
(2016) 04 RAJ CK 0043

RAJASTHAN HIGH COURT

Case No: Civil Writ Petition No. 12919 of 2015

Bhanwar Lal

APPELLANT

Vs

Lal Khan

RESPONDENT

Date of Decision: April 27, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Evidence Act, 1872 - Section 45

Citation: (2016) 2 DNJ 935

Hon'ble Judges: Arun Bhansali, J.

Bench: Single Bench

Advocate: Nitin Trivedi, Advocate, for the Appellant; R.C. Joshi, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Arun Bhansali, J.—The matter comes upon an application filed by the respondent seeking vacation of the interim order granted by this Court.

2. With the consent of the parties, the matter is finally heard.

3. This writ petition has been filed by the petitioner aggrieved against the order dated 12.08.2015 passed by the trial court to the extent the application filed by the respondent under Section 45 of the Evidence Act, 1872 ("the Act") has been accepted and the document in question has been directed to be sent to FSL to be examined based on the specimen thumb impression to be supplied by the petitioner in the court.

4. The petitioner filed a suit for declaration, injunction and possession against the respondent.

5. The respondent filed his written statement and claimed that vide sale deed dated 28.02.1978, the property in question has been transferred by the plaintiff to the

defendant.

6. During pendency of the suit, the defendant filed application on 31.10.2000 with a prayer to send the sale deed in question for expert opinion qua the signatures on the sale deed with the admitted signatures of the petitioner on the plaint and the Vakalatnama filed before the trial court. The application was allowed by the trial court by order dated 29.05.2001. The document was sent to FSL and the FSL by its report dated 30.01.2002 opined that the signatures on the sale deed and the plaint/Vakalatnama did not match.

7. Thereafter, the present application was filed on 18.11.2005, again under Section 45 of the Act seeking expert opinion qua the alleged thumb impression of the plaintiff on the sale deed dated 28.02.1978 after obtaining the specimen thumb impression of the plaintiff.

8. The application was opposed by the learned counsel for the petitioner on several counts. The trial court after hearing the parties, allowed the application.

9. It is submitted by learned counsel for the petitioner that the trial court was not justified in accepting the second application filed by the petitioner under Section 45 and 73 of the Act, inasmuch as, once the petitioner's prayer for seeking expert opinion qua the signatures was dealt with by the court and the result thereof was negative, it is not open for the respondent to file repeated applications for the same purpose and, therefore, the order impugned deserves to be set aside. It was further submitted that the application was delayed and that it is still open for the respondent to prove the thumb impression by leading evidence and, therefore, the impugned order deserves to be set aside.

10. Learned counsel for the respondent duly supported the order passed by the trial court.

11. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

12. A bare look at the document (Annex.-2), which has been exhibited, reveals that the same is a registered sale deed said to have been executed by Bhanwar Lal (plaintiff) in favour of Lal Khan (defendant). The document in question bears signatures on all pages and on page bearing the endorsement of the Sub Registrar, it also bears a thumb impression, which is claimed by the defendant that the same is of the plaintiff.

13. When the execution of the sale deed was disputed by the petitioner, an application under Section 45 of the Act was filed by the defendant, which came to be accepted by the trial court, however, the report of the FSL found that, the signatures contained on the sale deed and the admitted signatures were not matching. Where after, the present application was filed seeking comparison of the thumb impression with the specimen thumb impression to be delivered by the plaintiff.

14. The application, as notice herein before, has been accepted by the trial court.

15. So far as the submissions made by learned counsel for the petitioner regarding filing of the earlier application is concerned, it would be noticed that the earlier application was limited to the signatures on the document; neither any prayer was made for comparison of the thumb impression, nor the same was considered by the trial court. Therefore, it cannot be said that on account of filing of the earlier application, the present application for the said reason was not maintainable.

16. So far as the justification for accepting the application is concerned, a look at the thumb impression, which is alleged to be that of the plaintiff indicates that the same is quite clear, inasmuch as, the ridges are quite visible and it is well settled that comparison of disputed and specimen thumb impressions and report thereon as the same is based on scientific analysis, can be relied upon by the courts.

17. In view thereof, it cannot be said that a trial court was not justified in seeking the comparison of the alleged thumb impression of the petitioner with that of the specimen impressions to be produced by the petitioner.

18. So far as the delay for filing the application is concerned, the trial court has imposed a cost of Rs. 2000/- on the defendant, which takes care of the said aspect as even otherwise the suit is pending since the year 1999.

19. In view of the above discussion, no interference is called for in the order impugned. The writ petition has no substance, the same is, therefore, dismissed.

20. Looking to the fact that the suit is pending for near about 17 years now, the trial court is directed to deal with the matter as expeditiously as possible and ensure that, the trial is completed preferably within a period of 12 months from the date a certified copy of this order is placed before it.