

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

**RSA No.5459 of 2016 (O&M).
Date of Decision: 24.04.2017.**

Madan LalAppellant.

VERSUS

Rajia (now deceased) through L.R. and anotherRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Jitender K. Sehrawat, Advocate for the appellant.

SNEH PRASHAR, J.

CM-14239-C-2016

Allowed, as prayed for.

RSA-5459-2016 (O&M)

This was Regular Second Appeal filed by appellant-defendant Madan Lal (hereinafter referred to as 'the defendant') impugning the judgment and decree dated 12.08.2016 passed by learned Additional District Judge, Hisar whereby the appeal filed by the defendant challenging the judgment and decree dated 23.12.2013 passed in Civil Suit No.3-C of 08.03.2010/17.04.2012 by learned Civil Judge (Junior Division), Hisar, decreeing the suit for declaration and permanent injunction filed by the respondents-plaintiffs (hereinafter referred to as 'the plaintiffs'), was dismissed.

Precisely, the facts which need elaboration are as under:-

Plaintiffs – Smt. Rajia and her daughter Ram Murti filed a suit for declaration with consequential relief of permanent injunction challenging the release deed alleged to be executed by them in favour of Madan Lal-defendant in respect of land measuring 23 Kanals 14 Marlas being 2/25 share of total land measuring 296 Kanals-09 Marlas comprised in Khewat No.26 as per Jamabandi for the year 2006-2007, situated in village Chulli Bagrian, Tehsil Adampur, District Hisar (hereinafter referred to as the 'suit land'). They pleaded that they had filed suit No.453 of 1975 titled 'Rajia etc. vs. Kundan Lal etc.' in respect of the suit land, which was decreed in their favour by the then Civil Judge, Fatehabad on 03.01.1976 and they were held to be owners in joint possession of the suit land. The possession of the suit land was handed over to them and the execution proceedings were dismissed as satisfied on 17.07.1976. However, entry regarding the judgment and decree remained to be incorporated in the revenue record and taking undue advantage of the same, defendant Madan Lal suffered a collusive decree in respect of the suit land in favour of his father Kundan Lal on 27.05.1995 in Civil Suit No.1386 of 1994.

The decree dated 27.05.1995 was challenged by the plaintiffs by filing Civil Suit No.124 of 1999 which was decreed on 30.07.2007. The defendant filed civil appeal No.62 of 2007 which was dismissed by learned Additional District Judge, Hisar vide judgment dated 10.01.2009. The defendant then preferred a regular second appeal before this Court which was dismissed as withdrawn.

It was further the case of the plaintiffs that the defendant and

his father Kundan Lal intended to usurp the suit property forcibly and

illegally. They (plaintiffs) wanted to get their share separated from the defendant who also asked for partition. Believing the defendant, they went to the Office of Joint Sub Registrar, Adampur. Shri Davinder Singh Beniwal, Advocate in collusion with the defendant obtained their thumb impressions on some blank papers and then made them appear before Assistant Collector IInd Grade, Adampur on the pretext of obtaining order for partition. The Clerk of the Assistant Collector IInd Grade, Adampur obtained their thumb impressions on the back of some papers. These papers were neither read over and explained by their Advocate Davinder Beniwal nor were read over or explained to them by Assistant Collector IInd Grade, Adampur or his clerk. They came to know about execution of the release deed when the defendant alongwith some unscrupulous persons came to their house and threatened to dispossess them from the suit land on the basis of the said document and the mutation sanctioned thereupon, after which Smt. Rajia (plaintiff No.1) went to the Office of Joint Sub Registrar and obtained copy of the release deed and the mutation from the area Patwari.

The plaintiffs pleaded that the alleged release deed was based on fraud and misrepresentation and the mutation on the basis of the same was illegally sanctioned without issuing any notice to them. None of the attesting witnesses to the release deed was present when their thumb impressions were obtained by the Advocate or by the Clerk in the Court of Assistant Collector IInd Grade, Adampur. They had never handed over possession of the suit land to the defendant. There was also no reason for them to execute a release deed in respect of their ownership rights qua the suit land as it was their self acquired property and no release deed in respect

Submitting that the defendant was an influential person and in collusion with the local police and politicians was bent upon to dispossess them from the suit land illegally and forcibly and had refused to get the alleged release deed and mutation cancelled, the instant suit was filed.

The appellant-defendant contested the suit raising various preliminary objections. Replying on merits, the defendant denied that the plaintiffs were owners in joint possession of the suit land and submitted that he was the actual owner in possession of the said land from the date of execution and registration of the release deed in his favour by the plaintiffs. All allegations of the plaintiffs with regard to execution of the release deed and the deed being a forged or bogus document were denied by him. According to him, the release deed was a legal and valid document executed by the plaintiffs themselves and the mutation on the basis of the same was sanctioned in 'Jhalsa Sare aam'. He also pleaded that physical possession of the suit land was delivered to him by the plaintiffs on the date of execution and registration of the release deed. In the end, he prayed for dismissal of the suit.

On the rival contentions of the parties, following issues were framed:-

1. Whether the suit land is the self acquired property of the plaintiff, if so to what effect? OPP
2. If issue No.1 is proved in favour of the plaintiff, whether the plaintiffs is entitled to set aside the release deed No.1386 dated 24.8.2009 which was allegedly executed and registered by the plaintiff in favour of defendant? OPP
3. Whether the plaintiff is co-owner in joint possession of 2/25 share in the suit land? OPP
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD

5. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD
6. Whether the suit of the plaintiff is not maintainable in the present form? OPD
7. Whether the plaintiff has not come to the court with clean hands and if so to what effect? OPD
8. Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court decreed the suit vide judgment and decree dated 23.12.2013 holding the plaintiffs to be owners in joint possession of the suit land and declaring the release deed No.1386 dated 24.08.2009 and mutation No.3339 dated 26.08.2009 a illegal, null and void document. The defendant was restrained from doing any illegal act regarding the suit land and from dispossessing the plaintiffs forcibly, illegally and unauthorizedly except in due course of law.

Being unsatisfied, the defendant preferred an appeal which was dismissed by learned Additional District Judge, Hisar vide judgment and decree dated 12.08.2016.

Feeling aggrieved, the appellant-defendant filed the instant Regular Second Appeal.

The submissions made by Mr. Jitender K. Sehrawat, learned counsel representing the appellant-defendant have been heard and record perused.

Learned counsel for the appellant-defendant argued with vehemence that the impugned release deed dated 24.08.2009 was executed

in presence of brotherhood and Panchayat. As per compromise, the plaintiffs were to be paid Rs.1.5 lakhs by the defendant in lieu of the release deed to be executed by them. The defendant, however, paid Rs.2 lakhs to the plaintiffs through Clerk of Kulbir Singh (area MLA). Since the parties were closely related, the defendant did not insist either for execution of written compromise deed or execution of a receipt by the plaintiffs against payment. Learned counsel further contended that as a consequence to the compromise and the release deed executed by the plaintiffs, the defendant withdrew the appeal filed by him before this Court against the judgment and decree passed against him in earlier suit No.124 of 1999 filed by the plaintiffs. Learned counsel asserted that the release deed was duly proved by the defendant by examining its scribe and attesting witness. They were independent witnesses and there was no reason to discard their testimony.

As regards existence of the compromise between the parties, learned counsel submitted that he had filed an application under Order XLI Rule 27 of the Code of Civil Procedure (for short, 'the Code') alongwith his first appeal before learned Additional District Judge for producing and proving a CD alongwith its translation which contained conversation between the defendant and Hari Singh, husband of Smt. Ram Murti as during the conversation Hari Singh had admitted receipt of Rs.2 lakhs in pursuance of the compromise between the parties. The application was dismissed by learned first appellate Court and now with the instant appeal he has again filed an application seeking permission to produce and prove the CD by way of additional evidence. The conversation recorded in the CD would prove the terms and conditions on which the compromise had taken

document for complete and proper adjudication of the matter in dispute between the parties.

To me, there appears no force in the arguments of learned counsel for the appellant-defendant. Surprisingly, the defendant intends to lead additional evidence at this stage with regard to the facts which were not even pleaded by him in his written statement. There was no mention of any compromise or of payment of any money to the plaintiffs by the defendant in lieu of execution of release deed in the written statement filed by him. It is a settled proposition of law that no party can be allowed to adduce evidence beyond his pleadings. Any such evidence produced can also not be taken into consideration. Not a word has been mentioned by the defendant in his application to explain why the alleged CD, if any in existence, was not referred to in the pleadings and was not produced by him in evidence before learned trial court. It is not the case that the said piece of evidence, if at all it was genuine, could not be produced in evidence despite due diligence. By simply tendering a CD with its translation is also not the due process of law of proving such evidence. For all the said reasons, the application for additional evidence filed by the defendant deserves to be rejected outrightly.

It has been held by Hon'ble Supreme Court in **Kalyan Singh Chouhan v. C.P. Joshi, AIR 2011 SC 1127** that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and

it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.

Admittedly, the plaintiffs had filed Civil Suit No.453 of 1975 claiming to be owners in joint possession of the suit property which was decreed in their favour vide judgment and decree dated 03.01.1976. As per report of the bailiff (Ex.P4) and the Daily Diary Report No.343 dated 17.06.1976 (Ex.P5) possession of the suit land was handed over to the plaintiffs in pursuance of a warrant of possession issued by the Court in the execution proceedings filed by the plaintiffs. In other words, the plaintiffs were put in possession of the suit land in due process of law. Even though no mutation was sanctioned in that regard, that was of no consequence since the mutation does not confer any title. During his deposition, defendant Madan Lal admitted that the judgment (Ex.P6) and decree (Ex.P7) dated 27.05.1995 suffered in his favour by his father Kundan Lal was challenged by the plaintiffs by filing Civil Suit No.124 of 1999. The suit of the plaintiffs was decreed on 30.07.2007 and the impugned judgment and decree was set aside. The appeal filed by him was dismissed by learned Additional District Judge, Hisar vide judgment dated 10.01.2009 and thereafter the Regular Second Appeal filed by him before this Court was dismissed as withdrawn.

In the backdrop of the aforesaid facts, it is difficult to accept that after having contested such long litigation with the defendant, the plaintiffs would simply go and execute a release deed in respect of the suit land in favour of the defendant. Indeed, the scribe and the attesting witness of the release deed were examined by the defendant to prove the said

appellate Court in Para No.14 of the judgment (reproduced hereunder), clearly indicate that the evidence adduced is untrustworthy and is completely incompetent to prove due execution of the document.

“14. It is the case of the defendant that plaintiffs had executed a released deed dated 24.8.2009 regarding their 2/25 shares in the suit property in favour of defendant. In order to prove the said facts he examined the scribe of the release deed DW2 Davinder Beniwal who has stated that he read over the contents of released deed to plaintiffs and thereafter they have signed alongwith the witnesses but during cross examination he has admitted that he had no licence for dead writer and he does not know plaintiffs personally. He further admitted that entry of the said released deed was not entered in the register by him as he has not maintained any register in this regard. On the other hand Krishan Kumar DW4 attesting officer has admitted in the cross examination that deed writer has entered the particulars in his register and also got the signatures of the plaintiffs. He further stated that Rajia had signed at 3-4 places in the released deed while perusal of released deed shows that Rajia and Ram Murti has only affixed their thumb impression only once, therefore, evidence of DW2 and DW4 are inconsistent to each other. Release deed further shows that names of the witnesses were hand written. Had the witnesses were present at the time of drafting of the said released deed then their names, parentage and addresses would be typed written as the other contents of the released deed were typed

written, therefore, the evidence of the scribe and attesting witness is not consistent, trustworthy and reliable.”

It may be added that apart from the fact that the defendant did not plead about the compromise or payment of Rs.1.5/ 2 lakhs to the plaintiffs in lieu of execution of the release deed in his written statement, it is also important to note that as per his plea the compromise had taken place in the presence of Sarpanch Subhash and one Daljit and that he had paid the alleged amount to the plaintiffs through Clerk of one Kulbir Singh (area MLA). The name of Clerk of Kulbir Singh was not mentioned and none out of the said four persons was examined to prove the compromise or payment of any money. Seen from every angle, it stands established that the impugned release deed was a illegal, null and void document.

Both the Courts below have recorded consistent findings on all the facts involved which, as discussed above, call for no intervention. As such, finding no illegality or perversity in the concurrent findings of learned trial Court and learned first appellate Court and there being no substantial question of law involved for decision in the regular second appeal, it is dismissed.

24.04.2017.

jitender sharma

**(SNEH PRASHAR)
JUDGE**

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**