

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 149 of 2013(O&M)

Date of Decision:31.8.2018

Mahabir Singh and another

---Appellants

vs.

Rajbir Singh through LR's and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Manoj Chahal, Advocate
for the appellants
Mr. Mohit, Advocate
for Mr. R.A.Sheoran, Advocate
for respondent No. 1

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for declaration and permanent injunction filed by the appellants-plaintiffs claiming themselves and proforma defendant to be owners in joint possession of land measuring 25 kanal, detailed in para 1 (unnumbered) of judgment of the trial court was dismissed vide judgment and decree dated 4.6.2009 that came to be affirmed in appeal by the Additional District Judge (I), Bhiwani.

The plea of the appellants-plaintiffs is that parties to the suit are real brothers and owners in joint possession of the disputed land which is their ancestral property as their father inherited the same from his father vide mutation No. 540 dated 27.5.1961. Later, father of the parties transferred the suit land in favour of Smt. Sarti Devi, mother of the parties vide mutation No. 1023 dated 18.4.1986. Smt. Sarti Devi transferred the

suit land in favour of the parties vide mutation No. 1460. Smt. Sarti Devi mortgaged the land in dispute in favour of Bhiwani Primary Cooperative Agriculture & Rural Development Bank Limited, Bhiwani for a sum of Rs. 75000/- for the purpose of poultry farm. Smt. Sarti Devi filed Civil Suit No. 55 of 2001 against parties to the suit to challenge the judgment and decree dated 1.4.1994 but the same was compromised and it was agreed that parties to the suit would discharge the entire loan liability incurred by Smt. Sarti Devi by mortgaging the disputed land. Defendant No. 1 offered to deposit the entire dues subject to mortgage of land measuring 3 kanal each of the plaintiffs and proforma defendant in lieu of shares of total amount of Rs. 92,000/-. Defendant deposited the entire outstanding amount of Rs. 92,000/- on 7.5.2002 with the bank and the mortgaged land was redeemed. The parties to the suit were liable to pay Rs. 92,000/- in equal share i.e. 1/4th share each.

On 8.5.2002, Smt. Sarti Devi withdrew the aforesaid civil suit as the entire outstanding amount had been deposited. On the same day i.e. 8.5.2002, the parties to the suit and their mother Smt. Sarti Devi came to the petition writer Sh. Om Parkash and asked him to scribe the mortgage deed in respect of land measuring 3 kanal each out of share of plaintiffs and proforma defendant in favour of defendant No. 1 for mortgage money of Rs. 69,000/-. Since the plaintiffs and proforma defendant are illiterate and rustic villagers whereas Rajbir Singh is educated person serving in the Indian Army, he got executed release deed dated 8.5.2002 in respect of land measuring 11 kanal each belonging to the appellants and 3 kanal of Chand Singh-proforma defendant. It is further averred that release deed dated

8.5.2002 is wrong, illegal, null and void, based on fraud and misrepresentation and not binding on rights of the plaintiffs.

Defendant No. 1 filed the written statement raising certain preliminary objections noticed in para 3 of the judgment of trial court. He has admitted that Smt. Sarti Devi had taken loan from the Bhiwani Primary Co-operative Agriculture and Rural Development Bank Limited by mortgaging the disputed land. It is averred that the answering defendant paid entire loan amount, therefore Smt. Sarti Devi and plaintiffs were happy with defendant No. 1 and in a family settlement, she gave the disputed land to him by executing the release deed in his favour. Mutation No. 1488 was sanctioned on 4.9.2002. All other material averments of the plaint were denied with a prayer for dismissal of the same.

The sole submission made by counsel for the appellants-plaintiffs is that as the appellants intended to execute a mortgage deed in respect of 3 kanal each by the appellants and proforma defendant in favour of defendant No. 1 as he had discharged outstanding liability of Rs. 92,000/- in respect of loan taken by their mother Smt. Sarti Devi, release deed got executed by defendant No. 1 is the result of fraud and misrepresentation. It is further argued that the courts have heavily relied upon testimony of Chand Singh-proforma defendant but as per the release deed, Chand Singh has lost land of his share only to the extent of 3 kanal whereas the plaintiffs-appellants have lost their land measuring 11 kanal each.

Counsel for respondent No. 1 has supported consistent findings recorded by the courts.

I have heard counsel for the appellants, perused the paper book

particularly the judgments impugned.

Before advertng to the submissions made by counsel for the appellants, it is pertinent to recapitulate that in regular second appeal, it is not open for the Court to re-appreciate the evidence and set aside the judgment merely because a different view is possible to be taken. Equally settled is that the second appeal can be admitted for hearing if it gives rise to a question of law.

Counsel for the appellants has failed to advance any arguments much less meaningful to assail consistent findings recorded by the Courts on the basis of appreciation of materials on record whereby plea of the plaintiffs-appellants has been negated that the release deed executed in favour of defendant No. 1 is the result of fraud and misrepresentation. As per the settled position in law, plea of fraud even in civil proceedings is liable to be proved akin to criminal charge. As the appellants have failed to substantiate their claim of agreement between the parties to execute mortgage deed in favour of respondent-defendant No. 1 when otherwise that plea gets demolished from testimony of Chand Singh who has also relinquished his claim in respect of land measuring 3 kanal vide the same release deed, I do not find any reason to differ with the well considered judgments passed by the Courts.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

31.8.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No

