

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

RSA No.651 of 2016 (O&M)

Date of decision: 02.08.2017

Hukam Singh (deceased) through LRs and another

... Appellants

Vs.

Phoolwati (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. M.L. Sharma, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendants are in regular second appeal against the impugned judgment of reversal passed by the learned Additional District Judge, whereby first appeal of the plaintiff was allowed and her suit for declaration, permanent injunction and for joint possession was decreed, setting aside the judgment and decree dated 06.02.2015 passed by the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 3 of the impugned judgment, are that the plaintiff was co-owner in possession of the agricultural land situated within the revenue estate of village Begumpur Khatola Distt. Gurgaon, as fully detailed and described in para 1 of the plaint. It was alleged that in the month of July 2006, the defendants approached the plaintiff and suggested that they would take care of her land, as a licensee. Believing the representation made by defendants, the plaintiff put

her thumb impressions on some documents. However, the plaintiff was shocked to know that the defendants got registered a release deed in the office of Sub Registrar, Gurgaon on 25.07.2006 regarding the suit land in their favour and mutation No.3404 was also entered. By way of filing the present suit, the plaintiff had challenged the impugned release deed and subsequent mutation to be illegal, null and void, which were the outcome of fraud played by defendants upon the plaintiffs. Initially the defendants appeared but later on, they did not appear and were proceeded against ex-parte.

Defendants were served. They put appearance through their counsel. However, thereafter counsel of the defendants stopped appearing and consequently defendants were proceeded against ex-parte, vide order dated 11.11.2010 passed by the learned trial Court. Plaintiff led her ex-parte evidence. After hearing learned counsel for the plaintiff and going through the ex-parte evidence, learned trial Court dismissed the suit of the plaintiff vide its impugned judgment and decree dated 06.02.2015. Feeling aggrieved, plaintiff filed her first appeal, which came to be allowed by the learned Additional District Judge vide impugned judgment and decree dated 19.01.2016. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

As noticed hereinabove, it was a case of no evidence, so far as the appellants are concerned. They were proceeded against ex-parte. A bare combined reading of the judgments and decrees passed by the learned Courts below would make it crystal clear that learned trial Court fell in serious error of law, while passing its judgment and decree dated 06.02.2015, which were

rightly set aside by the learned first appellate Court by way of impugned judgment of reversal dated 19.01.2016. It is so said because the learned trial Court miserably failed to appreciate true facts of the case, cogent evidence available on record as well as the law laid down by the Hon'ble Supreme Court and this Court.

Admittedly, plaintiff was in fiduciary relationship with the defendants. It were the defendants who were in a dominating position, being in possession of the suit property. Plaintiff was living in her in-laws family. The only mistake she committed that she believed the defendants. She could not doubt their malafide intention at the time when the defendants-appellants misrepresented the facts and made the plaintiff to believe that she was signing a licence in favour of the defendants to keep on cultivating the suit land, which was the absolute ownership of the plaintiff.

Instead of getting the licence signed, the defendants got the signatures of the plaintiff, who was an old lady of about 80 years, on a release deed because of their malafide intention to grab the suit property. Since the document was surrounded by suspicious circumstances, onus was on the defendants to dispel all the suspicious circumstances, because they were the beneficiaries and propounders of the said document. Having said that, this Court feels no hesitation to conclude that the learned first appellate Court was well well within its jurisdiction to pass the impugned judgment of reversal and the same deserves to be upheld, for this reason also.

Once the plaintiff has specifically pleaded undue influence and misrepresentation at the hands of defendants, onus would on the defendants to

dispel all the suspicious circumstances, which were surrounding the document, i.e. the release deed in the present case. It was for the defendants to prove that they did not exercise undue influence on the plaintiff and did not take undue advantage of their dominating position. As noticed hereinabove, since the defendants were proceeded against ex-parte and they did not lead any kind of evidence, whatsoever, suit of the plaintiff ought to have been decreed by the learned trial Court. However, since the learned trial Court fell in serious error of law, while dismissing the suit of the plaintiff, the learned first appellate Court did well, while setting aside the judgment and decree of the learned trial Court, by passing the impugned judgment of reversal and the same deserves to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Mst. Kharbuja Kuer Vs. Jangbahadur Rai and others, 1963 (1) SCR 456 (SC).***
2. ***Krishna Mohan Kul @ Nani Charan Kul and another Vs. Pratima Maity and others, 2004 (9) SCC 468 (SC).***
3. ***K. Laxmanan Vs. Thekkayil Padmini and others, 2009 (1) SCC 655 (SC).***
4. ***Smt. Badami (Deceased) by her LR Vs. Bhali, 2012 (11) SCC 574 (SC).***
5. ***Joseph Johan Peter Sandy Vs. Veronica Thomas Rajkumar and another, 2013 (3) SCC 801 (SC).***
6. ***Mangat Singh Vs. Rakesh Kumar Gupta and another, 2014 (4)***

RCR (Civil) 387 (P&H).

7. ***RSA No.6842 of 2016 (Supreet Singh alias Supreet Singh Vs. Narinder Singh and others), decided on 20.02.2017.***

Before arriving at its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in the impugned judgment, which deserve to be noticed here, read as under: -

*“Learned counsel for the plaintiff has rightly cited the authority of Hon'ble supreme Court in case **Krishna Mohan Kul Vs. Pratima Maity 2003(2) Apex court Judgments 368** wherein that case it was held that when a person is in fiduciary relationship with another and latter is in possession of active confidence, the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person who is in the dominating position. In the said case provision of section 111 of the Indian Evidence Act came up for consideration before Hon'ble Supreme Court. Here in this case, since the defendants were in possession to dominate the will of the plaintiff, who being an old aged lady of more than 80 years of age was residing at far away place from the suit land and defendants were definitely in a dominating position and were in fiduciary relationship with the plaintiff, who had no real brother.*

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The matter needs to be considered from yet another angle. It

has come on record that the plaintiff previously filed a civil suit for declaration, permanent injunction and for joint possession before the court of Sh. Ashok Kumar then Civil Judge Jr. Divn. Gurgaon against the defendants and certain other persons pertaining to her other land measuring 4K 16M situated in a different village Behrampur Tehsil Sohna Distt. Gurgaon. Certified copy Ex.PW1/6 of plaint shows that she challenged another different release deed dated 17.2.04. Concededly in the said case the matter was compromised as is evident from the attested copy of the compromise Ex.PW1/7. It had come before the said court that plaintiff Phoolwati, who was a simpleton woman and defendants No.1 to 5 her cousin brothers got her land on the basis of her release deed and later on they sold the said land in favour of defendant No.6 M/s. Base exports (P) Ltd. In the said case believing the plaintiff to be a rustic villager and simpleton, sale deeds challenged were set aside. In fact compromise took place. In the said compromise, the plaintiff compromised the matter without prejudice to her rights against defendants No.1 to 5, which includes defendants here in this case, to raise her grievance. It is defendant No.6 M/s. Base Exports (P) Ltd. who was given the permission to utilise the land as he compensated the plaintiff by paying ₹31 lacs to Mahender, who is none other than sole legal heir of plaintiff Smt. Phoolwati on the basis of her will. Thus the past conduct of the defendants in the previous litigation is not free

from blemish. In fact, it points out a needle of suspicion towards them to be actively involved in procuring the impugned release deed of suit land in this case.

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So the past conduct of the defendants in previous suit is relevant as their dubious conduct in the entire episode has come to fore. Learned trial court did not appreciate the controversy by delving deep into the matter by extracting real motive of defendants in grabbing the land of innocent, old and illiterate villager, their sister, the plaintiff.

No doubt it is the duty of the plaintiff to prove his or her case and no mileage can be drawn from the weakness of the opposite party, but here in this case, the defendants had to rebut the case of the plaintiff by vouchsafing the due execution of the release deed being free from vice of the undue influence or misrepresentation.

Hence as a sequel to my above discussion, the appeal is accepted with costs and the impugned judgment and decree passed by trial court are hereby set aside with the result that the suit filed by plaintiff before trial court is decreed whereby a decree for declaration is passed to the effect that the impugned release deed of suit land is illegal, null and void and is hereby set aside and the plaintiff is entitled for the joint possession of the suit land and a decree for permanent injunction is further passed restraining the

defendants permanently from alienating the suit land in any manner. Suit is decreed and appeal is accepted with costs throughout.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgment of reversal passed by the learned first appellate Court. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

02.08.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No