

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

112

Regular Second Appeal No.5132 of 2013 (O&M)
Date of Decision: August 28, 2015

Mohinder Singh and another

...Appellants

Versus

Joginder Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sarju Puri, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.13788-C of 2013

Prayer in this application is for exemption from filing the certified copy of judgment and decree dated 29.11.2012 and the true typed copy of judgment and decree dated 26.08.2013.

Application is allowed as prayed for subject to just exceptions.

RSA No.5132 of 2013

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Shaheed Bhagat Singh Nagar, dated 29.11.2012 and the judgment passed by the Additional District Judge, Shaheed Bhagat Singh Nagar, dated 26.08.2013, by which the suit for declaration preferred by the appellants-plaintiffs to the effect that the appellants-plaintiffs are joint owners to the extent of 2/3rd share in possession of the land measuring 19 kanals 18 marlas being the estate of their deceased father Mehar Chand alias Mehru son of Ishar, out of the land measuring 40 kanals 0 marla of the land as detailed/mentioned in the head note, situated in village Salempur, Tehsil and District Nawanshahr, with a

consequential relief of permanent injunction restraining the respondent-defendant from in any manner interfering in the possession of the appellants-plaintiffs in the suit land, stands dismissed and as also the appeal.

2. It is the contention of the counsel for the appellants-plaintiffs that the Courts below have erred in law and proceeded on the assumption that a registered transfer deed dated 25.08.2004 executed by Mehar Chand father of the appellants-plaintiffs and respondent-defendant in favour of the respondent-defendant, cannot be sustained, specially when the appellants-plaintiffs have positively asserted that it is a document, which is based on fraud. For the said purpose, it has been asserted that their father Mehar Chand had fallen from the roof and suffered injuries on the head resulting in loss of his mental balance and was thus, not in a stable state of mind to have executed the said transfer deed. His further contention is that DW-1 Jarnail Singh, who asserted himself to be a Lambardar and signed the documents as such, in his cross-examination admitted that on the said date he was not the Lambardar as he has been removed from the said post because of the criminal case registered against him. Assertion has also been made that the Deed Writer DW-2 Surinder Pal had categorically stated that neither in his register nor in the deed, the state of mind of the executant Mehar Chand has been mentioned. Counsel on this basis asserts that the execution of a document cannot be said to be overboard and creates a doubt with regard to its authenticity and thus could not have been accepted by the Courts below. He asserts that the present appeal may be allowed by setting aside the findings recorded by the Courts below.

3. I have considered the submissions made by the counsel for the appellants-plaintiffs and with his assistance have gone through the

judgments passed by the Courts below.

4. A perusal of the judgments would show that it is an admitted fact that Mehar Chand father of the parties was an absolute owner of the suit land and, therefore, could execute the transfer deed. It is also not disputed that the appellants-plaintiffs had separated from their father and their youngest brother-respondent/defendant Joginder Ram and Mehar Chand was residing with Joginder Ram. Respondent-defendant has been able to prove that he was cultivating the land of Mehar Chand during his lifetime and after his death as well. Documentary evidence has been placed on record in the form of Ration Card, Election Card, BPL card and Voters List, which proves beyond doubt that Mehar Chand was residing with the respondent-defendant, who had been taking care of him. That apart, he being the youngest son, who had been taking care of his father, it cannot be said that because of love and affection, the transfer deed could not have been executed in his favour. The appellants-plaintiffs have not been able to adduce any evidence with regard to mental status of the deceased Mehar Chand. Nothing has been placed on record with regard to nature of the injuries, which were received by Mehar Chand, in his fall from the roof, which would indicate that his mental faculties were impaired in any manner, which would be of such a nature that he was not in a position to understand the effect and the result of execution of the transfer deed.

5. The assertion of the counsel for the appellants-plaintiffs that Jarnail Singh has signed as a Lambardar, whereas he has admitted in his cross-examination that he was not holding the said post and that he had been removed from the said post because of a criminal case registered against him, would not have the effect that he cannot be a witness to the

execution/registration of the transfer deed. Similar would be the position with regard to there being no endorsement in the transfer deed or the Deed Writer's register with regard to the mental status of the executant as admittedly there is no such requirement under the statute that such a mention is essential.

6. Since the appellants-plaintiffs have not been able to prove the assertions with regard to the fraud having been committed on them and that the transfer deed was a forged, fabricated or a fictitious one, the findings as recorded by the Courts below, cannot be faulted with.

7. An argument has been raised by the counsel for the appellants-plaintiffs that merely because a transfer deed is a registered document, the presumption with regard to its truth cannot be attached is merely to be mentioned as it being a public document, the presumption with regard to the execution thereof cannot be said to be not assumed. The findings thus recorded by the Courts below on this count also, do not call for any interference.

8. Counsel has further asserted that DW-3 respondent-defendant has admitted in his cross-examination that his father Mehar Chand prior to his death was admitted in hospital for about one year. But this would not make any difference as on the date of execution of the document, he was not hospitalized as the transfer deed is dated 25.08.2004 and Mehar Chand died on 22.11.2005. That apart, the nature of the illness of Mehar Chand has not been specified, which would indicate that it was of such a nature, which would have effected the mental faculty of Mehar Chand.

9. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with

as there is no perversity or illegality in the same.

10. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

11. In the light of the dismissal of the appeal, the application for stay i.e. CM No.13789-C of 2013, also stands dismissed.

August 28, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE