

RSA No.4811-2011

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

RSA No.4811-2011 (O & M)

Date of Decision: 02.02.2016

Satish

... Appellant (s)

Versus

Bholu

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Keshav Pratap Singh, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J. (Oral)

This regular second appeal of defendant is directed against the judgment and decree dated 14.05.2010 passed by learned Civil Judge (Jr. Divn.), Rohtak whereby suit for possession filed by the respondent-plaintiff has been decreed and against the judgment and decree dated 06.09.2011 passed by learned Additional District Judge, Rohtak whereby appeal preferred by the appellant-defendant has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments

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of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that plaintiff-Bholu (minor) filed the suit claiming a decree for possession of 1/3rd share of agricultural land fully detailed and described in para no.2 of the plaint. He averred that he is the grand son of Rati Ram son of Chandu who was owner in possession of the land to the extent of 1/3rd share. Rati Ram got registered a release deed dated 13.06.2000 qua his share in the land in favour of the plaintiff. On 04.10.2000, Rati Ram allegedly executed a sale deed in favour of defendant Satish and on 13.10.2000, he got the release deed dated 13.06.2000 cancelled vide another registered deed. The sale deed dated 04.10.2000 and the deed dated 18.10.2000 have been challenged in the suit as illegal, null and void on the ground that Rati Ram was not owner of the land allegedly sold by him to Satish on 04.10.2000 nor he was competent to get the release deed dated 13.06.2000 cancelled. The release deed dated 13.06.2000 was voluntary, valid, not based on any misrepresentation or fraud. The plaintiff was the absolute owner of the land in suit by virtue of release deed dated 13.06.2000 validly executed by Rati Ram in his favour. Mutation No.2343 was duly sanctioned in favour of the plaintiff. The defendant filed an appeal in the court of Collector, Rohtak against the order of A.C.Ist Grade, Rohtak sanctioning the mutation and cancelling the mutation sanctioned in favour of the defendant on the basis of the sale deed. The Collector, Rohtak dismissed the appeal of

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defendant on 14.11.2005, yet defendant took forcible possession of the suit land and refused to hand over the possession to the same. Hence, the suit.

Upon notice, the defendant resisted the suit and filed written statement taking various preliminary objections. It was denied that Rati Ram got registered release deed dated 13.6.2000 qua his share in the land detailed in para no.2 of the plaint, in favour of plaintiff. The release deed dated 13.06.2000 was stated to be illegal, null and void and result of fraud. The fraud was clear from the cancellation of release deed dated 18.10.2000. Rati Ram and defendant came to know about the fraud at the time of sanction of mutation on the basis of sale deed dated 04.10.2000, after which the release deed was got cancelled on 18.10.2000. The sale deed dated 04.10.2000 was legal and valid as also the cancellation dated 18.10.2000. On 04.10.2000, Rati Ram was the true owner of the property as per revenue record, having physical possession and the sale deed was got executed as the revenue record was neat and clear, without any remarks. Physical possession was also delivered to defendant by Rati Ram at the spot. Bholu and his mother Saroj had no concern with the land after the death of Kartar Singh son of Rati Ram. The mother of plaintiff was cunning and clever and had played fraud to grab the property regarding which a criminal case was also pending at Rohtak. Rati Ram voluntarily got the release deed cancelled on 18.10.2000. The plaintiff and his mother never lived in village

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Gharawati after death of Kartar Singh. Initially, Rati Ram was the absolute owner of the land and after him, the defendant was *bona fide* purchaser and true owner of the land in cultivating possession thereof. The sale deed dated 04.10.2000 was valid, legal and binding. The plaintiff has no right to take possession of the land on the basis of release deed dated 13.06.2000. Other averments in plaint were denied and dismissal of suit was prayed for.

On the basis of pleadings of parties, the Court of first instance framed following issues:

- “1. *Whether Rati Ram was owner in possession of the suit property detailed in para no.2 of the plaint?OPP*
2. *Whether sale deed dated 04.10.2000 and release deed dated 13.06.2000 are illegal, null and void and not binding on the plaintiff?OPP*
3. *Whether the plaintiff is entitled to the relief of possession?OPP*
4. *Whether the suit is not maintainable in the present form?*
5. *Whether the plaintiff has concealed the material facts from the Court, if so to what effect?OPD*
6. *Whether the suit is not properly valued for the purpose of court fees?OPD*
7. *Relief.”*

After appreciating the evidence, the Court of first instance decreed the suit vide impugned judgment and decree dated 14.05.2010.

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Feeling aggrieved, the defendant preferred an appeal which has been dismissed by the lower Appellate Court vide impugned judgment and decree dated 06.09.2011. Hence, this second appeal.

Learned counsel for the appellant has referred to following substantial questions of law formulated in the grounds of appeal for consideration by this Court:

- (i) *Whether the release deed dated 13.06.2000 is based upon fraud and misrepresentation and was not legally executed by Rati Ram?*
- (ii) *Whether Rati Ram had got every legal authority to cancel the release deed dated 13.06.2000 by executing another deed dated 18.10.2000?*
- (iii) *Whether the sale deed dated 04.10.2000 executed by Rati Ram in favour of the defendant-appellant is a validly executed document?*
- (iv) *Whether the suit of the plaintiff-respondent is hopelessly time barred as the plaintiff has failed to challenge the execution of the deeds dated 04.10.2000 and 18.10.2000 within the prescribed period of three years and the suit being filed on 07.02.2006 is hopelessly time barred?*
- (v) *Whether the suit was bad for non-joinder of necessary parties as Rati Ram was not impleaded as a party to the suit filed by the plaintiff-respondent seeking a decree for possession?*
- (vi) *Whether by execution of the deed dated 18.10.2000, the plaintiff-respondent lost all his right, title and interest in the suit property?*
- (vii) *Whether the plaintiff-respondent was bound to*

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pay the court fee on the market price of the suit property while seeking a decree for possession of the suit property?

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant submitted that both the courts below have not properly appreciated the evidence and there is misreading of material evidence by the courts below. Rati Ram was the actual owner of the suit property, therefore, he had every right to get the sale deed executed in favour of any person. When Rati Ram and defendant-Satish came to know about the execution of frivolous release deed dated 13.06.2000, he got the same cancelled. Rati Ram had voluntarily executed the registered sale deed dated 04.10.2000 in favour of the appellant. The plaintiff was fully aware of the execution of the sale deed dated 04.10.2000 as well as cancellation deed dated 18.10.2000, but he filed the present suit on 07.02.2006, therefore, the same is hopelessly time barred. He further submitted that Rati Ram, grand-father of the plaintiff, who had allegedly executed release deed as well as cancellation deed, was not impleaded as a party, therefore, the suit was bad for non-joining of necessary party.

I have considered the contentions of learned counsel for the appellant.

Both the courts below have concurrently held that the plaintiff could be able to prove that the release deed was duly executed

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by Rati Ram qua his share in the suit land in favour of the plaintiff, by examining PW 3 Bijender Singh Nandal, document writer and further Rampal, an attesting witness of the release deed, who stated that the contents of release deed were read over to Rati Ram who affixed his thumb impressions after accepting the same as correct. Both the courts below have also concurrently held that no details of alleged fraud played on Rati Ram were put forth in the written statement and mere statement of defendant that release deed dated 13.06.2000 was the result of fraud, is not sufficient to prove the alleged fraud. It is pertinent to mention here that Rati Ram on whom the alleged fraud was played, was never examined as witness by the defendant. He was the best witness who could have stated about the fraud played upon him by Smt. Saroj and his absence from the witness box is sufficient to raise an adverse inference against the defendant.

In the present case, the plaintiff claimed himself to be owner of the suit land and has sought possession of the same. In such circumstances, the relief of possession includes the relief of declaration of ownership of the suit property, omission to challenge the sale deed dated 04.10.2000 and cancellation deed dated 18.10.2000, is not sufficient to non-suit the plaintiff particularly when it is the admitted fact that the defendant is in possession. In this regard, reliance can be placed upon ***R.K.S.Builders vs. Bhupinder Kumar*** 2001(2) C.C.Cases 367 (P & H). The plaintiff being the owner of the property by virtue of

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release deed dated 13.06.2000 had no option but to seek possession of suit property by filing the suit, which, by no stretch of imagination, can be held time barred being filed on 07.02.006.

The courts below have rightly held that once Rati Ram had executed the release deed dated 13.06.2000 in favour of his grand-son i.e. plaintiff, he had lost his all rights and title in the said land and he could not have unilaterally cancelled the release deed to the prejudice of the minor. In the present case, Rati Ram has extinguished his all rights by virtue of release deed dated 13.06.2000 and no relief was claimed against Rati Ram, therefore, he was not a necessary party. Since Rati Ram was not having valid right and title in the suit land on the day of execution of sale deed dated 04.10.2010, therefore, the defendant cannot be considered a bona fide purchaser. Both the courts below have concurrently held that the defendant has failed to establish the fraud allegedly played upon Rati Ram. The plea of fraud cannot be based on suspicion or conjectures.

Learned counsel for the appellant has failed to show that findings recorded by the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

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No other point has been urged.

Dismissed in limine.

02.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge