

Jay Karan Vs Bhim Sain

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 27, 1981

Acts Referred: Evidence Act, 1872 â€” Section 73

Citation: (1981) 3 ILR (P&H) 644

Hon'ble Judges: M.R. Sharma, J

Bench: Single Bench

Advocate: O.P. Sharma, for the Appellant; H.L. Sarin, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.R. Sharma, J.

A suit for recovery of money had been filed against the Petitioner on the basis of a pronote which it is alleged had been thumb-marked by him. The learned trial Court directed him to furnish specimen thumb impressions for their comparison with the thumb-impression

appearing on the pronote. It was reported by the handwriting expert that the specimen thumb-impressions furnished by him were indecipherable.

Upon this, the learned trial Court directed the Petitioner to give fresh specimen thumb-impressions. The Petitioner has come up in revision against

this order on the ground that Section 73 of the Evidence Act does not entitle a Court to get specimen thumb-impressions for being compared by a

hand writing expert. The argument raised is that under this provision the Court can itself compare the writing or the thumb-impressions and it

cannot order a party to furnish specimen thumb-impressions which may be made use of by a hand writing expert. In support of this submission, the

learned Counsel for the Petitioner has relied upon Babubhai Mulchanddas Kapadia Vs. Ishwarlal Devchand Kabrawala, .

2. It is not disputed that if I accept the prayer made on behalf of the Petitioner, the controversy pending in the learned trial Court will not be finally

disposed of. The order passed by the learned trial Court is in the nature of an inter-Locutory order and it cannot be interfered with on the

revisional side if it does not occasion manifest justice. Besides, even apart from Section 73 of the Evidence Act, a Civil Court has the inherent

powers to pass an order in order to do justice between the parties. If the learned trial Court had in the first instance ordered the Petitioner to give

specimen thumb-impressions for its own observation and comparison the Petitioner would have had no grievance. If after getting the specimen

thumb-impressions the Court feels that it should have them compared by a hand writing expert, there was no bar against the learned trial Court to

adopt that procedure. In other words if the court were to adopt a circuitous method it would achieve the same results. A provision of law cannot

be interpreted in such a manner that it should force a court to adopt a round-about method of procuring evidence for doing justice between the

parties. If for nothing else at least on this consideration alone the view taken by the Gujarat High Court in Babubhai Mulchaddas Kapadia's case

(supra) appears with respect, to be seriously questionable.

There is no force in this petition which is hereby dismissed.