

RSA-1689-2015

Date of decision-17.11.2015.

NANHI DEVI SINCE DECEASED THROUGH HER LRS. BIRBAL AND ORS. ...Appellants

VS

JAGPAL

...Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashok Arora, Advocate
for the appellants.

RAJ MOHAN SINGH, J (Oral)

[1] Plaintiff is in second appeal arising out of suit for declaration and permanent injunction. Plaintiff has challenged release deed dated 30.03.2005 executed by her in favour of defendant Jagpal, who is her nephew in respect of 21 kanals 4 marlas of land out of total 158 kanals 16 marlas. Consequent mutation based on aforesaid release deed has also been assailed.

[2] Suit has been contested by the defendant on all customary pleas, claiming that after the death of father of the defendant in the year 2003, defendant was looking after the property and the plaintiff had all the faith in him. Plaintiff has two other sisters also namely Manbhari and Dilbhari who have also parted with the land in favour of their brothers.

Release deed in question was executed in the presence of witnesses namely Rajbir, Namberdar and Ramphal and execution thereof stood already proved. Defendant is in continuous possession of land in question since the date of execution of release deed. Following issues were framed by the trial Court:-

1. Whether impugned release deed No.4918 dated 30.03.2005 and impugned mutation No.1240 are illegal on the grounds taken in the plaint? OPP.
2. If issue No.1 is proved, whether plaintiff is entitled for declaration and decree of permanent injunction and decree of possession of suit land and injunction against alienation? OPP.
3. Whether suit is barred by limitation? OPD.
4. Whether plaintiff has not affixed proper court fee? OPD.
5. Whether plaintiff has no locus-standi and cause of action to file the present suit? OPD.
6. Whether plaintiff is estopped by her own act and conduct from filing the present suit? OPD.
7. Whether suit is false and frivolous? OPD.
8. Relief.

[3] Parties led evidence. Though the plaintiff has challenged the release deed on the basis of fraud, but particulars of fraud except the evidence in the form of PW-1 (herself), PW-2 Ram Kumar (brother) and PW-3 son (Birbal), have not been proved on record. Nothing incriminating could be brought on record, suggesting that the release deed is the outcome of any fraud or fabrication. Manner of committing fraud has not been pleaded or proved in any manner. Release deed in question is a registered document. It is settled principle that plea of fraud has to be proved like a criminal trial and the onus is always upon the person, who asserts in affirmative. Nothing could be brought on record to show that the defendant has done any such overt act so as to attract penal action against him.

[4] Release deed carries a photograph of the plaintiff and the same has been produced from proper source which has been further testified by DW-4 Registration Clerk namely Raj Kumar. Plea of plaintiff being in possession could not be substantiated by any evidence on record much less the revenue record in the form of khasra girdawari which remained conspicuously missing. In respect of other land also, release deed was executed by the plaintiff and other sisters in favour of their brothers. It could not be brought out on record as to why this release deed

has been singled out so as to label it having been executed with a plea of fraud and fabrication.

[5] The release deed in question was executed on 13.03.2005 and the suit came to be filed only on 21.08.2008 which in considered opinion of this Court is beyond a limitation as well. Though the appellant has formulated questions of law in Para 15 in the grounds of appeal but the question so framed are purely questions of fact and do not advance the case of the appellant in any manner. None of the question is a question of law much less substantial question of law. Controversy is purely based on facts. No law point worth consideration has been pleaded by the appellant.

[6] Having considered the controversy with reference to plea and evidence on record, this Court finds that no question of law worth cognizance involved in the present appeal.

Consequently, this appeal is found to be bereft of merit and accordingly dismissed.

November 17, 2015

vanita

**(RAJ MOHAN SINGH)
JUDGE**