

2024:PHHC:086537



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

CR-5891-2023 (O&M)

Date of decision:-11.07.2024

Mohan Singh and others

....Petitioners ..

VS.

Smt.Kailash Wati (since deceased) thr. LRs. and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Animesh Sharma, Advocate,
for the petitioners.

Mr. Vikas Mohan Gupta, Advocate with
Mr. Nakashvir Singh Aulakh, Advocate,
for the contesting respondents.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition filed under Article 227 of the Constitution of India, challenge has been laid to an order dated 06.09.2023 passed by the learned Civil Judge (Junior Division), Khanna, whereby an application filed on behalf of the petitioners-plaintiffs, seeking permission for examination of the sale deed dated 06.09.1973 by handwriting expert to find out as to whether the thumb impressions of vendor-Nasib Kaur were obtained on blank papers and thereafter the same was drafted and to produce him as a witness, stands declined.

2. Briefly stating, petitioners-plaintiffs filed a suit for declaration and permanent injunction claiming themselves to be owner of the suit

property measuring 6 kanal 06 marla, situated in village Majri, Tehsil Khanna, District Ludhiana while laying down challenge to the sale deed dated 23.06.1973, allegedly executed by Smt. Nasib Kaur in favour of respondents-defendants, besides claiming possession thereof as well. Issues in the aforesaid suit were framed on 05.10.2011. In the meanwhile, an application came to be filed on behalf of the petitioners-plaintiffs for issuance of direction to the respondents-defendants for production of original sale deed dated 23.06.1973 which came to be declined by the trial Court vide order dated 14.10.2014. Upon challenge, the prayer for production of original sale deed dated 23.06.1973 by the respondents was allowed by this Court vide order dated 15.03.2023 (AnnexureP-7) passed in CR-8715-2014 (O&M).

3. Respondents-defendants having complied with the same, an application dated 29.08.2023 was filed on behalf of the petitioners-plaintiffs seeking permission to allow them to produce handwriting and fingerprint expert. The relevant para No.5 of the said application is reproduced hereunder:-

“That the applicant/plaintiff seeks permission for this Hon’ble Court to produce a finger print expert as a witness in order to prove the fact that the alleged thumb impressions on the above mentioned sale deed executed by Smt. Nasib Kaur have been placed before the said sale deed was written, hence proving that the above said sale deed is not a genuine document.”

4. The prayer made in the said application was opposed at the instance of respondents-defendants. The trial Court vide order dated 06.09.2023, dismissed the application and the same has been impugned by way of present revision petition.

5. Impugning the aforesaid order dated 06.09.2023, learned counsel for the petitioners submits that once the evidence of the petitioners-plaintiffs was in progress, the trial Court could not have declined the prayer made on their behalf having closed the doors so as to produce evidence in support of their cause set-up in the plaint. He further submits that a specific plea of fraud, misrepresentation and impersonation was pleaded in the plaint and in such circumstances, it was essential for the petitioners-plaintiffs to have handwriting expert examined so as to establish the same and thus, the discretion exercised by the trial Court while passing the impugned order was liable to be interfered with.

6. On the other hand, prayer made herein has been vehemently opposed at the instance of learned counsel representing the respondents-defendants while submitting that in the given facts and circumstances, the petitioners-plaintiffs cannot be permitted to examine any handwriting expert merely for the purposes of proving or finding out as to whether the thumb impressions of Nasib Kaur were placed on the sale deed before it was drafted/executed, as no such case was ever pleaded by the petitioners-plaintiffs in the plaint. He further submits that in case the prayer made by the petitioners-plaintiffs is allowed, the same would be in a way allowing them to lead evidence beyond their pleadings, which is impermissible in law.

7. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioners.

8. In the present case, the sale deed dated 23.06.1973, allegedly executed by Nasib Kaur has been assailed at the instance of petitioners-plaintiffs being her successors on the basis of various-different pleas such as

fraud, misrepresentation as well as impersonation etc. Relevant para No.7 from the plaint is reproduced hereunder:-

“That defendants are alleging some sale deed alleged to have been executed by Smt.Nasib Kaur in favour of their predecessor in interest Sh.Ram Parkash on 26.06.1973. The fact remains that Smt.Nasib Kaur never executed any sale deed in favour of Sh.Ram Parkash. That the impugned sale deed is forged, fraudulent and false document apart from being illegal, null and void, without consideration is result of fraud and misrepresentation played upon Smt. Nasib Kaur deceased and is a result of impersonification and is liable to be cancelled and set aside on the following grounds:-

(i) That Sudesh Kumar defendant who was practicing as Taxation Advisor was having knowledge of properties of plaintiff and deceased Nasib Kaur as he was at that time looking after the taxation advisor of the plaintiffs. Due to the knowledge regarding the property, Nasib Kaur, Sudesh Kumar in a calculated move got alleged sale deed executed and registered in the name of Ram Parkash father of Sudesh Kumar defendant. In fact Nasib Kaur never appeared before Sub Registrar, Khanna, never purchased stamp papers and never visited Deed Writer for scribing the alleged sale deed dated 26.06.1978 and never received sale consideration of the alleged sale deed.

(ii) That defendant Sudesh Kumar and Ram Parkash deceased by way of misrepresentation produce some other women before Sub Registrar, Khanna, and got alleged sale deed thumb marked and registered in the name of Ram Parkash by illegal manner in connivance with the Sub-Registrar and the alleged attesting witnesses. In fact above stated property was never intended to be sold by Nasib Kaur during her life time.

(iii) That the impugned sale deed is without consideration and illegal document.

(iv) That Smt. Nasib Kaur never delivered the possession of property in question to Sh.Ram Parkash and even the defendants are not in possession of the property in question. That earlier

Smt.Nasib Kaur was recorded as owner in possession of the property in question and thereafter her death, the plaintiffs are the owners in possession of the property in question and are recorded as such in the revenue record. The relevant revenue record in shape of jamabandies and Khasra Girdawris reflecting the ownership and possession of the plaintiffs over the property in question are attached herewith.

(v) That Sh.Ram Parkash in connivance with the revenue authorities got entered his name in the revenue record on the basis of the impugned sale deed, however, when the error came to the notice of the revenue officers, the same was corrected and now after a lapse of more than one and a half decade, the defendants under the garb of greed are trying to re-agitate the matter which chapter was closed by Sh.Ram Parkash during his lifetime.

(vi) That the impugned sale deed being illegal, null and void is liable to be set aside.

(vii) That Smt. Nasib Kaur never intended to sell or execute sale deed in favour of Ram Parkash deceased. The impugned sale deed is result of impersonification and is result of fraud and misrepresentation.

In the wake of aforementioned pleadings wherein it was specifically pleaded that one of the respondent-defendant (Sudesh Kumar), who happened to be a practicing Taxation Advisor having knowledge about the properties of deceased-Nasib Kaur and even looking after those as her Taxation Advisor as well as that of the petitioners-plaintiffs, the prayer made on their behalf for examining handwriting expert so as to opine as to whether thumb impressions of Nasib Kaur were obtained on blank papers followed by drafting of the sale deed in question thereafter, becomes essential, especially, when a specific plea of misrepresentation was pleaded in the plaint.

9. At this stage, in case, this Court delves upon the issue of the evidence being sought to be led was beyond the pleadings or not, it would be travelling too far, while entertaining an application for seeking permission for examination of handwriting expert by the petitioners-plaintiffs. The purpose for which the examination of handwriting expert is being sought for cannot be termed to be in contradiction with the pleadings set-up in the plaint as all the pleas therein about the sale deed in question being invalid document are separate, alternative and exclusive, yet not contradictory.

10. Further more, the reasoning recorded by the trial Court while declining the prayer made on behalf of the petitioners-plaintiffs to the effect that the science of handwriting is an inexact science and not the only way or mode of proving the signatures and handwriting of a person; has to be treated as premature observation at this stage before the report of the handwriting expert is made part of record and perused by the Court. The trial Court did not appreciate the fact that technical relevance of the evidence has to be assessed and determined at the stage of final adjudication of the *lis* between the parties, rather than curtail it at the inception. Once the report, if any, by the handwriting expert is proved on record and made part of it, its evidentiary value and relevance shall definitely be assessed by the trial Court while taking into consideration the scientific norms and standards brought before it. Thus, at this stage even before allowing the petitioners-plaintiffs to examine the handwriting expert, the trial Court can not be permitted to pre-judge the issue as to whether any such science as claimed in the application exists or not unless the parties are afforded adequate opportunity in this regard.

11. Accordingly, in the given facts and circumstances, in order to

do substantial justice to the rights of the petitioners-plaintiffs and to enable them to establish their case, they were required to be afforded an opportunity to examine handwriting expert as prayed for in their application. Resultantly, in view of the discussion made herein above, revision petition is allowed. Order dated 06.09.2023 is set aside..

- 12. Pending application, if any, also stands disposed of.
- 13. Any observation made in this order may not be construed as an expression of opinion on merits of the case.

11.7.2024
sonika

(HARKESH MANUJA)
JUDGE

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