

CWP No.23434-2013

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

CWP No.23434-2013 (O & M)

Date of Decision:19.02.2015

Aman Ranjit Singh and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr.M.S.Khaira, Sr. Advocate with
Mr. R.S.Khaira, Advocate,
for the petitioners.

Mr. L.S.Virk, Addl. A. G. Punjab.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 06.08.2008 (Annexure P-7) passed by respondent no.2-Divisional Commissioner, Patiala Division, Patiala and order dated 07.08.2008 (Annexure P-8) passed by respondent no.4-Assistant Collector-IIInd Grade-cum-Tehsildar, Patiala.

Brief facts as averred in the petition are to the effect that one Umar Ranjit Singh was owner in possession of a triangular land measuring 456 x 486 x 390 *karams*. Umar Ranjit Singh, predecessor-in-

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interest of the petitioners, filed suit for declaration and permanent injunction against the State of Punjab through respondent no.3-District Collector to the effect that he was owner in possession of triangular land measuring 456 x 486 x 390 *karams*, marked with letters 'ABC' in the site plan attached with the plaint. Learned Sub Judge, Ist Class, Patiala, vide judgment and decree dated 24.02.1987 (Annexure P-1), held that Umar Ranjit Singh is owner in possession of the triangular land situated in village Nain Kalan and State of Punjab was restrained from taking possession of the same. Feeling aggrieved, the State of Punjab preferred appeal before learned Additional District Judge, Patiala which was dismissed vide judgment and decree dated 17.12.1987 (Annexure P-2). Against that, the State of Punjab filed regular second appeal before this Court which was also dismissed vide judgment dated 24.08.1998 (Annexure P-3). The special leave petition filed by the State of Punjab was also dismissed vide order dated 12.03.1990 (Annexure P-4). In pursuance of the order of the civil court, Umar Ranjit Singh filed application for entering mutation as well as allotment of number and for issuance of notification with regard to land measuring 456 x 486 x 390 *karams* alleged to be falling within village Nain Kalan, Tehsil and District Patiala. Respondent no.2-Divisional Commissioner, Patiala, vide order dated 31.07.2007 (Annexure P-5) , sent letter to respondent no.3-Deputy Commissioner-cum-District Collector, Patiala whereby permission has been granted to allot number to the aforesaid plot as per

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the decision of civil court. Respondent no.3-District Collector sent the letter dated 30.08.2007 (Annexure P-6) to the Sub Divisional Magistrate, Patiala for allotment of number to the area having no number, as per Sections 34 and 37 of the Punjab Land Revenue Act, 1887 (in short, 'the 1887 Act'). In pursuance of the said letters, mutation no.931 (Annexure P-8) was sanctioned on 27.09.2007. However, respondent no.2 has reviewed his order dated 31.07.2007 (Annexure P-5), vide impugned order dated 06.08.2008 (Annexure P-7) whereby permission to allot number to the land subject matter of jurisdiction in civil suit was withdrawn. Pursuant to the passing of the impugned order dated 06.08.2008 (Annexure P-7), the revenue authority has cancelled the mutation no.931 dated 27.09.2007 vide order dated 07.08.2008. The petitioners claiming themselves sons and widow of Umar Ranjit Singh, who died on 28.11.2011 and on the basis of sale deed dated 15.07.2008 executed by Umar Ranjit Singh, have filed the present writ petition for setting aside the impugned orders (Annexures P-7 and P-8).

Upon notice of motion, respondents no.1 to 4 filed separate written statement by taking preliminary objections that the present petition has been filed just to grab the government land measuring 43 acres in village Bir Kule Majra. The judgment and decree dated 24.02.1987 is result of fraud played upon the court as well as the Government. As per jamabandi for the year 1905, total area of village Bir Kulemajra, Tehsil and District Patiala was taken as 3573 bighas 8

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biswas which was recorded under the ownership of 'Sarkar Daulat Madar' i.e. the then Government. Similarly as per jamabandi for the year 1920-21, area of village Nain Khurd was 1053 bighas 04 biswas. The then Nazam ordered for transfer of 243 bighas 7 biswas land from village Bir Kulemajra to village Nain Khurd vide mutation No.1 and this area was merged vide mutation no.6 in village Nain Khurd. In this manner, as per jamabandi for the year 1925-26, village Bir Kulemajra had an area of 3330 bigha 1 biswa (694 acres). In the year 1916, total area of village Nain Khurd was 1053 bighas 4 biswas and after adding above 243 bighas 7 biswas in the year 1924 of village Bir Kulemajra to it, the area of village Nain Khurd became 1296 bighas 11 biswas. In the year 1961, area of village Bir Kulemajra was declared "Protected Forest" by the Govt., vide notification (Annexure R-4). After the bandobast (settlement), the area of village Bir Kulemajra was 3330 bighas 1 biswa as per jamabandi for the year 1925 and area of village Nain Khurd was 1296 bighas 11 biswas. Harbhajan Singh son of Jaswant Singh appeared as "marusi bila lagan" against 17 bighas in khasra no.72/37 min of village Bir Kulemajra in 1954-55 and 1957-58. The name of grandfather of the petitioners appeared for the first time in the column of cultivation in the revenue record by way of tampering. In fact, the petitioners have no claim over the land in dispute. In the jamabandis for the years 1945-46, 1949-50, 1953-54, 1957-58, area of village Bir Kulemajra was 3330 bighas 1 biswas. After a gap of 49 years,

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Harbhajan Singh and Ranjit Singh filed suit for declaration and permanent injunction against the State of Punjab and Divisional Forest Officer, Patiala which was decreed to the extent of permanent injunction vide judgment dated 20.04.1977 (Annexure R-8) with liberty to the State of Punjab to take possession of land measuring 243 bighas 7 biswas in due course of law. Again, Ranjit Singh filed suit for declaration against the State of Punjab and others which was dismissed vide judgment dated 06.01.1978 (Annexure R-9).

It is further averred that on 11.10.1977, State of Punjab through Divisional Forest Officer, Patiala filed ejectment petition regarding land measuring 269 kanals 7 marals comprised in khasra no.33//1-10-11-12-18-19-20, 34//1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20, 35//1-2-3-4-5-6-7-8-9-10-11-12 min. situated within the revenue limit of village Bir Kulemajra, Tehsil Patiala against Ranjit Singh son of Harbhajan Singh, which was allowed by the Collector, Patiala, vide order dated 02.11.1982 (Annexure R-10). Against that, appeal was filed in the Court of Commissioner, Patiala Division, Patiala which was dismissed vide order dated 23.12.1985 (Annexure R-11). Thereafter, Umar Ranjit Singh filed suit for declaration without mentioning khasra numbers of land and showing the land as triangular and procured judgment and decree dated 24.02.1987 (Annexure P-1). In fact, the judgments and decrees dated 20.04.1977 and 06.01.1978 (Annexures R-8 and R-9 respectively) had become final, therefore,

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principle of *res judicata* was clearly applicable to the suit filed by Umar Ranjit Singh. The land mentioned in the suit filed by Umar Ranjit Singh was the same land for which Ranjit Singh had earlier filed two suits. It is further averred that in pursuance of judgment and decree dated 24.02.1987, the Divisional Commissioner, Patiala Division, Patiala ordered to assign khasra number to the alleged unnumbered land (comprised in triangle shown in decree) vide order dated 31.07.2007 (Annexure P-5), however, the said order was withdrawn vide impugned order dated 06.08.2008 (Annexure p-7) as no notification was issued by the Government.

It is further averred that the land mentioned in the decree forms a part of village Bir Kulemajra and is having khasra number, but the decree was obtained by Umar Ranjit Singh by playing fraud upon the State Government and the Court. In order to ascertain as to whether the land mentioned in decree is having khasra number and who is the actual owner of the disputed land, demarcation of villages i.e. Asmanpur, Nain Kalan, Nain Khurd, Saffera, Suneriarheri, Kulemajra and Akaut which are surrounding to village Bir Kulemajra, was carried out by the revenue officials under the supervision of Sub Divisional Magistrate, Patiala, who submitted his report (Annexure R-12). Similarly, demarcation of village Bir Kulemajra was also conducted by the Forest Department through G.P.S.System and as per the report dated 30.11.2013 (Annexure R-13), total area of village Bire Kulemajra comes to 579.89 acres. The

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claim of petitioners that the triangular area falls within village Nain Kalan, is falsified in view of para 1 of consolidation scheme. The entire area of village Nain Kalan has been consolidated. As per consolidation resolution no.5 dated 28.04.1954, Harbhajan Singh son of Jaswant Singh had pre-consolidation area measuring 46 bighas 15 biswas. The consolidation proceedings of village Bir Kulemajra were revoked vide order dated 16.02.1983 (Annexure R-14). Perusal of order dated 16.02.1983 (Annexure R-14) reveals that area was restored to 694 acres, however, it was not implemented in the revenue record and entries continued as per consolidation proceedings showing the area of village Bir Kulemajra as 590 acres. By taking undue advantage of wrong entries in the revenue records, Umar Ranjit Singh procured civil court decree. Even otherwise, if the predecessor-in-interest of the petitioners was aggrieved against non-numbering of khasra numbers, then remedy was either before the Consolidation Department or Revenue Department and in both the eventualities, jurisdiction of the civil court is barred under Section 158 of the 1887 Act and Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. On merits, the grounds made in the petition have been denied.

Respondent no.5 filed separate written statement with the averments that the civil court has no jurisdiction to adjudicate the matter in view of provisions of Section 15 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 as the case has been

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decided in favour of State from the Court of Collector (Sub Divisional Officer), Patiala on 02.11.1982. Appeal against the eviction order is pending before the Commissioner, Patiala. The suit filed by Umar Ranjit Singh was barred by the principle of *res judicata* as the matter has already been decided by the High Court in RSA No.1265 of 1973 wherein ownership of triangular piece of land of Umar Ranjit Singh was not accepted. The plaintiff had not specified the khasra number of the alleged triangular piece of land measuring 456 x 486 x 390 situated in village Nain Khurd. The khasra numbers mentioned in the heading of suit fall in village Bir Kulemajra.

I have heard learned counsel for the parties and perused the record.

Learned senior counsel for the petitioners mainly contended that once the right qua triangular land has been affirmed upto the Hon'ble Supreme Court, the revenue authorities are bound by the judgment and decree dated 24.02.1987 (Annexure P-1). Accordingly, the mutation is required to be entered in the revenue records and new number is required to be assigned to the same.

Per contra, learned State counsel vehemently contended that earlier, two civil suits were filed by Ranjit Singh, father of Umar Ranjit Singh with regard to the same very land. The judgments in those two suits were rendered prior to the judgment passed in the suit filed by Umar Ranjit Singh. It has been pointed out that for allotting khasra

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number to the alleged triangular piece of land which is situated on the boundaries of three villages namely Bir Kulemajra, Nain Kalan and Asmanpur as mentioned in the decree-sheet dated 24.02.1987. Learned State counsel further contended that firstly the area to which khasra numbers were assigned prior and after consolidation is required to be completed as per the dimensions mentioned in the revenue records. Thereafter, if any area is left from the village Nain Kalan which the petitioners claim that this triangular part is of that village, that can be determined. It is settled principle of law that before determining an area specifically which does not find mention in the revenue records, demarcation of the area is required to be done and the area to which specific rectangle and khasra numbers have been assigned is required to be completed. Learned State counsel further contended that otherwise also, mutation does not confer any title and the disputed facts arise in the present writ petition as the identity of land is required to be established where this land is situated. Learned State counsel further contended that demarcation of the seven villages surrounding to village Bir Kulemajra was carried out vide demarcation report (Annexure R-12) by forming the teams headed by the senior revenue officials who are well-versed in demarcating the area. As per the demarcation report (Annexure R-12), whatever area left in between villages Asmanpur, Nain Kalan, Nain Khurd, Saphera, Suneriaheri, Kule Majra and Akaut, the same can be treated area of village Bir Kule Majra. The consolidation of village Bir

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Kule Majra has been cancelled/revoked in the year 1983 whereas jamabandi has been continuing according to consolidation. Besides this, it is a dense forest and the some area is without forest. As and when the consolidation of village Bir Kulemajra takes place, area of persons who may be actual owners can be reduced.

I have considered the rival contentions of learned counsel for the parties.

Before proceeding further, it would be apposite to reproduce relevant sections of the 1887 Act. Sections 46, 100, 101 and 104 and 105 of the 1887 Act read as under:

“46. Power to make rules respecting records and other matters connected there with: -

The Financial Commissioner may make rules--

(a) prescribing the language in which records and registers under this Chapter are to be made;

(b) prescribing the form of those records and registers, and the manner in which they are to be prepared, signed and attested;

(c) for the survey of land so far as may be necessary for the preparation and correction of those records and registers;

(d) for the conduct of inquiries by Revenue-officers under this Chapter; and

(e) generally for the guidance of Revenue-officers and village-officers in matters pertaining to the records and registers mentioned or referred to in this Chapter.

100. Powers of Financial Commissioner to make rules for demarcation of boundaries and erection of survey-marks: - (1) *The Financial Commissioner may make rules as to the manner in which the boundaries of all or any estates in any local area are to be demarcated and as to the survey-marks to be erected within those estates.*

(2) Rules under this section may prescribe, among other matters, the forms of surveymarks and the material to be used in their construction.

101 Power of Revenue-officers to define boundaries: -

(1) A Revenue-officer may, for the purpose of farming any record or making any assessment under this Act, or on the application of any person interested, define the limits of an estate, or of any holding, field or other portion of any estate, and may, for the purpose of indicating those limits, require survey-marks to be erected or repaired.

(2) In defining the limits of any land under sub-section (1) the revenue-officer may cause survey-marks to be erected on any boundary already determined by, or by order of, any Court, Revenue-officer or Forest Settlement-officer, or restore any survey-marks already set up by, or by order of any, Court or any such officer.

101-A to 101-F ***XXXX***

104. Power of Revenue-officers to enter on land for purposes of survey and demarcation - *Any Revenue-officer, and any person acting under the orders of a Revenue-officer, may, in the discharge of any duty*

under this Act, enter upon and survey land and erect survey-marks thereon and demarcate the boundaries thereof, and do all other acts necessary for the proper performance of that duty.

105 Survey for purpose of preparation of records: - (1)

When any land is being surveyed in pursuance of rules under section 46, clause (c), any Revenue-officer directing the survey may, by notice or proclamation, require all persons having rights or interests in the land to indicate, within a specified time, by temporary marks of a kind to be described in the notice or proclamation, the limits of those rights or interests.

(2) If a person to whom the notice or proclamation is addressed fails to comply with the requisition, he shall be liable at the discretion of the Revenue-officer to fine which may extend to ten rupees.”

There is no dispute that Ranjit Singh, grand-father of the petitioners, had earlier filed two civil suits which were dismissed. Those suits were filed in respect of specific khasra numbers, however, third suit was filed with regard to a triangular area which bears no khasra number as per the revenue records and the said area is between the boundaries of three villages namely Nain Kalan, Bir Kulemajra and Asmanpur.

In order to ascertain the area in which alleged triangular falls, the Deputy Commissioner-cum-District Collector constituted demarcation teams of various revenue officials. They carried out the demarcation of seven villages i.e. Suniarheri, Saphera, Naina Khurd,

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Nain Kalan, Asmanpur, Akaut, Kule Majra which are adjoining to the boundaries of village Bir Kulemajra. The demarcation report reveals that no area of village Nain Kalan is vacant which may be without number, rather the area of alleged triangular falls in the area of village Bir Kulemajra. When there is a dispute with regard to the identity of land, the demarcation is to be carried out in view of the provisions as envisaged in Chapter I Part M (i), Volume-I of the Rules and Orders of the Punjab and Haryana High Court which reads as under:

“(i) Procedure in “Hadd Shikni” cases

1. Local inquiry. *In “Hadd-Shikni” suits and other suits of boundary disputes of land falling within the jurisdiction of a Civil Court it is generally desirable that enquiry be made on the spot. This can usually be done in the following ways:*

- (a) by suggesting that one party or the other should apply to the Revenue Officer to fix the limits, under Section 101 (1) of the Punjab Land Revenue Act. Time for such purpose should be granted under Order XVII, Rule 3, of the Code of Civil Procedure;*
- (b) by appointing a local Commissioner, and*
- (c) by the Court itself making a local enquiry.*

2. Enquiry by Revenue Officer. *An order of the Revenue Officer made under Section 101 of the Land Revenue Act is not conclusive; but when his proceedings have been held in the presence of, or after notice to, the parties of the suit, and contain details of enquiry and of the method adopted in arriving at the result, it would be a valuable piece of evidence. It may be noted that an Assistant Collector of the second grade can deal with cases in regard to boundaries which do*

not coincide with the limits of an estate.

3. Appointment of Commissioner. *Similarly the report of the local Commissioner should contain full details so that the Court may satisfactorily deal with the objections made against it.*

No person other than a Revenue Officer (or retired Revenue Officer) not below the rank of a Field Kanungo should usually be appointed a local Commissioner. The appointment of retired Revenue Officers is to be preferred as these Officers have the spare time and the inclination for completing the work with expedition. A commission issued to a Revenue Officers in service necessitates the obtaining of permission of the higher authorities and this along with the fact that such Revenue Officers are usually busy often results in delay in the disposal of the case. The wishes of the parties in regard to the appointment of a particular individual as commissioner for local investigations should be taken into consideration while making such appointments.

4. Instruction for the guidance of Commissioners. *On the motion of the Judges, the Financial Commissioners have issued the following detailed instructions for the guidance of Revenue Officials or Field Kanungos appointed as Local Commissioners in Civil suits of this nature.*

Financial Commissioner's Instructions

(i) If a boundary is in dispute, the Field Kanungo should relay it from the village map prepared at the last Settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and

then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map, the position and distance of those points from a line of a square, and then with a chain and cross staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute, as near to it as he can, and, if possible, not more than 200 kadams apart which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. If the distances, when thus compared, agree in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then, lay them out with the cross-staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only a small dispute as to the boundary between two fields the greater part of which is undisturbed then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.

(ii) In the report to be submitted by him, the Field Kanungo must explain in detail how he made his measurements. He should submit a copy of the relevant

portion of the current Settlement field map of the village showing the fields, if any, with their dimensions (karu kan) of which he took measurements, situated between the points mentioned in Instruction No. (i) above and the boundary in dispute. This is necessary to enable the Court to follow the method adopted and to check the Field Kanungo's proceedings.

(iii) If a question is raised as to the position of the disputed boundary according to the field map of the Settlement preceding the current Settlement, that also should be demarcated on the ground, so far as this may be possible, and also shown in the copy of the current field map to be submitted under Instruction No. (ii)

(iv) On the same copy should be shown also, the limits of existing actual possession.

(v) The areas of the fields, abutting on the boundary, in dispute, as recorded at the time of the last Settlement and those arrived at as a result of the measurement on the spot should be mentioned in the Field Kanungo's report with an explanation of the cause or causes of the increase or decrease, if any, discovered.

(vi) When taking his measurements the Field Kanungo should explain to the parties what he is doing and should enquire from them whether they wish anything further to be done to elucidate the matter in dispute. At the end, he should record the statements of all the parties to the effect that they have seen and understood the measurements that they have no objection to make to this (or if they have any objection he should record it together with his own opinion) and that they do not wish to have anything further done on the spot. It constantly happens that when

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the report comes before the Court, one or other party impugns the correctness of the measurements and asserts that one thing or another was left undone. This raises difficulties which the above procedure is designed to prevent.

(vii) The above instructions should be followed by Revenue Officers or Field Kanungos whenever they are appointed by a Civil Court as Commissioners in suits involving disputed boundaries.”

Following the above provision, demarcation has been carried out by forming the teams. The demarcation report (Annexure R-12) clearly indicates that the triangular area is not part of village Nain Kalan for which the alleged decree has been passed. In this manner, the dispute with regard to the land cannot be settled in writ jurisdiction as disputed questions of fact and law are involved. Otherwise also, it is settled principle of law that mutation does not confer any title. It is pertinent to mention here that consolidation of village Bir Kulemajra commenced, but the same was cancelled/revoked in the year 1983. At the time of consolidation, total area of village Bir Kulemajra is to be completed and it may vest in the persons who are actual owners of village Bir Kulemajra.

Admittedly, Umar Ranjit Singh had not disclosed about the previous litigation while getting decree dated 24.02.1987. It is settled proposition of law that a litigant who approaches the court is bound to produce all the document which are relevant to the litigation. If he

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withholds a vital document to gain advantage, he is guilty of playing fraud upon the court as well as the other party. In this regard, reliance can be placed upon ***S.P.Changalvaraya Naiidu (dead) by LRs vs. Jagannath (dead) by LRs*** (1994) 1 SCC 1 wherein it has been held as under:

“....The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in

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dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”

In view of above discussion, no interference is called for in the impugned orders.

Dismissed.

Costs made easy.

19.02.2015

parveen kumar

(Paramjeet Singh)
Judge