

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

RSA No.4489 of 2010
Date of decision: 08.01.2015

Kanwal Singh and others

...Appellants

Versus

Dharam Pal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sachin Kadyan, Advocate for
Mr. ML Sharma, Advocate for the appellants.

Mr. Pawan Hooda, Advocate for the respondents.

1. Whether reporters of 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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court vide judgment and decree dated 22.09.2008. Appeal preferred against the said decree failed and was dismissed on 31.03.2010. This is how, plaintiffs are before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiffs, they prayed for a declaration that the release deed dated 10.07.2001, purportedly executed by defendant No.1 and late Balbir Singh in favour of defendants No.2 & 3, qua the suit property, was illegal, null and void and a result of fraud. And thus, not

binding upon the rights of the plaintiffs. Further, a decree for injunction was also claimed, restraining the defendants from alienating the suit property in any manner. It was averred that plaintiffs, defendant No.1-Dharam Pal, Charan Singh father of defendants No.2 & 3, and one Balbir Singh (since deceased) were real brothers. Dharam Pal-defendant No.1 and Balbir Singh (since deceased) had no son and their brothers used to look after them. Dharam Pal-defendant No.1 and late Balbir Singh happened to be the owners in possession of the suit property. It was maintained that defendants No.2 & 3, illegally obtained the thumb impressions of defendants No.1 and Balbir Singh (since deceased), and got procured a release deed dated 10.07.2001, as regards the suit property in their favour. Further, suit property was stated to be ancestral and the parties to the lis were purported to be governed by zamidara customs. As despite repeated requests made by the plaintiffs, defendants refused to acknowledge their claim and thus, the suit.

In defence, defendant No.1 pleaded, inter alia, that he had no issue and he used to live with the sons of his brother, namely, Rajender Singh and Ajit Singh. It was averred that they used to serve him and he was pleased with their services. It was maintained that defendants No.2 & 3 never obtained his thumb impressions fraudulently or otherwise. Release deed dated 10.07.2001, in favour of

defendants No.2 & 3, was asserted to have been executed by defendant No.1 with his free will and consent. It was maintained that defendant No.1 followed Hindu religion and thus, was not governed by Zamidara custom.

Since defendant No.3 died during the pendency of the suit, learned counsel for the parties submit that a common written statement was filed by his heirs and defendant No.2. It was maintained that Dharam Pal-defendant No.1 had no issue and Balbir Singh (since deceased) had no son, but two married daughters. It was claimed that the answering defendants used to look after Dharam Pal and late Balbir Singh. Pursuant to a family settlement, Dharam Pal and Balbir Singh (since deceased) executed a release deed dated 10.07.2001 qua the properties owned by them, in favour of defendants No.2 & 3. It was maintained that both i.e. Dharam Pal and late Balbir Singh, were in a sound state of mind at the time of execution of the release deed dated 10.07.2001, and the same was executed by them with free mind and consent.

Trial court, on a consideration of the matter in issue and evidence on record, found that though the plaintiffs had set up a plea of fraud, but they failed to lead any cogent evidence to substantiate the said plea. Concededly, Dharam Pal and Balbir Singh (since deceased) had thumb-marked the release deed (Ex.P8). Plea of the plaintiffs that their thumb impressions were obtained on blank papers and subsequently,

a release deed (Ex.P8) was forged by the defendants, remained unproved on record. Further, Dharam Pal, in a written statement filed by him, maintained that the release deed dated 10.07.2001 was indeed executed by him with his free will and consent. Kanwal Singh (PW2) testified in his cross-examination that Dharam Pal and Balbir Singh had in fact bequeathed their lands in favour of Rajender and Ajit. Still further, the release deed (Ex.P8) was a registered document and the photographs of Balbir Singh and Dharam Pal were duly affixed thereon. Certificate issued by the Sub-Registrar that the document in question was read over and explained to Balbir Singh and Dharam Pal, who affixed their thumb impressions after understanding the contents thereof, in the presence of the witnesses, was proved on record. That being so, it was concluded that Dharam Pal and Balbir Singh (since deceased) appeared before the Joint Sub Registrar on 10.07.2001 and executed the release deed with their free will and consent. Vikram Singh (DW1) and Surinder Kumar (DW2) deposed in unison that Dharam Pal and Balbir Singh had executed a release deed in favour of defendants No.2 & 3 and the document was duly read over and explained to both. In so far as the nature and character of the suit property i.e. whether the suit property was ancestral in nature, it was observed that the plaintiffs failed to prove that the suit property was indeed ancestral in the hands of Balbir Singh

and Dharam Pal. It was observed that the plaintiffs had set up dual plea that the suit property was a Joint Hindu Family Property and also that the parties were governed by Zamidara customs. However, it was observed that counsel for the plaintiffs could not specify, as to which of the two pleas, he intended to substantiate. On the contrary, as defendants No.2 & 3 had pleaded in the written statement that they were governed by Zamidara customs, in reference to a case titled **Hari Singh v. Jug Lal, 1989(2) LJR 157 (P&H)**, it was observed that sonless proprietor could alienate ancestral property in favour of close relation in lieu of services rendered. A reference was also made to a case titled **Sube Singh and another v. Kanhaya and others, 1991(1) 313 (SC)**, and it was observed that Jat of Tehsil Jhajjar even having a son, could also alienate the ancestral land for a consideration. That being so, it was concluded that even if, it was presumed that the suit property was ancestral in the hands of Dharam Pal and Balbir Singh, even then, they had an unrestricted power to alienate the same. Accordingly, it was held that as defendant No.1-Dharam Pal and Balbir Singh (since deceased) were uncles of defendants No.2 & 3, and they being the members of the same family, defendant No.1 and late Balbir Singh could execute the release deed. Resultantly, it was concluded that Dharam Pal-defendant No.1 and Balbir Singh (since deceased) had executed the release deed dated

10.07.2001 (Ex.P8), with their free will and consent. Accordingly, the suit was dismissed.

Being dissatisfied with the decree, plaintiffs preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the parties at length and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

As opposed to this, learned counsel for the respondents submits that both the courts below have concurrently concluded that the release deed dated 10.07.2001 was duly executed by Dharam Pal and Balbir Singh (since deceased) with their free will and consent. Thus, no interference is warranted in the decree being assailed in the instant appeal.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Concededly,

plaintiffs had assailed the release deed dated 10.07.2001 (Ex.P8), on the ground that the same was obtained by defendants No.2 & 3 by playing fraud upon defendant No.1 and late Balbir Singh. Plaintiffs failed to lead any evidence, least cogent, to substantiate that the document in question was indeed obtained by fraud. It would be apposite to point out that none other than Dharam Pal son of Lehri himself was a party to the present lis and was arrayed as defendant No.1. In a separate written statement filed by him, he maintained that he indeed execute the release deed dated 10.07.2001, in favour of defendants No.2 & 3, with his free will and consent. So much so, none other than plaintiff No.1-Kanwal Singh (PW2) conceded in his cross-examination, that Dharam Pal and Balbir Singh had bequeathed their lands in favour of Rajender and Ajit (defendants No.2 & 3). Ex facie, release deed (Ex.P8) is a registered document and bears the photographs of late Balbir Singh and Dharam Pal. Certificate of Sub Registrar reflects that the document in question was duly and validly executed by Balbir Singh and Dharam Pal. Witnesses examined by the defendants i.e. DW1 & DW2, deposed in unison as regards the due and valid execution of the release deed (Ex.P8). Surinder Kumar (DW2) categorically deposed that document in question was scribed by him and the contents thereof were duly read over and explained to the executant and the witnesses. Plaintiffs failed to lead any

cogent evidence on record to show that the suit property in the hands of late Balbir Singh and Dharam Pal was ancestral in nature and as to how, they lacked capacity to execute the release deed dated 10.07.2001. Learned counsel for the appellants could not show or point out as to how the conclusions that were concurrently arrived at by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, and the conclusions that have concurrently been recorded by both the courts below, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

January 8, 2015
Rajan

(Arun Palli)
Judge