

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

**Regular Second Appeal No.3677 of 2014 (O&M)
Date of decision: 01.07.2015**

Shubhram @ Sube Singh

.....Appellant

Versus

Mahender and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kunal Mulwani, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.3743-C of 2015

Annexure A-1 is taken on record.

Misc. application stands allowed accordingly.

RSA No.3677 of 2014

Plaintiff-appellant has come up in regular second appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Civil Judge (Junior Division), Mohindergarh and the Additional District Judge, Narnaul, whereby his suit has been dismissed.

Shubh Ram @ Sube Singh-plaintiff (appellant herein) filed a suit through his next friend and wife Bhateri Devi with regard to the suit land forming part of Khewat No.160, Khatoni No.241, Kita 16, measuring 100 Kanals 10 Marlas and Khewat No.254/1, Khatoni No.420, Kita 7, measuring 18 Kanals 3 Marlas, as per Jamabandi for the year 1998-99, situated at village Duloth Ahir, Tehsil & District Mohindergarh to the extent of 1/3rd

share and impugned release deed No.490 dated 31.05.2000.

Plaintiff was earlier employed in Indian Army and after suffering from mental disease, he was discharged on 03.03.2000. Defendant-respondent Nos. 1 and 2 are his sons and defendant-respondent Nos. 3 and 4 are his real brothers. The aforesaid suit property was ancestral in nature, out of which, the plaintiff-appellant was owner in possession of 1/3rd share. It was alleged that release deed No.490 dated 31.05.2000 was got executed in favour of defendant Nos. 1 to 3 at the instance of defendant No.4 by playing fraud and misrepresentation upon the plaintiff. Accordingly, he sought a decree of declaration that he was owner in possession of 1/3rd share of the suit land and the impugned release deed No.490 dated 31.05.2000 was void and nonest against him.

Upon notice, defendant-respondents filed written statement, wherein it was pleaded that the release deed in question had been executed validly. Relationship between the parties was also admitted. It was further submitted that the plaintiff had executed the release deed voluntarily and no fraud and misrepresentation was played upon him.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for a decree of declaration as mentioned in para No.1 of the plaint? OPP
2. Whether the present suit is time barred? OPD
3. Whether the present suit is not maintainable? OPD
4. Whether the plaintiff has no locus standi to file the present suit?
OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, observed that the release deed was a registered document. In order to prove the same, the defendants-respondents examined Fakir Chand, Draftsman (DW-5), who had typed the document. A suggestion was put to him that Subh Ram-plaintiff was suffering from schizophrenia, but there was nothing in the cross-examination to prove that conduct of Subh Ram was such as would have created some doubt in the mind of this witness that he (Subh Ram) was not having natural conduct. Sh. R.S. Sharma, Advocate (DW-6) was one of the witnesses of release deed. He stated that he was known to the parties personally and had been their counsel for over 20 years and belonged to the same village. In his cross-examination, he deposed that at the time of execution of the document, both the parties were in sound mind. A suggestion was put to him that Subhe Singh was suffering from schizophrenia. There was no suggestion that prior to the execution of the document or at the time of execution of document or even thereafter, the conduct of Subh Ram (plaintiff) was such which point out his mental faculties being incapacitated by mental disease. The trial Court accepted the release deed to be a valid document as it was registered and was proved by deposition of Fakir Chand, draftsman (DW-5) and R.S. Sharma, Advocate (DW-6), who was a witness to the release deed. From the deposition of DW-5 and DW-6, it could not be made out that Subh Ram-plaintiff was suffering from schizophrenia and the release deed had been got signed by him by playing any fraud and misrepresentation. With these observations, issue No.1 was decided against the plaintiff.

Issue No.2 was with regard to limitation. It was observed that the impugned document was dated 31.05.2000 and the present suit was instituted

on 12.05.2004. Therefore, the suit was held to be time barred and issue No.2 was decided in favour of the defendants and against the plaintiff. Ultimately, the suit was dismissed by the trial Court.

The main ground in appeal before the lower appellate Court was that Subh Ram-plaintiff had been relieved from Army on the ground that he was suffering from mental disorder and there was no need for the plaintiff to lead evidence in this regard, as the discharge orders were not in dispute between the parties. However, this ground was considered by the lower appellate Court by making reference to document, Ex.PW-2/F, which was sent by plaintiff-appellant himself to the Army authorities for final re-survey by medical board. This letter was handwritten and signed by the plaintiff in the year 2005. It was held that at the time of writing this letter in the year 2005, the plaintiff was not suffering from any mental disorder of permanent nature. Moreover, Ramsarup Arora, Manager GGB (DW-1), Hoshyar Singh, Salesman Co. Society, Nangal Serohi (DW-2) and Birender Kumar, Deputy Manager, PNB Nangal Serohi (DW-3) proved that plaintiff-appellant had taken loan from Gurgaon Gramin Bank on 24.05.2002, from Primary Cooperative Society on 23.05.2001 and from Punjab National Bank on 22.08.2003. All the above transactions showed that even though, the plaintiff-appellant was suffering from schizophrenia, but he was not of unsound mind. In view of the above documents, the lower appellate Court came to a conclusion that the impugned release deed dated 31.05.2000 was not executed on account of any fraud or misrepresentation and the plaintiff-appellant was not on unsound mind at the time of execution of the same. The release deed was held to be a valid document being registered and duly proved by the witnesses of the defendants-respondents. Moreover, the suit

was filed after a gap of four years from the date of execution of the release deed. The findings returned by the trial Court were affirmed and the appeal was dismissed.

After going through the judgments passed by both the Courts below, this Court is of the view that the release deed dated 31.05.2000 has been executed by the plaintiff-appellant in sound disposing state of mind and he was not suffering from any mental disorder at that time. The suit of the plaintiff-appellant has been rightly dismissed and there is no dispute with regard to the concurrent findings of fact recorded by both the Courts below.

No substantial question of law arises for consideration.

Dismissed.

01.07.2015
ajp

(RITU BAHRI)
JUDGE