

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

**RSA No.6182 of 2014 (O&M)
Date of Decision: 17.07.2017**

Krishan and others

... Appellants

Versus

Chanderpati

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajinder Goyal, Advocate,
for the Appellants.

Mr. Sanjiv Aggarwal, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Defendants No.1 to 3 have filed this Regular Second Appeal against the judgement passed by the First Appellate Court dated 10.10.2014.

Following substantial questions of law arise in the present case:-

(i) Whether the Release Deed is an instrument of transfer? If yes, whether Release Deed can only be with respect to ancestral property?

(ii) Whether the finding of the Court that defendant No.4 - late Sh. Saroopa was not in sound disposing mind, is result of misreading of evidence?

Plaintiff had filed a suit for declaration challenging Release Deed dated 04.10.2002 executed by defendant No.4- late Sh. Saroopa in

favour of defendant – appellant Nos.1 to 3. Plaintiff, the daughter of late Sh. Saroopa claims that the suit property was ancestral, hence plaintiff was having direct interest in the property. Taking advantage of old age of defendant No.4-late Sh. Saroopa and taking advantage of their fiduciary relationship, defendants No.1 to 3 got executed the Release Deed. She came to know of the Release Deed in September, 2008 and hence she filed the suit on 02.06.2011.

In this case, defendants No.1 to 4 (including late Sh. Saroopa-defendant No.4) filed joint written statement defending the execution of the Release Deed.

After framing of issues, parties were permitted to lead evidence.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit filed by the plaintiff vide judgement and decree dated 05.01.2012.

Plaintiff filed the First Appeal. Learned first Appellate Court has allowed the appeal filed by the plaintiff. The reasons given by the first Appellate Court are: –

(i) Release Deed can only be executed with respect to the ancestral property without registration fee and since it is not established that the property was ancestral, therefore, the Release Deed is not valid.

(ii) Late Sh. Saroopa - the executant of the Release Deed was a very old person and it is established that defendant No.4 was not in sound disposing mind at the time of execution of Release

Deed.

(iii) The suit filed by the plaintiff is not time-barred as the plaintiff has pleaded knowledge in the year, 2008. Hence, the suit filed by the plaintiff is within time.

Defendants No.1 to 3 have filed the present appeal.

I have heard learned counsel for the parties and with their assistance have gone through the records as provided by the learned counsels.

With respect to the first issue, Release Deed has been mentioned in the Stamp Act. Release Deed has always been considered as an instrument of transfer. Through a Release Deed, one is entitled to transfer the property within family. Under the Stamp Act, the State government has issued notification exempting payment of stamp duty if the Release Deed is to be executed within the family. Hon'ble the Supreme Court way back in 1967 in the judgement reported as AIR 1967 SC 1395, titled *Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and another*, had held that a Release Deed can usefully be employed as a form of conveyance by a person to another having no pre-existing right. Still further, in another judgement reported 2011(2) PLR 44 titled as *Harjot Singh and others Vs. Gurjit Kaur and others*, it has been held that even self acquired property can be transferred within the family members through Release Deed. It was held that a deed called a Deed of Release, can by using words of sufficient amplitude, transfer title to one having no title before the transfer within the family. This was a case arising out of transfer of property by grandfather to the grandsons.

Plaintiff in her plaint had admitted that the property is ancestral in the hands of late Sh. Saroopa. In spite of the fact that the plaintiff had specifically admitted in the pleadings that the land in question was ancestral, still the first Appellate Court chose to record a finding that the land is not ancestral. Anyhow, in view of the observations made above, irrespective of the fact whether the land was ancestral or not, late Sh. Saroopa could execute the Release Deed and transfer the property.

In the present case, since late Sh. Saroopa did not had any son, therefore, he transferred the property to the sons of his brother i.e. nephews. It was pleaded by the plaintiff that the property is ancestral and there was no rebuttal thereto. There is no bar to transfer the property within the family members amongst themselves through a deed called Release Deed.

Learned first Appellate Court has further recorded a finding that the Release Deed was got executed when defendant No.4-late Sh. Saroopa was not in sound disposing mind. The first Appellate Court has relied upon the statement of scribe, who appeared as DW3. A reading of the statement given by DW3 - Satish Kumar would show that DW3 had only stated that hands of late Sh. Saroopa were trembling/shaking and he was having weak eyesight. DW3 did not say anything that late Sh. Saroopa was not in sound disposing mind. The learned first Appellate Court has drawn the conclusion on the ground that since hands of Saroopa were trembling and he was having weak eyesight and his thumb impressions were put with the help of persons accompanying him, therefore, late Sh. Saroopa was not in sound disposing mind.

Learned first Appellate Court has totally misread the evidence.

Learned first Appellate Court has further overlooked the written statement filed by late Sh. Saroopa. The first Appellate Court has further overlooked that the Release Deed was executed and registered in the year 2002. Photographs of late Sh. Saroopa were affixed on the Release Deed. Release Deed is a registered document, which adds to its authenticity. Merely because hands of the executant were trembling or he was having weak eyesight, it cannot be concluded that the executant was not in sound disposing mind. There is no evidence led to the effect that late Sh. Saroopa was not having sound disposing mind. Late Sh. Saroopa went to the extent of supporting the defendants and also supported the Release Deed executed by him in the year 2002.

The finding of the learned first Appellate Court that (1) late Sh. Saroopa was not in sound disposing mind is clearly beyond what has been stated by DW3. (2) I have carefully read the statement of DW3. He has not stated anything about late Sh. Saroopa being of unsound mind at the time of execution of Release Deed. The Court cannot overlook the fact that late Sh. Saroopa remained alive and died on 09.07.2009. The Release Deed was executed on 04.10.2002. If late Sh. Saroopa was not in sound disposing mind, he would have challenged the Release Deed, particularly when he remained alive for almost 07 years. Even as noticed above, late Sh. Saroopa filed a written statement contesting the suit filed by his daughter. In these circumstances, it is not possible to conclude that late Sh. Saroopa was not in sound disposing mind.

Learned first Appellate Court has further erred in recording a finding that suit filed by the plaintiff is within time. The Release Deed is a

registered instrument. As per Section 3 of the Transfer of Property Act, there is a presumption of knowledge of the registered document. Therefore, the suit was clearly beyond time. The suit for declaration can only be filed within a period of three years from the date right to sue first accrues. It is not in dispute that the land was transferred in favour of defendants No.1 to 3 after registration of Release Deed in the year 2002. Mere pleading of the plaintiff that she came to know about the Release Deed in 2008 would not make a suit to be within limitation. Once there is a statutory presumption of knowledge of registered instrument then it was for the plaintiff to prove that the aforesaid presumption stands rebutted and in fact, plaintiff had no knowledge.

Still further, plaintiff is married daughter. After marriage, she settled in her in-laws' house. Mother of the plaintiff had died when she was very young. Late Sh. Saroopu-Defendant No.4 had been living with his brother and his sons throughout. A reading of the Release Deed would show that he had transferred the property in favour of his nephews with free will and volition as he has been living with them for quite some time. As noticed above, the Release Deed is a registered document, having photographs of the executant. The release deed has been proved by examining attesting witnesses.

In these circumstances, the findings arrived at by the learned first Appellate Court are clearly erroneous and result of misreading of evidence, particularly of DW3.

In view of the discussion made, the questions of law, as noticed above, are answered in favour of the appellant.

Hence, present appeal is found to be meritorious. The same is accepted. The judgement and decree passed by the first Appellate Court dated 10.10.2014 is set aside, while restoring the judgement passed by the trial Court dated 05.01.2012. The suit filed by the plaintiff is ordered to be dismissed.

(ANIL KSHETARPAL)
JUDGE

17.07.2017
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Whether speaking/reasoned	Yes
Whether Reportable	Yes