

RSA No.3866 of 2011 (O&M)

Manoj Kumar
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RSA No.3866 of 2011 (O&M)

Dhiyan Singh and Anr.

...Appellants

Versus

Jaspal Singh and Ors.

....Respondents

Date of Order: 21.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Kumar Verma, Advocate for the appellants.

Mr. Raghubir Tejpal, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J (ORAL)

CM No.11088-C of 2013

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Delay of 9 days in filing the appeal is condoned.

RSA No.3866 of 2011

Plaintiffs-appellants are in second appeal aggrieved of concurrent judgments and decrees passed by both the courts below whereby their suit for declaration and possession laying challenge to the release deed dated 12.9.2001 executed by defendant No.4 in favour of defendant Nos.1 & 2 in respect of land in dispute, has been dismissed vide judgment and decree dated 20.4.2009 passed by learned Civil Judge (Jr. Division), Kurukshetra and affirmed in appeal by the lower Appellate Court vide judgment and decree dated 30.4.2011.

Plaintiffs-appellants instituted the suit on the premise that the

release deed dated 12.9.2001 aforesaid could not be executed in favour of grand-sons, for, the land at the hands of Joginder Singh was ancestral in nature.

Upon notice, the suit was contested by the defendants-respondents on the grounds of locus standi, maintainability, cause of action, estoppel, concealment of true and material facts and mis-joinder and non-joinder of necessary parties. It was pleaded that the suit property is self acquired property and not Hindu Family property.

On the basis of preponderance of evidence, the trial court dismissed the suit of the plaintiffs-appellants and the Appellate Court affirmed the findings in appeal.

Learned counsel for the appellants submitted that the findings recorded by both the courts below are not sustainable in law, for defendant No.4-Joginder Singh was not competent to execute the release deed since the land in dispute was ancestral. Once there is categorical admission of defendant No.4 with regard to nature and character of the property, the release deed has no legal value and is liable to be discarded but both the courts below have failed to notice the same.

Per contra, learned counsel for the defendants-respondents submitted that no error could be found with the judgment and decrees passed by both the courts below, for, the plaintiffs in order to discharge their onus, were required to lead direct and cogent evidence. Mere admission will not clothe the property to be ancestral, thus, urged this Court for affirming the findings under challenge. In support of his case, he cites a judgment of this Court reported as **Banta Singh and Ors. Vs. Phuman Singh and Anr., 1972 PLJ 275.**

After hearing learned counsel for the parties and appraising the paper book, I am of the view that there is no force and merit in the submissions of learned counsel for the appellants, for, the appellants have failed to bring on record any cogent, much less, corroborative evidence like Naksha Hakdarvar, Khatuni etc except the recital of release deed to show that the property was ancestral in nature. In my view, the appellants-plaintiffs did not have any locus standi to challenge the release deed since any admission with regard to ancestral nature of property would be of no help and not binding unless and until it is proved. Had any fraud been played upon him, he would have been a front-runner in challenging the same. Having not done so, I am of the view that the suit was nothing, but an act of aggrandizement and thus no fault could be found with the judgment and decrees passed by both the courts below.

Resultantly, the present appeal is dismissed.

May 21, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No