

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.2055 of 2015 (O&M)

.....

Date of decision:13.5.2015

Kanta and others

.....Appellants

v.

Devi Lal and another

.....Respondents

.....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Manjeet Singh, Advocate for the appellants.

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Inderjit Singh, J.

This regular second appeal has been filed by Kanta, Sahil and Komal-appellants/plaintiffs against Devi Lal and Dharmbir-respondents/defendants challenging the impugned judgment and decree dated 18.1.2011 passed by the learned Civil Judge (Junior Division), Hisar, vide which the suit of plaintiff was dismissed and the judgment and decree dated 13.2.2015 passed by the learned District Judge, Hisar, vide which the appeal filed by the plaintiff has been dismissed.

The brief facts of the case are that Kanta, Sahil and Komal-plaintiffs filed suit against Devi Lal and Dharmbir-defendants for declaration that Dharmbir-defendant No.2 is husband of plaintiff No.1 and father of plaintiffs No.2 and 3 and the parties to the suit are governed by

Hindu Law. The property is joint Hindu Family coparcenary property of defendant No.2, who had inherited the same from his father and plaintiffs No.2 and 3 have got their pre-existing right by birth in the same as coparceners. It is further stated that defendant No.1 is a clever and cunning person and he by taking undue advantage of the vices of defendant No.2, had obtained a release deed No.2613, dated 12.7.2001 qua the suit property in his favour and on the basis thereof, mutation No.1821 dated 25.2.2002 has also been sanctioned. The aforesaid release deed is without jurisdiction and consideration and the same is not binding upon the rights of the plaintiffs and defendant No.2. It is also the case of the plaintiffs that in fact defendant No.2 wanted to execute a release deed regarding suit property in favour of plaintiff No.1 and for this purpose, he had brought defendant No.1 and Satish Kumar as witnesses along with him, but defendant No.1 and Satish Kumar as witnesses in connivance with each other, they got a release deed written on behalf of defendant No.2 in favour of plaintiff No.1 regarding land measuring 44 Kanals 12 Marlas, however, defendant No.1 got another release deed written in his favour fraudulently and both the release deeds were produced before the Sub Registrar on 12.7.2001 and same were registered there.

On the other hand, defendant No.2, on notice, did not appear and has not contested this suit. Defendant No.1 filed written statement stating that the property is neither coparcener nor ancestral property. The plaintiffs have not given full details of property inherited by defendant No.2 from his father. It is also stated that defendant No.2 executed the release

deed in favour of defendant No.1 for consideration of ₹5,20,000/-, which was paid in the presence of Rajinder Singh, Hari Singh and Shamsheer Singh.

The learned learned Civil Judge (Junior Division), Hisar, after appreciating the evidence produced by both the parties decided that the release deed is not result of fraud and it is for consideration of ₹5,20,000/-. It is also held by the learned Civil Judge (Junior Division), that the witnesses have not been cross-examined by the plaintiffs specifically regarding the payment of ₹5,20,000/-, therefore, these facts remained unchallenged. The Court also held that there is no evidence to prove that any fraud has been played. Aggrieved from this judgment and decree, an appeal was filed by the plaintiffs, which was also dismissed by the learned Additional District Judge, upholding the findings given by the learned Civil Judge (Junior Division).

At the time of arguments, learned counsel for the appellants mainly argued that the suit property is ancestral property, therefore, defendant No.2 has no right to alienate the same and the release deed cannot be issued by defendant No.2 in favour of defendant No.1, who is his cousin and he placed reliance regarding notification of the Haryana State Government regarding payment of stamp duty etc.

After hearing learned counsel for the appellants and after going through the record, I find that no substantial question of law arises in this regular second appeal. The findings given by the Courts below are correct and as per evidence and law. The evidence has been read in right

perspective. There is no cogent evidence produced by the plaintiffs to prove the fraud played by defendant No.1 upon defendant No.2. The release deed has been executed by defendant No.2 in favour of defendant No.1 in the year 2001. The suit has been filed in the year 2007 challenging the release deed executed by defendant No.2 in favour of defendant No.1. The plaintiffs in the plaint has mentioned that two release deeds have been executed by defendant No.2, one in favour of defendant No.1 and the other in favour of plaintiff No.1, who is none else, but the wife of defendant No.2. Defendant No.2 has never challenged this release deed on the ground of fraud nor he has appeared in this case to say that any fraud has been played upon him by defendant No.1. As discussed above, defendant No.1 has paid ₹5,20,000/- regarding the land measuring 16 Kanals as mentioned in the release deed and this fact remained unchallenged as the witnesses were not cross-examined on this point. The Court has also held that this release deed for consideration was for legal necessity as defendant No.2 was under debt and he had to pay outstanding payment of loan, which he had taken from the Bank. Even if it is taken that stamp duty has not been properly paid at the time of registration of the document, it is for the revenue authorities to see whether the release deed has been properly valued for the purpose of stamp duty or not. If it was under value, they could have taken the action as per law.

Therefore, from the above discussion, I find that the judgments and decrees passed by the Courts below are correct and as per law which do not require any interference from this Court and the same are upheld.

Otherwise also, no substantial question of law arises in this regular second appeal.

Finding no merit in this regular second appeal, the same is dismissed.

May 13, 2015.

(Inderjit Singh)
Judge

hsp