

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4253 of 2014 (O&M)

Date of decision: 30.4.2015

Smt. Sulekha

.. Appellant

v.

Kulwant Singh and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. Surya Parkash, Advocate for the appellant.

...

Rajesh Bindal J.

The plaintiff having failed in both the courts below has filed the present appeal. The suit filed by her for declaration and joint possession, was dismissed.

The appellant-plaintiff, who claimed herself to be widow of Bhupinder son of late Smt. Sita Devi, filed the suit claiming that Sita Devi was owner to the extent of 1/3rd share in the suit property. She had three sons and two daughters. The appellant was married to one of her son, i.e., late Bhupinder. One of the sons, namely, Tirlochan Singh and one daughter, namely, Kamla Devi died unmarried. The marriage of the appellant with late-Bhupinder was solemnised in the year 1987. The appellant, being widow of late-Bhupinder, was entitled to the share of Bhupinder in the property owned by late-Sita Devi. Challenge was made to the release deed executed by late-Sita Devi in favour of his son-Kulwant

Singh on 27.11.2001. The suit was filed on 23.4.2009. Both the courts below did not find any merit in the claim made, hence, dismissed the suit.

Learned counsel for the appellant submitted that the release deed executed by Sita Devi in favour of respondent No. 1 was a result of fraud. Sita Devi was at advanced age when the release deed was got executed from her. The witness thereto was none else but wife of Kulwant Singh, the beneficiary. Though a plea was sought to be taken by the respondents that the appellant had re-married after the death of Bhupinder, but the same could not be established. The appellant, being widow of Bhupinder son of Sita Devi, was entitled to the share in the property.

After hearing learned counsel for the appellant, I do not find any merit in the submissions made. It is not in dispute that on 16.5.1989, the appellant filed divorce petition. She had also filed a criminal case against Sita Devi and other family members on 8.6.1992, which was later on disposed of as compromised. Meaning thereby, the families were not having cordial relations. Immediately after filing of divorce petition, Bhupinder died on 21.5.1989. Ever since then the appellant had been living separate from the family. Even as per the address furnished in the suit, she is resident of Jaipur. Though the release deed challenged in the suit is dated 27.11.2001, the suit was filed more than 7 years thereafter on 23.4.2009. It is claimed that the suit was filed when the appellant came to know about the execution of release deed, but nothing has been substantiated on record. Sita Devi died on 11.1.2004. Meaning thereby the appellant was not knowing even that fact. The appellant did not dispute the fact that Sita Devi was absolute owner of the property and could give it to any one. Though a plea was sought to be taken that the release deed was a result of fraud, however, no evidence was led in support thereof except the oral statement of the appellant. In the evidence led by her, it came on record that the appellant never met her mother-in-law, namely, Sita Devi. Had the fraud been committed on Sita Devi with reference to the release deed executed by her on 27.11.2001, she died more than 2 years thereafter on 11.1.2004 but never challenged the same.

In view of my aforesaid discussion, I do not find any error in the concurrent findings of fact recorded by both the courts below. No substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

30.4.2015
mk