

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2920 of 2011 (O&M)

Date of Decision: 17.12.2018

Rajesh Singh and another

.....Appellants

Vs.

Balbir Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Mohit Garg, Advocate, for the appellants.

Mr.Jasbir Mor, Advocate, for the respondent.

DR. RAVI RANJAN, J.

I have heard the parties and perused the records of this case.

The challenge in this appeal is made to the judgment and decree passed by the Additional Sessions Judge, Hisar in Appeal No.2-C-A of 2009 dated 25.01.2011 by which he has affirmed the judgment and decree passed by the Additional Civil Judge (Sr.Divn.), Hisar in Civil Suit No.288-C of 2005 dated 26.11.2008.

The appellants here were plaintiffs before the trial Court and obviously, respondent was the defendant. Civil Suit was filed for declaration that the plaintiffs are having title over half share in the agricultural lands of *Khasra* No.88//15(8—0) measuring 16 Kanals situated at Village Agroha, Tehsil & District Hisar and further that release deed bearing No.1775 dated 12.06.2001 (brought on record by the plaintiffs as Ex.P-4) is null and void without consideration and not enforceable against

misrepresentation and fraud and, thus, is liable to be set aside and subsequent entries in the revenue records are also liable to be set aside and corrected in the names of plaintiffs in place of defendant. The plaintiffs sought further relief for passing a decree of permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiffs over the aforesaid land and further, for restraining him from claiming himself to be the owner of the aforesaid land and from alienating, transferring or incumbering the property in dispute in favour of the third party.

Short facts of this case which emanate out from the respective pleadings of the parties and are necessary for consideration of *lis*, stand enumerated as under:

Plaintiffs have stated in the plaint that their father, v.i.z., Sh.Prahlad Singh purchased the aforesaid property through a Registered sale deed dated 02.07.1979 from Sh.Mool Singh son of Khubi and others. It is stated that the suit land was purchased by father of the plaintiffs out of his own earnings and, thus, it would have to be treated as self acquired property. Father of the plaintiffs died on 24.11.1997 and accordingly, plaintiffs names were mutated in his place by revenue authorities. The plaintiffs are recorded as co-owners in possession of the aforesaid land to the extent of 1/4th share each alongwith Smt.Ved Wati and Sh.Satender Pal Singh (brother of the plaintiffs). It is further alleged in the plaint that the plaintiffs were in need of money for extension of their business of Newspaper publication and the defendant, who happens to be real paternal uncle of the plaintiffs, offered financial help to the plaintiffs. The plaintiffs

obtained a loan of Rs.1,00,000/- from the defendant which was repayable on or before 12.02.2005 along with interest @ 12% per annum. The plaintiffs themselves offered the defendant to get executed some security with respect to the land and, as a result of which, the deed of release, which has been brought on record as Ex.P-4, was executed on 12.06.2001 and the same was got registered by the competent authority of the State. It is further claimed that the defendant assured that execution of the document was a mere formality and had assured that the same would be cancelled when the plaintiffs would repay the loan amount with interest. Claim of the plaintiffs is that loan, which with interest came to Rs.1,44,000/-, was paid to the defendant in the presence of certain persons and request was made to the defendant to get the release deed cancelled. However, despite assurance, even after Panchayat was also convened, the defendant did not cancel the released deed. Hence, the present suit has been filed.

It is alleged in the plaint that the release deed is without consideration and based upon fraud and misrepresentation, thus, it is liable to be set aside as it could not have been executed in favour of the defendant as the land in question was not ancestral.

In response to the summons issued, the defendant appeared and filed his written statement taking preliminary objections of maintainability, lack of *locus-standi* and cause of action, suppression of true and material facts, suit being hit by the doctrine of estoppel and law of limitation etc. The defendant came up with the statement in the written statement that the plaintiffs are educated persons who themselves signed on the release deed and thereafter, the deed of release was registered and order of mutation was

passed by the revenue authorities in favour of the defendant. As a consequences thereof, *jamabandi* was created in the name of defendant. Thus, it is contended that on the basis of the concocted story of loan, the plaintiffs are estopped from filing the suit by their own act and conduct.

The trial Court, on the basis of the pleadings of the parties, has framed the following issues:

1. Whether the plaintiffs are owner in possession of half share in the suit land and release deed bearing No.1775 dated 12.06.2001 is illegal, null and void, and not binding upon the rights of plaintiff and is based upon fraud and misrepresentation?OPP.
2. Whether the revenue records are liable to be corrected in favour of plaintiffs, as prayed for ? OPP.
3. Whether the plaintiffs are entitled to relief of permanent injunction against the interference in their possession? OPP.
4. Whether the suit of plaintiffs is not maintainable in its present form? OPD.
5. Whether the plaintiffs are estopped by their own act and conduct to file present suit? OPD.
6. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPD.
7. Relief.

The findings of the issues No.2 and 3 were returned by recording that the plaintiffs have not been able to prove that the deed of release was result of fraud and misrepresentation committed by the defendant and the mutation has already been sanctioned and the defendant is coming in possession of the suit property as would emanate from *Khasra Girdawari*

2005-06 Ex.DW4/B. It has been noticed that plaintiffs have not placed on record any document with regard to the story of getting loan from the defendant as well as repayment of the same. The plaintiffs have relied upon the sole oral evidence of PW-2 Satinder Pal Singh who has stated that, at the time of taking loan, he was not there but the plaintiffs had made repayment of the loan alongwith interest in his presence. However, the plaintiffs have neither placed on record any document regarding taking of the loan nor have they examined any witness to the effect that they have taken loan from the defendant. The trial Court, placing reliance upon the decision of the Hon'ble Supreme Court rendered in **Kuppuswami Chettiar Vs. A.S.P.A.Arumugam Chettiar and another AIR 1976 SC 1395 (cited supra) wherein** as well as **Satyesy Chander Banerjee Vs. Smt.Rani Banerjee and others AIR 1977 Calcutta 509** and also placing reliance up to the decision of this Court in **Saudagar Singh Vs. Harnam Kaur (Deceased) Now represented by Lrs and others 1987 PLJ 248,** has come to the conclusion that the plaintiffs have not able to prove that there was any misrepresentation or it was an act done by playing fraud on the defendant in getting the release deed executed. It is also noted that Ex.P-7 is a notification of Haryana Government but it does not reveal that there cannot be any execution of the deed. Ultimately, the trial Court dismissed the suit.

The appellate Court also upheld the findings recorded by the trial Court and has further held that, in view of the law laid down by the Apex court in **S.Sativel (dead) by LRs Vs. M.Venugopal Pillai and others AIR 2000 SC 2633,** while, elucidating scope of proviso (4) to Section 92 of the

Evidence Act, a contract, grant or disposition required by law to be in writing has been arrived at orally then subsequent oral agreement modifying or rescinding the said contract or disposition can be substantiated by parole evidence and such evidence is admissible, however, where under law a contract or disposition are required to be in writing and is in writing then its terms cannot be modified or altered or substituted by oral contract or disposition.

Accordingly, the first appellate Court has also dismissed the appeal. While doing that it has also taken into notice the submissions raised on behalf of plaintiffs/appellant regarding Ex.P-7, it has come to the conclusion that it is nowhere mentioned in Gazette notification of State of Haryana that release deed cannot be executed with respect to a self acquired property and also that plaintiffs having presented the ordinary deed of release and proved it to have been executed by them, they cannot seek rescindment of the document merely on the ground that it is insufficiently stamped or was not properly registered.

In view of the findings recorded above and on appreciation of submissions made on behalf of parties, this Court is also of the opinion that the law has been clearly laid down by the Hon'ble Supreme Court in **Kuppuswami Chettiar (cited supra)** holding that the earlier decision does not lay down that a deed styled as a deed of release cannot in law transfer title to one who before the transfer had no interest in the property.

In such a situation, since the case stands concluded by concurrent findings of fact by the Courts below and no substantial question of law could be raised by the learned counsel for the appellant at the time of

hearing of this matter for the purpose of admitting this appeal, the same is dismissed. However, the parties will bear their own costs.

(DR. RAVI RANJAN)
JUDGE

17.12.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No