

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

1. RSA No.4335 of 2009 (O&M)
Date of decision : 11.01.2016

Phoi (deceased through LRs)

...Appellant

Versus

Sahiya @ Sahi Ram and ors.

...Respondents

2. RSA No.4336 of 2009 (O&M)
Date of decision : 11.01.2016

Phoi (deceased through LRs)

...Appellant

Versus

Sahiya @ Sahi Ram and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Vijay Singh Kajla, Advocate for the appellant.

Mr. Harkesh Manuja, Advocate for respondents.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second
Appeals bearing No.4335 and 4336 of 2009 titled as Phoi (deceased)

through LR's Vs. Sahiya @ Sahi Ram and ors. filed at the instance of the plaintiff (since deceased) vis-a-vis two release deed dated 11.09.2001 in respect of land situated in two villages namely Dadhola and Dadholi, Tehsil Panipat executed in favour of the defendants.

Mr. Vijay Singh Kajla, learned counsel appearing on behalf of the appellant has raised multifold arguments in support of the grounds of appeal which are enumerated hereinbelow:-

1. Phoi, who alleged to have executed the relinquishment deed in respect of two villages filed suit on 28.09.2001 and prior to that had filed a complaint to the police. Two suits, one for injunction filed by Dhanpat s/o Hukam Chand against Phoi claiming relationship of tenancy and another filed by Malkhani alleging to be the another wife of Balwant Singh were pending and under good faith the plaintiff was made to put her thumb impression on the release deeds whereas she had no intention to execute them.

2. The respondent-defendants have not discharged the onus as per the provision of Section 111 of the Indian Evidence Act on the premise that once good faith has been pleaded in the written statement, and as per the ratio decidendi culled out by this Court in *Hameloo (deceased) Vs. Jang Sher Singh, 2002(1) RCR (Civil) 626*, onus was required to be discharged.

3. The trial Court on the basis of oral and documentary evidence found that fraud and misrepresentation had been played upon plaintiff and, therefore, rightly decreed the suit. However, lower Appellate Court being last Court of facts and law perversely and erroneously set aside the well-reasoned judgment and decree on the ground that Phoi was not parda nashin

lady and has not noticed the provisions of Indian Evidence Act and as well case law cited at bar and thus prays that substantial question of law arises for determination.

Mr. Harkesh Manuja, learned counsel appearing on behalf of respondents submits, that suit instituted in the year 1997 by Dhanpat against Phoi was only with regard to claiming tenancy rights and another suit filed by Malkhani claiming herself to be wife of Balwant Singh was against Phoi and Dhanpat s/o Hukam Singh. No ingredients as envisaged under Order 6 Rule 4 of the Code of Civil Procedure, have been pleaded, much less, proved. Rather onus as enshrined under Section 111 of the Indian Evidence Act has been discharged by examining the Clerk from the office of Sub-Registrar. The presumption of truth is drawn vis-a-vis the registered documents and a very strong and cogent evidence is required to rebut.

I have heard learned counsel for the parties and appraised the paper book and of the view that appeal deserves to be dismissed for the following reasons:-

1. The relinquishment deed, aforementioned, has been proved through the testimony of DW2 Ashok Kumar-Deed Writer. Ex.DW1/A has been proved by DW2 Scribe/Typist & DW3 Ram Kishan, attesting witnesses. Thus, ingredients of Section 68 of the Indian Evidence Act, has been proved. PW3 examined, at the instance of plaintiff to a specific question in cross-examination has been equanimous by stating that the contents of release deed was read over only after understanding the same by executant.

2. DW7 Umrav Singh, Naib Tehsildar deposed that in the year 2001 that he was posted as Naib Tehsildar/Sub-Registrar, Bapoli and two release deed were produced before him by Phoi witnessed by Lambardar witnesses, Sahi Ram and Hukam Singh and he read over both aforementioned release deed to Phoi who was in her full senses.

Keeping in view the aforementioned evidence, I am of the view that plaintiff has failed to prove the ingredients of Order 6 Rule 4, much less, ratio decidendi culled out by this Court in *Hameloo (deceased) case supra* do not apply, as defendants have discharged the onus as enshrined under Section 111 of the Code of Civil Procedure. I am in agreement with the findings rendered by the lower Appellate Court which has set the judgment and decree of the trial Court in dismissing the suit as trial Court did not examine, the aforementioned facts while decreeing the suit.

Keeping in view the facts and circumstances, I do not find any illegality and perversity in the impugned judgment and decree of the lower Appellate Court. I do not intend to differ with the findings rendered by it, much less, no substantial question of law arises for determination.

Accordingly, appeals are dismissed.

11.01.2016

pawan

**(AMIT RAWAL)
JUDGE**