

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

RSA No.2807 of 2015 (O&M)
Date of Decision: 5.10.2015

Laxman

...Appellant

Jaipal

.....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Sudhanshu Makkar, Advocate, for the appellant.

RAJESH BINDAL, J.

The defendant is before this Court against concurrent findings of fact recorded by both the courts below, whereby the suit filed by the respondent/plaintiff for declaration was decreed.

In the case in hand, the parties to the litigation are real brothers. The respondent/plaintiff filed a suit challenging the release deed dated 7.3.2000 and mutation dated 14.6.2000, vide which 4 kanals 10 marlas of land owned by the respondent/plaintiff was transferred in the name of the appellant. Besides the parties to the suit, there are five other brothers. The respondent/plaintiff is handicapped. The land, which was transferred by the respondent/plaintiff in favour of the appellant was his share in the joint family property. There was no other property owned by the respondent/plaintiff for his sustenance. There was no consideration for transferring entire land in favour of the appellant. For taking care of his share of land, the respondent initially executed a power of attorney in his favour and thereafter, executed the release deed, as he was living with him. The parties had fiduciary relationship, which had apparently been misused by the appellant. The learned courts below have gone through the entire evidence led before it and found that the release deed was got executed by the appellant under the garb of power of attorney. In these circumstances, even the delay in filing the suit was not fatal.

Learned counsel for the appellant referred to the judgment of Hon'ble the Supreme Court in Joseph Johan Peter Sandy v. Veronica Thomas Rajkumar and another, 2013 (2) RCR (Civil) 461, raising the issue

regarding onus stated that the release deed having been challenged by the respondent/plaintiff, the onus was on him. However, in the judgment cited by the learned counsel by the appellant, it was observed that if the transaction appears to be unconscionable, then the burden to prove that contract was not induced by undue influence, lies upon the person, who was in a dominating position. In the case in hand, the transaction is unconscionable and the appellant was certainly in dominating position, the respondent/plaintiff being his handicapped brother.

For the reasons mentioned above, I do not find any reason to interfere with the concurrent findings of fact recorded by the courts below. No substantial question of law arises. The appeal is dismissed.

(RAJESH BINDAL)
JUDGE

5.10.2015

sharmila