

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

Regular Second Appeal No. 1526 of 2016(O&M)

Date of Decision: September 27 , 2018.

Simar Kaur

..... APPELLANT (s)

Versus

Harbhajan Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. KPS Virk, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The plaintiff-appellant is aggrieved of judgment and decree dated 31.10.2013 passed by the learned Civil Judge(Junior Division), Pehowa as well as judgment and decree dated 04.08.2015 passed by the learned Additional District Judge, Kurukshetra whereby suit filed by her for declaration with consequential relief of permanent injunction or in alternative joint possession has been dismissed.

Facts as set forth in the plaint filed by the plaintiff/appellant are that, she claimed to be the owner in possession of half share of land measuring 9

Kanals 15 Marlas out of the total land measuring 19 Kanals 10 Marlas which represented 1/3rd share of the total land as described in the plaint. It was pleaded that defendants/respondents No.1 to 3 and 5 are her real brothers. Defendant/respondent No.4 is her mother. It is pleaded that when the plaintiff came to her parental home and requested for her share in the suit-land by way of partition, defendants No.1 to 3 blatantly declared that the plaintiff has no share in the suit land and they have become owners in possession of the said property. Thereafter, the plaintiff and her husband contacted the Halqa Patwari and came to know that defendants No.1 to 3 alongwith their mother (defendant No.4) played a fraud upon the plaintiff and procured Dastbardar Nama (relinquishment deed) dated 18.11.2002 in respect of the suit land, which was registered in the office of Sub Registrar, Pehowa on the same day. Plaintiff averred that the relinquishment deed is null, void, nonest, bogus and a sham transaction being the result of fraud and misrepresentation at the instance of defendants No.1 to 3, who had represented to the plaintiff that the suit land has to be pledged with the bank for the purposes of obtaining loan to purchase a tractor for cultivation of the joint land in question including the suit land. It was further pleaded that it was represented before the plaintiff that she as well as her mother, defendant No.4 would have to execute the mortgage deed in favour of the bank. Relying upon the said representation, the plaintiff visited Tehsil complex Pehowa on 18.11.2002 where the relinquishment deed was prepared in collusion with the deed writer and witnesses thereof. It was pleaded that the plaintiff signed the abovesaid document under the impression that it was the mortgage deed being executed in favour of the bank for obtaining a loan for the tractor and she never signed the

document after reading the same and neither were the contents thereof read over to her. Mutation No.1378 was sanctioned on 05.12.2002 on the basis of the said relinquishment deed. Plaintiff further averred that in case she had wished to relinquish her rights in the suit land, she would have done so in favour of all the four brothers and not just three of them. Defendants No.1 to 3 threatened to alienate the plaintiff's share. Hence, the suit was filed on 13.01.2011.

Suit was resisted by defendants No.1. to 4. Written statement was filed taking various preliminary objections. Averments on merits were controverted. The said defendants pleaded that they were absolute owners in possession of the suit land. It was denied that any fraud was played upon the plaintiff or that the relinquishment deed dated 18.11.2002 was a document procured by fraud or misrepresentation. The plaintiff had herself out of her own free will alongwith her mother remained present at the office of the Sub-Registrar. It was averred that since no share of the plaintiff's property was given to defendant No.5, the 4th brother, he has misguided the plaintiff to file the present suit. Dismissal of the suit was prayed for.

Defendant No.5, the 4th brother filed a written statement admitting the claim of the plaintiff.

From pleadings of the parties, the following issues were framed by the learned trial court:-

1. Whether the relinquish deed dated 18.11.2002 and mutation No.1378 is illegal, null and void? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD.

5. Whether this Court has no jurisdiction to try and entertain the present suit?OPD
6. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.
7. Whether the plaintiff has come to this Court with clean hand and concealed the true and material facts from the Court? OPD.
8. Whether the suit of the plaintiffs is hopelessly time barred? OPD.
9. Relief.

Both the parties led evidence to substantiate their respective case in support of their respective pleas.

The learned trial court on the basis of the facts, circumstances and evidence on record dismissed the suit of the plaintiff vide judgment and decree dated 31.10.2013 while holding that the plaintiff had failed to prove her contradictory plea of fraud and misrepresentation. The suit was also held to be barred by limitation. Appeal filed by her was also dismissed by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 04.08.2015. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the appellant/plaintiff. It is contended that present appellant intended that her share should be divided equally between all her four brothers and not just between defendants No.1 to 3 as has been done vide relinquishment deed dated 18.11.2002. This fact has not been considered by both the learned courts below. Moreover, it is duly proved on record that the said relinquishment deed was executed under the undue influence exerted upon the plaintiff by defendants/respondents No.1 to 4. Furthermore, the learned trial court, it is urged, has rendered contradictory findings to the extent that it has been observed

that the appellant's suit is barred by limitation, whereas issue No.8 has been decided in her favour. It is thus prayed that this appeal be allowed and impugned judgments and decrees be set aside. Consequently, the suit filed by the plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the photocopy of the record, furnished in Court today by learned counsel for the appellant.

It is not disputed that the appellant's father Jaimal Singh passed away in the year 1985. He was survived by his four sons, defendants No.1 to 3 and 5, the present appellant (his daughter) and his widow, defendant No.4. The present suit was filed on 13.01.2011 after the lapse of so many years. Even if it is held that the suit filed by the appellant is not time barred as she claims relief on the basis of title, there is indeed no explanation for the appellant, sleeping over her rights for all these long years. The case set up by the plaintiff is that the duly registered relinquishment deed dated 18.11.2002 is null and void, nonest, bogus and a sham transaction being the result of fraud and misrepresentation. The plaintiff/ appellant claims 1/6th share of the property in question. It is the specific case of the appellant that the relinquishment deed was procured by defendants No.1 to 4 in a fraudulent manner on account of misrepresentation and exerting of undue influence upon her. It was incumbent upon her to prove the same but she has miserably failed to do so. Certain facts which are extremely material in this respect are that the plaintiff/appellant has admitted her signatures and photograph on relinquishment deed (Ex.P1), though it is contended that it was due to fraud, misrepresentation and paradoxically undue influence on her that the

relinquishment deed was executed. It is not disputed that the appellant's father died in the year 1985. The relinquishment deed was executed a number of years thereafter in the year 2002.

DW1 Ram Phal, deed writer has specifically deposed that he scribed the relinquishment deed (Ex.P1) and contents thereof were read over to the parties who signed/affixed their thumb impressions after understanding the contents thereof. The said document is a duly registered document before the Sub Registrar, Pehowa. Mutation (Ex.P2) was thereafter sanctioned on 05.12.2002 in favour of respondents No.1 to 3 qua the share of the appellant/plaintiff. The entire suit land as well as the one held by all the four brothers was adjoining. All the four brothers were cultivating the land of their share separately. It cannot be presumed that the appellant was not even aware thereof.

The learned appellate court has rightly observed that the entire case set up by the plaintiff is doubtful as it is highly improbable that in case relinquishment deed had been procured in a fraudulent manner or by misrepresentation, respondent No.5 (the 4th brother of the plaintiff) did not inform her of the same at the very outset. Respondent No.5 at no stage demanded his share in the part of the land relinquished by the plaintiff in favour of the other three brothers. Both the learned courts below have rightly held that the plaintiff has failed to prove that the relinquishment deed dated 18.11.2002 was a result of any kind of fraud, misrepresentation or undue influence.

Another argument raised vociferously by learned counsel for the appellant is that the plaintiff/appellant intended her share to be divided equally between all her four brothers and not amongst just three of them, as has been

done vide relinquishment deed dated 18.11.2002. This argument is devoid of any merit. Perusal of the record produced in Court today reveals the appellant/plaintiff nowhere pleaded that she intended her share to be divided equally between her four brothers. In fact, it is specifically pleaded that she never had any intention to relinquish her share in the property and she intended to remain the owner thereof. The contradiction in the judgment and decree passed by the learned trial court to the extent that in para 12, it is mentioned that the suit of the plaintiff is barred by limitation while deciding Issue No.8 in favour of the plaintiff is irrelevant and immaterial in the facts and circumstances of the case.

I am of the considered opinion that there is no question of law much less substantial question of law which arises for adjudication in this regular second appeal. Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 31.10.2013 and 04.08.2015 passed by the learned Civil Judge (Junior Division), Pehowa and the learned Additional District Judge, Kurukshetra, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

September 27, 2018.
'om'

(LISA GILL)
JUDGE

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