

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

107

Regular Second Appeal No.1202 of 2015 (O&M)
Date of Decision: January 13, 2016

Sukhwinder Singh and another

...Appellants

Versus

Kuldeep Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Yowan Sharma, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.3424-C of 2015

Prayer in this application is for condonation of delay of 15 days
in re-filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of applicant-appellant No.2, the present
application is allowed.

Delay of 15 days in re-filing the appeal stands condoned.

CM No.3425-C of 2015

Prayer in this application is for condonation of delay of 7 days
in filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of applicant-appellant No.2, the present
application is allowed.

Delay of 7 days in filing the appeal stands condoned.

RSA No.1202 of 2015

Challenge in this appeal is to the judgment and decree dated
05.08.2014 passed by the Additional District Judge, Panchkula, whereby the

appeal preferred by the respondent-plaintiff against the judgment and decree dated 26.07.2013 passed by the Additional Civil Judge (Senior Division), Kalka, whereby the suit for declaration to the effect that the respondent-plaintiff is owner and in possession of the land measuring 1 bigha 19 biswansi as detailed in the suit, Tehsil Kalka, District Panchkula, was dismissed, has been allowed.

2. It is the contention of learned counsel for the appellants that the Court below has not properly appreciated the pleadings and the evidence which has been led by the parties. He contends that the relinquishment deed dated 12.06.2009 Exhibit P-4 and the consequential mutation No.1822 dated 30.09.2009 Exhibit P-5 are not result of fraud or misrepresentation, as has been found by the Lower Appellate Court. He contends that the relinquishment deed Exhibit P-4 is a registered document and the presumption of truth is attached with the said document apart from its due execution and knowledge to the executor as in this case, the respondent-plaintiff, she was a major when the relinquishment deed was executed by her and merely because two witnesses have come forth and deposed in her favour cannot be made the basis for coming to a conclusion that the said relinquishment deed Exhibit P-4 was a result of fraud and had not been executed by her properly. He further contends that the burden of proof which was on the respondent-plaintiff having not been discharged to the extent as required in the case of fraud having alleged by her, the findings cannot sustain and deserves to be set aside. Prayer has, thus, been made for setting aside the judgment and decree passed by the learned Additional District Judge, Panchkula and for dismissing the suit of the respondent-plaintiff.

3. I have considered the submissions made by learned counsel for the appellants and with his assistance, have gone through the impugned judgment.

4. It is correct, as has been asserted by the counsel for the appellants that the onus is upon the respondent-plaintiff to prove the plea of fraud taken by her, specially when the document which is sought to be said to be a result of the same, is a registered document. The presumption of truth with regard to the registered document is no doubt attached to it but the same is rebuttable and, therefore, all the more burden is put upon the party, who asserts it to be a product of fraud as in this case the relinquishment deed Exhibit P-4. The two witnesses on which reliance has been placed by the learned Lower Appellate Court and rightly so in the opinion of this Court, is Krishan Kumar PW-4, who admittedly is the marginal witness to the relinquishment deed Exhibit P-4, who states that he was unaware of the document on which he has put his signatures and further that he has done so at the behest of Kehar Singh father of the appellants-defendants. He has also stated that the contents of the relinquishment deed Exhibit P-4 were not read over to the respondent-plaintiff. This clearly establishes the plea of the respondent-plaintiff that she was not aware of the document which was being got executed from her. It may be added here that the respondent-plaintiff had been taken care of as per the stand of the appellants-defendants by Kehar Singh from the infant age of three years and she was under the care and protection of Kehar Singh. The relinquishment deed, when was got executed by her, she was merely 18 years of age and had just attained majority.

5. It would not be out of way to mention here that on the basis of the relinquishment deed dated 12.06.2009 Exhibit P-4, mutation was got sanctioned in favour of the appellants-defendants on 30.09.2009 Exhibit P-5 and a complaint against the appellants-defendants and Kehar Singh father of the appellants-defendants was submitted to the Station House Officer, Police Station, Pinjore, for the purpose of investigation admittedly in December, 2009. Immediate steps have been taken by the respondent-plaintiff on having come to know of the effect of the deed which was got signed by Kehar Singh from her. It has further come on record that the police recorded the statements of the appellants-defendants as also the respondent-plaintiff and other villagers and thereafter an agreement was entered into for release of the land of the respondent-plaintiff. The appellants-defendants executed relinquishment deed dated 04.01.2010 Exhibit P-1 and affidavit dated 28.12.2009 Exhibit P-3 which depicts that the appellants-defendants had admitted their guilt.

6. At this, it has been stated by the counsel for the appellants-defendants that she had withdrawn her complaint. An argument was also raised by the counsel for the appellants-defendants that this relinquishment deed and affidavit was got executed because of the coercion and influence of the police authorities and would not be binding upon the appellants-defendants. This plea cannot be accepted as it is keeping in view the evidence of Daljeet Kaur mother of appellants-defendants, who appeared as DW-1, she in her cross-examination, stated that the relinquishment deed was obtained from the respondent-plaintiff by practicing fraud. In the light of this categorical admission by DW-1 Daljeet Kaur mother of the appellants-defendants, the plea of fraud having been

established while getting the relinquishment deed Exhibit P-4 executed, stands proved, especially when read along with the statement of Krishan Kumar PW-4, the marginal witness to the relinquishment deed. The findings, thus, recorded by the Lower Appellate Court, cannot be faulted with.

7. No question of law arises for consideration of this Court.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

January 13, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE