

(2023) 08 RAJ CK 0108

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15298 Of 2017

Bhairu Lal And Others

APPELLANT

Vs

Shankar Lal And Others

RESPONDENT

Date of Decision : 25-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Rajasthan Tenancy Act, 1955 — Section 53, 88, 92A, 188
Code Of Civil Procedure, 1908 — Section 151
Evidence Act, 1872 — Section 45

Citation : (2023) 08 RAJ CK 0108

Hon'ble Judges : Dr. Nupur Bhati, J

Bench : Single Bench

Advocate : Jitendra Chopra, Vikas Bijarnia

Final Decision : Dismissed

Judgement

Dr.Nupur Bhati, J

(1) The present writ petition has been filed under Article 227 of the Constitution of India with the following prayers:-

“(i) The record pf the Case No.86/1998 (Shankar Lal & Ors. Vs. Late Shri Jeevraj & Ors.) pending before the SDO, Sojat, District Pali may kindly be called;

(ii) The impugned order dated 16.10.2017 (Annex.07) passed by the Revenue Board, Rajasthan, in Revision No.TA/8235/2008/Pali (Shankar Lal V/s Bhairulal) may kindly be set aside and quashed,

(iii) The SDO, Sojat, District Pali may kindly be directed to take on record the report dated 25.08.2007 (Annex.04) while considering Case No.86/1998 (Shankar Lal V/s Late Shri Jeevraj & Ors.) and dispose off accordingly.”

(2) The brief facts of the case are that the defendants-respondents Nos.1 to 12 filed a suit (Annex.1) under Section 88, 92A, 53 and 188 of the Rajasthan

Tenancy Act, 1955 came to be filed before the Assistant Collector, Sojat being Suit No.86/1998 for declaration that the agricultural land situated in village Sojat Road, Patwar Circle Siyat Bera Raghunath Sagar, measuring 24.14 hectare be declared in their names and revenue record be rectified accordingly. It was also prayed that partition of the suit property in 2/3 be made and permanent injunction be also granted against the petitioners-defendants.

(3) The petitioners-defendants filed reply to the suit stating therein that the total rakba was 140 bighas 1 biswa out of which 1/3rd share was in possession of the petitioners-defendants and their father late Shri Jeevraj Ji. It was also stated that the respondents-plaintiffs sold their 2/3rd portion to the present petitioners-defendants and their father Late Shri Jeevaram through registered sale-deed dated 11.07.1956 and therefore, they do not have any right over the suit property. Since 11.07.1956, the petitioners-defendants have right over the said 2/3rd portion and are also having the possession over the same and, thus, they have neither title over the suit property nor any cause of action arose to file the suit.

(3) During the pendency of the suit, the respondents-plaintiffs raised question regarding authenticity and truthfulness of the thumb impression appended on the registered sale-deed dated 11.07.1956. The thumb impression was examined by one Shri Anil Kumar Khetia, Hand Writing and Finger Print Expert, who gave his report dated 25.08.2007 (Annex.3). The relevant portion of the report dated 25.08.2007 reads as under:-

"I made an inspection of the original documents and took photographs with the kind permission of the Hon'ble Court, I also prepared the Computer prints on my personal computer. I also prepared on Computer C.D. Containing Photo Images.

Taking into consideration all these factors, it is my considered opinion that the Disputed Thumb impression marked as Q-1 to 4 has been affixed by the same person Shankar who has affixed his Left Specimen Thumb impressions marked as L1 and L2."

The said Hand Writing and Finger Print Expert also gave evidence before the Assistant Collector, Sojat.

(4) The respondents-plaintiffs filed an application under Section 151 CPC before the Assistant Collector, Sirohi praying thereby that the report (Annex.3) and the statement of the Hand Writing and Finger Print Expert may not be taken on record on the ground that the said Hand Writing and Finger Print Expert did not possess valid degree. The petitioner-defendants filed reply to the aforesaid application stating therein that no special qualification or degree is required for handwriting and thumb impression examiner and the same can be done by an experienced person as the same is also permissible under the law. It was also stated in the reply that the said hand-writing and thumb impression examiner is a quite experienced person and he had given his opinion in more than 3500 matters before various courts, and thus, submitted that the said report and

statement deserve to be taken on record.

(5) The Assistant Collector dismissed the application filed by the respondents-plaintiffs under Section 151 CPC vide order dated 09.07.2008 (Annex.6). Aggrieved of the order dated 09.07.2008, the petitioners-defendants preferred a revision petition before the Board of Revenue, Rajasthan being Revision/TA/8235/2008/Pali. However, the Board of Revenue, without considering the matter properly, allowed the revision petition and quashed and set aside the order dated 09.07.2008 (Annex.6) vide order dated 16.10.2017 (Annex.7).

(6) Therefore, the petitioners, being aggrieved of the order dated 16.10.2017 (Annex.7) passed by the Board of Revenue, has preferred this writ petition.

(7) Learned counsel for the petitioners submitted that the respondents-plaintiffs have moved the application after the report of the hand-writing and finger-print expert was placed before the court and his statement was recorded which shows that it is a delaying tactic adopted by the respondents-plaintiffs. The respondents-plaintiffs could have raised this objection at the time of giving specimen thumb impression. Thus, the Assistant Collector has rightly dismissed the application of the respondents-plaintiffs.

(8) Learned counsel for the petitioners further submitted that the said hand-writing and finger-print expert Shri Anil Kumar is having vast experience in the subject and had given his opinion in various courts and the reports so submitted have been taken on record. Moreso, the report given by the hand-writing and finger-print expert is based on scientific examination.

(9) Learned counsel for the petitioners also submitted that as per the provisions of Section 45 of the Indian Evidence Act, a person is called experts when the court has to form an opinion upon a point of foreign law, or of science, or art or as to identify of handwriting or finger impressions, the opinion upon that point of persons specially skilled in such foreign law, science or art or in questions as to identify of handwriting or finger impression. In the case in hand, the hand-writing and finger-print expert is having vast experience of 20 years and, therefore, his opinion cannot be thrown out without there being any justifiable reason.

(10) Learned counsel for the petitioners placed reliance upon the judgments rendered in the cases of Sureinder Kaur Vs. Badal Singh & Ors. [(2013(3) CCC 144 (P&H)], Rajendra Kumar Vs. Rent Tribunal, Jodhpur Metropolitan, Jodhpur & Anr. [2016 CJ (Rent Control) 65], Devi Singh & Anr. Vs. Rafiq Ahmed & Anr. [2015 CJ (Rent Control) 339], Puran Singh Vs. Yoginder Pal [2017 (4) CCC 081 (H.P.)], R.P. Chhabra Vs. R.K. Arora [2015(2) CCC 516 (P&H)], Mortha Vimala Vs. Gouthu Rajulu & Anr. [2015(1) CCC 822 (A.P.)], Vidhyadhar Vs. Mankikrao & Anr. [AIR 1999 SC 1441] and Rattan Singh & Ors. Vs. Nirmal Gill & Ors. [AIR 2021 SC 899].

(11) Learned counsel for the respondents submitted that a hand-writing and

finger-print expert should be a graduate in Science or should be having diploma in the subject, rather he is a commerce graduate. Thus, his report and statement cannot be read in evidence.

(12) Learned counsel for the respondents also submitted that the Board of Revenue, while deciding the revision petition, has also recorded a finding that the said hand-writing and finger-print expert was not having a degree or a certificate from a recognized institution and thus, the report and statement could not be taken on record and thus, rightly accepted the revision filed by the respondents-plaintiffs.

(13) Heard learned counsel for the parties and perused the material on record.

(14) Section 45 of the Evidence Act reads as under:-

"45.- Opinion of experts.- When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinion upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts."

(15) Section 45 of the Evidence Act engrafts an exception to the general rule of evidence and makes the opinion of certain persons relevant facts. Such persons have been described as "experts" in Section 45 of the Evidence Act.

(16) The opinions which are "relevant facts" within the meaning of Section 45 of the Evidence Act are the opinions of persons who are "specially skilled" and are limited to the matters which are mentioned therein, namely, (a) foreign law, (b) science, (c) art, (d) identity of handwriting, and (e) identity of finger impressions.

(17) It is the contention of the learned counsel for the respondents-plaintiffs that the said person is not a qualified hand-writing or finger-impression expert. From a bare perusal of the record, particularly the report submitted by the said handwriting or finger impressions expert, it is crystal clear that his qualification is B.Com. and LL.B. and no other qualification has been shown, which makes it clear that he is not a qualified hand-writing or finger impression expert. As per the provisions of Section 45 of the Evidence Act, the person who is opining about the hand-writing or finger-print, should be specially skilled in the subject. The Board of Revenue also considered this aspect of the matter and recorded a finding that he is not a specially skilled person and thus, has rightly allowed the application of the respondents-plaintiffs.

(18) In view of the above, this Court does not find any reason to interfere with the order dated 16.10.2017 (Annex.7), passed by the Board of Revenue. The writ petition is, therefore, dismissed being devoid of any merit.

(19) The stay application and all other pending applications, if any, also stand disposed of.