

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1345 of 2013 (O&M)

Date of Decision: February 02, 2018

Smt.Shanti Devi

...Appellant

Versus

Kartar Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Prashant Garg, Advocate for
Mr.Ashish Yadav, Advocate,
for the appellant.

None for the respondents.

AMIT RAWAL, J.

The appellant-plaintiff is in Regular Second Appeal against the dismissal of the suit.

Before advertng to the arguments of the learned counsel for the appellant-plaintiff, it would be apt to give brief preface of the facts.

Appellant-plaintiff instituted the suit claiming declaration to the effect that the plaintiff and defendants No.1, 7 and 8 were the owners of ancestral agricultural land measuring 176 kanals 3 marlas, situated within the revenue estate of Village Judola, Tehsil Farrukhnagar, District Gurgaon and defendant Nos.2 and 3 are the sons of defendant No.1. Defendant No.1 came back to Village Chhawla, New Delhi in the house of the plaintiff in July, 2001 and requested for partition of the suit property and claimed the share. Plaintiff believing upon his brother, came to village Judola along with her brother and got her thumb impression on some blank as well as

typed papers. The plaintiff realised that, in fact, defendant No.1 misused the said papers on which her thumb impressions were obtained and converted the same into sale deed in his favour vide Vasika No.478 dated 5.7.2001 in respect of land measuring 12 kanals 4 marlas in favour of defendant Nos.2 to 5, who are his sons and grand sons. The plaintiff, being an illiterate, simpleton and innocent villager did not know the intricacies of the legal implications. She visited the office of the Patwari and it was apprised to her that release deed vide Vasika No.476 dated 5.7.2001 of her share had been got prepared along with the sale deed, *ibid* in favour of Ajit Singh-defendant No.6, which were prepared on the instructions of defendant No.1. The challenge was laid on the premise that defendant No.1 played a fraud upon the plaintiff.

Defendant Nos.4, 5, 7 and 8 did not turn up despite service and were proceeded against *ex-parte*. The suit was contested by defendant Nos.1 to 3 and 6. In the written statement filed on their behalf, certain preliminary objections were taken and it was stated that the release deed executed by the plaintiff was her own volition and free will and no fraud had been played. A registered document carries presumption of truth unless and until the fraud is proved. Defendant No.6 also filed a separate written statement and stated that the plaintiff was no longer owner in possession of the suit property as she had sold 4 kanals of land in favour of defendant No.6.

Since the parties were at variance, the trial Court framed seven issues, including the issue of locus-standi.

In support of her case, plaintiff examined Bhoj Raj, Clerk of Sub Registrar, Farrukhnagar as PW-1 and herself appeared as PW-2 and tendered into evidence following documents:-

- “Ex.P1 : Release deed dated 5.7.2001.*
Ex.P2 : Sale deed dated 4.7.2001
Ex.P3 : Jamabandi for the year 1997-98
Ex.P4 : Jamabandi for the year 1997-98
Ex.P5 : Jamabandi for the year 1997-98
Ex.P6 : Jamabandi for the year 1997-98”

On the contrary, the defendants examined as many as five witnesses and produced on record the following documents:-

- “Ex.D1 : Release deed dated 5.7.2001*
Ex.D3 : Copy of sale deed dated 4.7.2001
Ex.D4 : Saving Bank pass Book of Ajit Singh.”

Both the Courts below dismissed the suit.

Mr.Prashant Garg Advocate for Mr.Ashish Yadav, learned counsel for the appellant-plaintiff submitted that both the Courts below have abdicated and committed perversity in not noticing the fact that a fraud had been played upon the appellant-plaintiff by defendant No.1 in getting the two documents, i.e., sale deed and release deed in favour of the respective beneficiaries. The suit was filed with promptitude, i.e., on 24.1.2002. Both the Courts below overlooked and ignored the fact that the alleged sale deed and release deed had been obtained by taking undue advantage of relationship. He also submitted that it had been proved that the appellant-plaintiff is an illiterate and Pardanasheen Lady and onus to prove the execution of the agreement was always upon the party by whosoever it had been executed. The signatures were given by the plaintiff on the pretext of partition, but did not know that the defendants converted the same into two documents. It was on account of lust of money and urged this Court for setting-aside the concurrent findings by formulating the substantial questions of law as drawn in the grounds of appeal.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the aforementioned submissions of the learned counsel for the appellant-plaintiff.

A person, who approaches the Court for setting-aside a registered document on the plea of fraud and misrepresentation or coercion, has to lead evidence in tune with what has been stated in the plaint. Order 6 Rule 4 of the Civil Procedure Code specifically provides that where in all cases in which the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, particulars have to be necessary. However, on going through the findings rendered by the Courts below, it is established that the appellant-plaintiff has miserably failed to prove the fraud. If at all, any fraud had been played upon the plaintiff, nothing prevented her to launch criminal proceedings against defendant No.1.

A registered document carries presumption of truth. The sale deed prescribes the payment of consideration. It has not been proved on record that the consideration had not been received by the plaintiff. Not only this, even plaintiff, when appeared for cross-examination, candidly admitted that she had appended her thumb impressions on the sale deed and did not deny her photograph.

As far as the sale deed is concerned, it has been specifically come in evidence that defendant No.6 withdrew the amount from the bank, therefore, it cannot be said that the sale deed was without any consideration. Ex.D4 is the bank statement with regard to the withdrawal of the amount.

As far as the release deed is concerned, there is no evidence that the plaintiff and defendant Nos.1 and 3 are the close relation to each

other. In view of the admission of the appellant-plaintiff with regard to her thumb impressions and photograph and in the absence of any ingredients of fraud and misrepresentation, the Courts below did not have any occasion but to draw an adverse inference against the appellant-plaintiff. The appellant-plaintiff has not been able to bring out a different case whether the findings fall within the realm of illegality or perversity enabling this Court to frame substantial questions of law as was urged.

In my view, the appellant-plaintiff has miserably failed to prove the ingredients of the fraud and, therefore, no ground for interference in the concurrent findings is made out. No substantial question arises for determination by this Court. Resultantly, the appeal is dismissed.

February 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No