

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

**RSA-1446 of 2011(O&M)
Date of decision: 26.07.2017**

Vipin Kumar Aggarwal ... Appellant

vs.

Vijay Kumar ... Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

* * *

Present : Mr. Santosh Sharma, Advocate
for the appellant.

Mrs. Avin Kaur Sandhu, Advocate for
for the respondent.

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DEEPAK SIBAL, J.(ORAL)

The appellant who was the plaintiff before the trial Court had filed a suit against his brother seeking therein possession of ½ share of residential house bearing No.B-2-1060/A situated at Canal Rest House Road, Yamunanagar (for short “ the suit property”) after partitioning of the same with metes and bounds. The suit was dismissed by the trial Court and the appeal preferred by the appellant against such judgment and decree met the same fate giving him a cause to knock the doors of this Court through the present second appeal.

The case set up by the appellant-plaintiff was that on 24.12.2001, Om Parkash Aggarwal, who was the father of the parties to the lis, executed a registered Will bequeathing the suit property in favour of

both the appellant and the respondent in equal shares. The appellant's share was earmarked towards the western side and the respondent's on the eastern. After the death of their father on 03.02.2002 the parties to the suit, as per the afore referred Will, were in joint possession of the suit property. However, when the respondent, on the basis of a relinquishment deed dated 30.07.2002, (for short "the deed") started to proclaim himself to be the owner of the entire suit property, the appellant initially sought partitioning of the suit property but on the refusal by the respondent to do so, instituted the present suit through which he sought possession of ½ share of the suit property after partitioning of the same with metes and bounds with a further prayer for restraining the respondent from alienating the suit property. It was submitted that the deed was a result of fraud played upon the appellant by the respondent as he was made to append his signatures thereupon by projecting the same to be a surety bond for a loan taken by the respondent.

Upon notice, the respondent appeared before the trial Court and denied the assertions made by the appellant. It was admitted that through the Will dated 24.12.2001 the father of the parties to the suit had bequeathed the suit property in half share to both the appellant and the respondent. However, on 30.07.2002, on the basis of a family settlement, the appellant through a registered deed dated 30.07.2002 had relinquished his half share in the suit property in favour of the respondent and such relinquishment was done in view of the respondent paying their father's debt which after his death had devolved as a liability upon both the parties to the suit.

The trial Court found that except the appellant's bald

statement no other evidence was led by him to prove that fraud had been played upon him by the respondent who made him sign the deed by projecting the same to be a surety bond for a loan taken by the respondent. On the other hand the respondent was found to have proved the deed by producing and proving documents showing the respondent to have solely paid the debt of the father of the parties which otherwise would have been the liability of both the brothers. Further, in support of his case not only did the respondent himself appear before the trial Court, he also produced Barkha Ram who was the scribe of the deed as also the sister and brother-in-law of the parties namely Deepa Rani and Devinder Kumar who were its eye witnesses.

On the basis of the above evidence, the trial Court dismissed the appellant's suit.

The appellant approached the appellate Court which by dismissing his appeal not only approved the trial Court's judgment and decree but also gave him a cause to knock the doors of this Court through the present second appeal.

Counsel for the appellant assails the concurrent findings of the trial Court as also the appellate Court on the ground that the deed had been procured by the respondent through fraud. The respondent, his brother, had approached him to sign a document to stand surety for the loan taken by him and having faith in his brother he signed the document thinking that he is appending his signatures upon a surety bond. Little did he know that the respondent was making him sign the deed.

He further submits that since the property in question was not ancestral and the deed having not been stamped in accordance with the

provisions of Section 55 of the Indian Stamp (Haryana Amendment) Act, 1979 (for short 'the 1979 Act'), no reliance upon the same could have been placed by either the trial Court or the appellate Court. Rather, in terms of Section 35 of the Indian Stamp Act, 1899 (for short 'the 1899 Act') the same, on production was liable to be confiscated.

Per contra, counsel for the respondent submits that the allegations of fraud as sought to be raised by the appellant were not proved by him as except for his bald statement, no other evidence was led. On the other hand adequate evidence was led by the respondent to prove the deed. With regard to the argument of the learned counsel for the appellant that the deed could not have been relied upon as the same had not been stamped as per Section 55 of the 1979 Act, it was submitted that as no such plea had been raised by the appellant in his plaint, in the grounds of appeal before the appellate Court as also before this Court. Even otherwise such plea had no merit as the deed was admittedly tendered in evidence by the appellant himself and that being so, as per Section 36 of the 1899 Act no objection to its admissibility can be raised by the appellant.

After hearing counsel for the parties I am of the opinion that the present appeal must fail.

It is not disputed that Om Parkash had executed a Will dated 24.12.2001 bequeathing the suit property to the parties to the present proceeding in equal shares. However, after his death, the appellant claims that the respondent started projecting himself as the owner of the entire suit property on the basis of the deed dated 30.07.2002 which as per the appellant was obtained by the respondent from him by fraud as the appellant was made to sign upon such document by the respondent after

projecting that the appellant was appending his signatures upon a document to stand surety for the respondent for some loan taken by him.

Whether the deed dated 30.07.2002 is a result of fraud?

To prove fraud, except his bald statement, no other evidence was led by the appellant. On the other hand, the respondent duly proved that Om Parkash, the father of the parties to the suit, had taken a loan which remained unpaid till he died and therefore after his death such unpaid loan devolved as a liability upon both the appellant and the respondent. However, since the appellant was not residing in the suit property, he agreed to relinquish his half share in the suit property in favour of the respondent in lieu the respondent repaying the entire unpaid loan amount of their deceased father.

To prove his case the respondent not only himself appeared before the trial Court but also produced Barkha Ram, who scribed the deed as also Deepa Rani and Devinder Kumar who were its marginal witnesses. As per the above witnesses the deed was duly signed by the appellant in the presence of his sister (Deepa Rani) and brother-in-law (Devinder Kumar) as also the scribe Barkha Ram.

Barkha Ram categorically stated that after scribing the deed, he had read over its contents to the parties who only after hearing and understanding the same appended thereto their respective signatures. The attesting witnesses to the relinquishment deed who were the sister and brother-in-law of the parties to the suit also deposed that the execution of the deed was duly witnessed by them. The testimony of the respondent is also to the same effect. Cross examination of the above witnesses could yield nothing which would even dent the case of the respondent.

Nothing was brought on record by the appellant as to why his own sister and brother-in-law would have a hostile attitude towards him. The appellant while appearing before the trial Court had admitted that he had studied upto Class 7th. Therefore it did not lie in his mouth to say that he blindly appended his signatures to the deed as also got the same registered without having any knowledge as to the contents thereof.

That the deed is a registered document also cannot be lost sight of. Registration adds weight to a document's evidentiary value which of course is rebuttable. However, the appellant did not produce any evidence which would even question its correctness. To top it all, the appellant admitted to have appended his signatures to the deed before the registering authority.

Learned counsel for the appellant has argued that the property in question was self acquired and therefore qua such a property no release/relinquishment deed, without appending thereupon the requisite stamp duty could have been relied upon. Rather as per Section 35 of the 1899 Act such document was reliable to be confiscated.

It is not disputed that the release deed in question was tendered and admitted in evidence as Exhibit P-2 by the appellant himself and therefore in terms of Section 36 of the 1899 Act he cannot be allowed to question such document on the ground that the same was not duly stamped.

Section 36 of the 1899 Act reads as under:-

“Admission of instrument where not to be questioned.- Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit

or proceeding on the ground that the instrument has not duly stamped.”

Section 36 of the 1899 Act was interpreted by a Constitution Bench of the Apex Court in **Javer Chand and others versus Pukhraj Surana, AIR 1961 SC 1655** as under:-

“Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross examinations of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction”.

To the same effect are the following observations of the Apex Court in **Shyamal Kumar Roy v. Sushil Kumar Aggarwal (2006) 11 SCC 331** :-

“The agreement, as notice hereinbefore, was executed in the year 1995. The applications purported to be under Section 151 of the Code of Civil Procedure, 1908 were filed by Appellant only on 16.2.2005. The Development Agreement, as noticed hereinbefore, was admitted in evidence on 17.2.2003. The learned Trial Judge as also the High Court relied upon a decision of this Court in Javer Chand (supra). An attempt to distinguish the said decision of this Court was made, inter alia, on the premise that therein this Court was concerned with interpretation of the provisions of Marwar Stamp Act, 1947 in respect of two mudatti hundis, which have been admitted in evidence on payment of duty and penalty, but sought to be made inadmissible in evidence in terms of the provisions contained in the 1947 Act. This Court opined that

once the said document was admitted in evidence, the new Act i.e. the 1947 Act would be inapplicable, stating :

"Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, [Section 36](#) of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction."

The said decision, therefore, is an authority for the proposition that [Section 36](#) would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefor. If a party to the lis intends that an instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril".

From the above observations of the Apex Court it is clear that once a document has been admitted in evidence and thereafter the trial has progressed, in terms of Section 36 of the 1899 Act it is not open to the trial Court, the Appellate Court or even the Court of Revision to question its admissibility on the ground that the same was under stamped.

In the case in hand the relinquishment deed was in fact tendered by the appellant himself leaving no door open for him to question its admissibility on the ground that it was under stamped.

In view of the above, no fault can be found in the impugned

judgments of the trial Court as also the appellate Court.

Dismissed.

No costs.

(Deepak Sibal)
Judge

July 26, 2017
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<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>