That there is no evidence to prove that Sh.Darbara Singh remained under treatment from any doctor relating to mental health past 1977.

b)That Sh. Darbara Singh never appeared in evidence as a witness and the court never got him examined in order to assess his mental health by drawing court's attention to the judgment passed on 9th February, 1987.

c) That Sh.Jagmail Singh and Sh. Darbara Singh sons of Sh.Fauja Singh and Sajjan Singh and Dhanna Singh sons of Kirpal Singh had jointly suffered a decree in favour of Surjit Singh and Pargat Singh.

d) That Jagmail Singh is not only a real brother of Sh. Darbara Singh, but he is also defendant no.1 in the aforesaid suit, and

e) That other members of the family have never assailed the correctness of the judgment and decree passed on 9th February, 1987.

8. On the other hand, the learned counsel representing the respondent has submitted the following:-

a)Sh.Darbara Singh and Jagmail Singh were unmarried and issueless.

b)He submits that as per the case of the appellants Jagmail Singh was residing with the appellants, but he was never examined in evidence.

c)That Darbara Singh was sentenced to life imprisonment in a murder case, where, he was released on parole. At that time, Jarnail Singh alias Ajmer Singh gave undertaking that he will not get signatures of Sh.Darbara Singh on any legal papers.

d) That condition of parole was violated by suffering a decree in the year 1987.

e)That Dr. Ravinder Mohan Sharma has proved that Sh.Darbara Singh was mentally sick and therefore, not in a position to admit the claim of the plaintiff in a suit filed in the year 1987,

which resulted in the judgment and decree dated 9th February, 1987.

f) That the presumption against defendant should be drawn as the appellant never produced Sh.Darbara Singh in the court for his medical examination through the court.

g)In the end, he submits that the appellants got executed a sale deed from Sh.Darbara Singh on 18th October, 2012 and also got executed a registered Will from him on 2nd May, 2008 and on the complaint of Jasmail Kaur, Dhana Singh, Pargat Singh, Jasmer Singh, Surinder Pal Sharma, Lal Singh and Salta Singh were convicted and sentenced to rigorous imprisonment vide judgment dated 18th March, 2019.

9. Now, it becomes important to appreciate the evidence led by the parties. The plaintiffs have examined PW1 Ujjagar Singh. He is a resident of village Pero @ Peron where the land is situated and the parties are residing. He states that Sh.Darbara Singh is not of sound disposing mind and he is being looked after by his sister Jasmail Kaur. He denies the suggestion of the defendant that Sh.Darbara Singh resides with his nephew namely Surjit Singh alias Jeet Singh.

10. PW2 is also a resident of the village. He states that Sh.Darbara Singh is not of sound disposing mind. On being questioned, he stated that Sh.Darbara Singh is not getting medical treatment for his medical condition. PW3 is Jasmail Kaur, sister of Sh.Darbara Singh. The suit has been filed through her. She is

married in village Sardoolgarh, but she states that she is residing in village Pero for the last 2-3 years. She claims that the Darbara Singh is mad and is not aware of anything whether good or bad. In the cross examination, she admitted that Jagmail Singh, other brother of Sh.Darbara Singh is residing with Dhana Singh etc. and Sh.Darbara Singh is able to walk and goes to Sardoolgarh, whenever she visits that village. On being questioned with respect to the treatment of the Darbara Singh, she submitted that she did not get Sh.Darbara Singh treated from any doctor. She again appeared in evidence in the year 1997 when the case was remitted back for submitting report by the First Appellate Court, after framing the additional issue. In the cross-examination, she admitted that Sh.Darbara Singh was residing with the defendants. PW4 Darshan Singh is again a resident of village, who has supported the case of the plaintiff. PW4 renumbered as PW5 states that he has brought the hospital record of Sh.Darbara Singh. He was referred to mental hospital on 5th March 1959 by the Central Jail, Patiala, where it was discovered that he was suffering from Schizophrenia. At that time, after conviction in a murder case, he was undergoing life imprisonment after conviction in a murder case. His life imprisonment was completed on 27th July, 1970 and he remained in the hospital as criminal upto 27th July 1970 and thereafter, he remained in the hospital as a patient. He was sent to reside in parole during this period and he remained under treatment upto 1977, though, he was discharged from the hospital on

20th January, 1974. He was treated by Dr. Baldev Kishore, the Chief Medical Superintendent. In the cross-examination, he has stated that he never examined, treated or attended Darbara Singh. In layman's terms, he has stated that Sh.Darbara Singh was suffering from major mental disorder which is called Meloneholia, which is a curable illness. The court questioned him with regard to the expected position of Sh.Darbara Singh on 6th or 9th February, 1987. He stated that nothing can be said for sure but chances are that there will be residual symptoms. On the other hand, the defendants examined DW1 Varinder Bhatnagar, hand-writing and fingerprint expert to prove the thumb impression of Sh.Darbara Singh, DW2 Sajjan Singh son of Kirpal Singh, another nephew of Sh.Darbara Singh. He stated that he along with Jagmail Singh, Darbara, Singh, Dhana Singh are residing with Surjit Singh and Pargat Singh. Darbara Singh is of sound disposing mind and they jointly suffer a decree in the year 1987. DW3 Labh Singh is Sarpanch of the village, who has stated that the Darbara Singh is of sound disposing mind and is residing jointly with Surjit Singh and Pargat Singh. DW 4 Santa Singh is a member of the panchayat. He also stated that Darbara Singh is of sound disposing mind and he is active in agricultural work. DW5 Gurbandh Singh Sekhon, Advocate filed the written statement in the year 1987 on behalf of Jagmail Singh, Darbar Singh Dhana Singh and Sajjan Singh.

11. The plaintiffs in order to prove the mental health of Sh.Darbara Singh has produced Ex. PW4/A, discharge certificate of Sh.Darbara Singh issued in January, 1974. It is evident that on furnishing of bonds by Ajmer Singh, Sukhdev Singh and Sajjan Singh, Darbara Singh was discharged from the hospital. He was sent to parole under the care of his elder brother. Thereafter, on 20th July 74, he returned to the hospital and on 22nd July 1974, he was again released for a period of six months. Ex.DX is a medical certificate issued by the Medical Officer, Central Jail, Patiala. Ex.CY is again a document which shows that on 22nd January, 1974, he was sent on parole for a period of two months on furnishing bonds. Ex. CX is a note given by the doctor to prove that Sh.Darbara Singh was not well oriented as he failed to tell the month. However, he identified that he is in the hospital. His general knowledge was stated to be poor.

12. From analyses of the aforesaid evidences, it becomes evident that there is absolutely no evidence to prove that Darbara Singh remained under treatment for any mental sickness whatsoever after 1977. In fact, there is no evidence for his treatment or visit to any doctor post 1977. He was released from the hospital in January, 1974. No evidence has been produced to prove that he was under any major treatment though he was visiting the Hospital upto the year 1977. A period of more than a decade is sufficiently long time. In the absence of evidence to prove that Darbara Singh was not

mentally sound in the year 1987 when the decree was passed, the First Appellate Court has erred in reversing the judgment and decree passed by the trial court.

13. In this case, Smt. Jasmail Kaur herself admits that she has never got Sh.Darbara Singh treated from any doctor. In these circumstances, obvious and natural conclusion would be that Darbara Singh does not require any treatment and he was normal and healthy without any mental disability. In such circumstances, the First Appellate Court has erred in relying upon Modi's book of medical jurisprudence. Dr. Ravinder Mohan Sharma admitted that Schizophrenia is a curable disease. Moreover, the court can not overlook the fact that at the relevant time, due to conviction in a murder case Darabara Singh was undergoing life imprisonment.

14. Though Dr. Ravinder Mohan Sharma has stated that there will be residual symptoms while answering the courts questions, however, this is only in the form of his opinion. He was summoned along with the record from the hospital. He never examined, treated or assessed the mental sickness of Sh.Darbara Singh himself. Section 45 of the Indian Evidence Act 1872 provides that opinion of experts are relevant facts in evidence. However, these are evidence of opinions. Such opinion is not substantive evidence. Medical opinion being an opinion is advisory in nature and not binding upon the court. The court has to form its own opinion, considering material, data and analysis of evidence

produced. Reference in this regard can be placed on the judgment of the Supreme Court in **Madan Gopal vs. Naval Dube (1992) 4 SCC 69.**

15. It may be noted here that while analysing the opinions of the expert, the court, being the final obiter is required to critically examine the same. The opinions based on his study and experience earned by expert over a period of time and his perception are relevant, however, these cannot be conclusive. Expert evidence should be evaluated with considerable care and caution. An expert witness is naturally biased in favour of the party, who calls him in evidence. However impartial, he may wish to be, he is likely to be unconsciously prejudiced in favour of the side calling him. Besides, an expert is often called by one side simply and solely because it has to be ascertained that he holds views favourable to his interest. Reliance in this regard can be placed on the judgment passed in **Diwan Singh and others vs. Emperor 1933 AIR Lahore 561.**

While analysing the entire evidence, the court should not overlook the positive evidence lead by eye witnesses who have seen the development. Moreover, the medical evidence does not itself prove the case of the plaintiff. Its value is only corroborative.

16. In the facts of the case, the First Appellate Court erred in overlooking the direct evidence namely the Sarpanch and member of the Panchayat, who have appeared in evidence as DW3 and DW4. They are not interested witnesses.

17. In this case, the courts below have erred in failing to get Sh.Darbara Singh examined from a good expert in the field. The plaintiff has also not filed any application in this regard. The onus to prove that Darbara Singh was not in sound disposing mind in the year 1987 was as the plaintiff. They could have filed an application in this regard before the court. Sh.Darbara Singh himself had appeared in the court to give his standard thumb impression on 10th May, 1989. On that day, the court should have either questioned him or should have referred him to some medical expert. Now, Darabar Singh is already dead.

18. It may be noted here that Smt.Jasmail Kaur, while appearing in evidence in February, 1989, positively asserted that the Sh.Darbara Singh was residing with her. She could get Sh.Darbara Singh examined from the Medical expert in order to prove the case. In 1997, when she appeared in evidence, she has stated that Sh.Darbara Singh is residing with the defendants. This corroborates the evidence of Sh.Sajjan Singh, who has stated that he, Jagmail Singh, Dhana Singh and Darbara Singh are residing jointly with Surjit Singh.

19. The First Appellate Court has also erred while observing that the judgment and decree passed on 9th February, 1987, on the basis of family settlement is not sustainable in the eyes of law because it is unregistered. By now, it is well settled that settlement of the dispute between the family members, which is

subsequently reduced as a memorandum, is not required to be registered. Similarly, the decree passed on the basis of the aforesaid family settlements are also not required to be registered. Reliance in this regard can be placed on **Kale vs. Director of Consolidation (1976) 3 SCC 119** which was recently followed in **Gurbachan Singh vs. Angrej Kaur (2020) SCC online SC 607**. The courts lean in favour of upholding the family settlements and desist from interfering in the same in order to maintain harmony in the family. This has been consistent view of the Supreme Court from 1950s onward. In **Ravinder Kaur Grewal vs. Manjit Kaur (2020) 9 SCC 706**, the Supreme Court also held that memorandum of family settlement does not require mandatory registration.

20. The First Appellate Court has also erred in observing that no expert evidence has been produced by the defendants and oral evidence of the defendants weighs down when compared with the expert evidence. It is evident that the First Appellate Court has overlooked the fact that burden to prove that Sh.Darbara Singh was lunatic in the year 1987 was on the plaintiff. They were required to lead positive evidence. The evidence produced by the plaintiff is not sufficient to prove that Sh.Darbara Singh was lunatic in the year 1987, particularly when he has been residing with his family from 1974 continuously with his family without any further treatment from the doctor. Had he been lunatic from his birth, he could not be convicted for committing murder. Moreover, being a convict by the

court of law, he had sufficient exposure to the nuances of the courts. The expert evidence is based on the opinion whereas the evidence led by the defendants is direct evidence. The Sarpanch and member of the Panchayat have deposed that Sh.Darbara Singh was/is not mentally unsound. The First Appellate Court has also erred in observing that no written compromise deed was filed in the previous suit. In the year 1987, once the defendants themselves file the written statement after appending their signatures and thumb impression including Darbara Singh admitting the claim of the plaintiff in the suit filed, there is no need of written compromise deed. Learned counsel representing the defendants in the suit filed in 1987 did made a statement admitting the claim of the plaintiff. In these circumstances, there is no requirement of written compromise as the suit was decided in accordance with Order XII Rule 6 of the Code of Civil Procedure, 1908.

21. Now this Court proceeds to analyse the argument of the learned counsel representing the respondent. The first argument is that the defendants have not examined Jagmail Singh @ Ajmer Singh. At the cost of repetition, the onus is on the plaintiff to prove that Sh.Darbara Singh was mentally unsound.

22. The second argument is based on an undertaking given by Jasmail Singh @ Ajit Singh in 1974. That undertaking is only a condition of grant of parole. However, that would not debar Sh.Darbara Singh throughout his life from entering into contract or

signing any document. In this case, Darbara Singh conceded to the claim of the plaintiff in the suit filed in the year 1987. In the absence of any evidence to prove that he continues to suffer from Schizophrenia, he could not be debarred from filing the written statement in the court.

23. Last argument of the learned counsel is based on Section 114 of the Indian Evidence Act, 1872. An adverse inference can be drawn against the defendants only if it were the defendants who were to prove that Sh.Darbara Singh is of sound mind. Rather the burden to prove lies on the plaintiff.

24. Furthermore, although the judgment has not been produced in additional evidence, however, it is the case of the plaintiff (respondent herein) in the written argument filed before this Court that Sh.Darbara Singh executed a registered will on 2nd May, 2008 as well as a sale deed on 18th October, 2012 in favour of the defendants (the appellant herein). It rather proves that Sh.Darbara Singh continued to live with the appellants and he always wanted to give property to the appellants rather than bequeathing it in favour of the Smt.Jasmail Kaur or her children.

25. Keeping in view the aforesaid facts and discussion, the conclusion is inevitable. The judgment passed by the First Appellate Court is set aside and that of the trial court is restored. The Regular Second Appeal stands allowed.

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

19.01.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE