

(2015) 09 SHI CK 0111

In the High Court Of Himachal Pradesh

Case No : OMP No. 134 of 2015 and C.S. No. 31 of 2014

Dharamjeet Kaur

APPELLANT

Vs

Jagiro

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 12 Rule 4, Order 14 Rule 1, 151

Citation : (2015) 09 SHI CK 0111

Hon'ble Judges : Piar Singh Rana, J

Bench : Single Bench

Advocate : B.B. Vaid, for the Appellant; Sanjeev Kuthiala, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Piar Singh Rana, J—Interim Order This order will dispose of application filed under Order X Rule 2 read with Order XIV Rule 1 and Section 151 CPC.

Brief facts of case

2. Applicant Smt. Dharamjeet Kaur filed Civil Suit for specific performance of contract dated 18.1.2014 relating to suit land comprised in khewat-Khatauni No. 48/70 khasra No. 386/125 measuring 0-11 biswas and khewat-khatauni No. 48/70 khasra No. 388/125 measuring 4 bighas 16 biswas total land 5 bighas 7 biswas as entered in the jamabandi for the year 2007-08 situated in village Manguwal Pargana Palasi Tehsil Nalagarh District Solan H.P. In alternative applicant sought relief of compensation to the tune of Rs. 16,00,000/- (Rupees sixteen lacs) with interest at the rate of 18% per annum. Applicant also sought additional relief of permanent perpetual prohibitory injunction against non-applicant restraining non-applicant from transferring the land in favour of any third person or from changing the nature of the suit land.

3. Per contra written statement filed on behalf of the non-applicant pleaded

therein that applicant did not come to the Court with clean hands and is guilty of suppressio veri and suggestio falsi. It is pleaded that applicant has no locus standi to file present suit and has no cause of action to file the present suit against non-applicant. It is further pleaded that applicant had committed fraud and misrepresentation. It is further pleaded that applicant took advantage of old age of the non-applicant. It is further pleaded that no agreement of sale was executed by non-applicant in favour of the applicant as alleged in the civil suit and it is further pleaded that there is no subsisting agreement inter-se the parties. It is further pleaded that applicant brought non-applicant for the purpose of getting widow pension from the Government and it is further pleaded that applicant brought non-applicant to Nalagarh and got certain stamp papers thumb marked from the non-applicant on the pretext of family pension. It is further pleaded that applicant did not pay any earnest money to the non-applicant. It is further pleaded that non-applicant is widow and is uneducated rustic lady and does not know how to sign. It is further pleaded that non-applicant only thumb marked and applicant played fraud upon non-applicant who is old illiterate lady. It is further pleaded that non-applicant is pardanashin woman and prayer for dismissal of application sought.

4. Admission and denial process conducted by the Court before framing of issues in the civil suit. Applicant filed the present application before framing of issues in the civil suit pleaded therein that non-applicant has denied the execution of agreement dated 18.1.2014. It is pleaded that there is ambiguity in the facts stated in the written statement and in the admission and denial process. It is further pleaded that examination of applicant and non-applicant before framing of issues is essential in the present case. It is further pleaded that in case thumb impression is admitted by non-applicant then controversy would narrow down and it would avoid extra expenditure to prove the thumb impression on the document of agreement by the non-applicant. It is prayed that applicant and non-applicant be examined in person in the Court before framing of issues under Order X Rule 2 read with Order XIV Rule 1 read with Section 151 CPC.

5. Per contra response filed on behalf of the non-applicant to the application filed under Order X Rule 2 read with Order XIV Rule 1 and Section 151 CPC pleaded therein that application is not maintainable. It is further pleaded that there is no ambiguity in the pleadings of the parties and in admission and denial process. It is further pleaded that applicant is under legal obligation to prove the contents of agreement and prayer for dismissal of application sought.

6. Court heard learned counsel for the applicant and non-applicant and also perused the entire record carefully. Following points arises for determination:--

"1) Whether application filed under Order X Rule 2 read with Order XIV Rule 1 and Section 151 CPC is liable to be accepted as mentioned in the memorandum of grounds of application?

2) Relief."

Findings upon point No. 1 with reasons.

7. Submission of learned Advocate appearing on behalf of the applicant that there is ambiguity in the written statement filed by the non-applicant and in the admission and denial process and in order to avoid expenditure to prove thumb impression of non-applicant upon agreement application filed by the applicant be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the pleadings of parties. Non-applicant has denied the contents of agreement before Additional Registrar (Judicial) on 7.10.2014 in the admission and denial process. Object to examine parties before framing of issues under Order X Rule 2 CPC is to ascertain matter in dispute and not to take evidence in civil suit. Examination under Order X Rule 2 CPC is not substitute for regular examination on oath. It is well settled law that examination under Order X Rule 2 CPC is to illustrate the pleadings which are obscure and vague in nature. It is also well settled law that under Order X Rule 2 CPC the statement of parties is not recorded on oath. It is also well settled law that admission of signature or thumb impression upon document is not admission of contents of document. See *Kapil Corepacks Pvt. Ltd. and Others Vs. Shri Harbans Lal (since deceased) through Lrs.*, AIR 2010 SC2809 : (2011) 111 CLT 222 : (2010) 8 JT 124 : (2010) 7 SCALE 558 : (2010) 8 SCC 452 : (2010) 9 SCR 500 : (2010) 8 UJ 3752 : (2010) AIRSCW 4593 : (2010) 6 Supreme 225 . It is held that parties are examined in the Court before framing of issues only when there is ambiguity between pleadings of the parties. In the present case there is no ambiguity in the pleadings of the parties. Applicant did not issue any notice to the non-applicant for admission of facts as required under Order XII Rule 4 Code of Civil Procedure 1908. In the present application applicant has sought relief of admission of fact of the thumb impression of non-applicant in agreement dated 18.1.2014. It is held that fact of thumb impression in disputed agreement could not be admitted by non-applicant under Order X Rule 2 read with Order XIV Rule 1 and Section 151 Code of Civil Procedure 1908 but could be admitted only under Order XII Rule 4 Code of Civil Procedure 1908 after issuance of notice as mentioned under Order XII Rule 4 Code of Civil Procedure 1908 as per Form No. 11 Appendix-C of Code of Civil Procedure 1908. In view of the fact that there is no ambiguity in the pleadings and in admission and denial process Court is of the opinion that it is not expedient in the ends of justice to allow present application before framing of issues in civil suit. Point No. 1 is decided against applicant.

Relief (Point No. 2):

8. In view of findings upon point No. 1 application filed under Order X Rule 2 CPC read with Order XIV Rule 1 and Section 151 CPC is dismissed. Observations made in this order will not affect merits of the case in any manner and will strictly confine for disposal of OMP No. 134 of 2015. OMP No. 134 of 2015 is disposed of. No order as to costs.