

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

RSA No.2867 of 2016
Date of Decision.14.05.2018

Shammi Devi

.....Appellant

Vs

Lakesh Kumar @ Rocky

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Mittal, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration of according ownership of the suit property by laying challenge to the release deed dated 21.05.2002 by deceased-husband in favour of his real brother by the trial Court and affirmed by the lower Appellate Court.

Mr. B.S. Mittal, learned counsel appearing on behalf of the appellant submitted that there was a matrimonial discord between the husband and wife as the appellant-plaintiff had instituted the case for maintenance. As a counter-blast, her husband (since deceased) had executed the release deed *ibid*, though the property at the hands of Ashok Kumar was ancestral and therefore, it could not have been alienated in the manner and mode done, except for legal necessity. The suit was filed on 15.06.2009. During all this period, there was a litigation, therefore, the suit was well within limitation as he died in March, 2009.

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

submissions of Mr. Mittal, for, the appellant-plaintiff failed to prove on record any document that the property at the hands of Ashok Kumar was ancestral. In the absence of nature and character of the property, it was obligatory upon the appellant-plaintiff to prove the ingredients of fraud and misrepresentation being played upon the husband while executing the release deed.

The argument that the release deed required registration would not also come in the way of defendant, for, there was a matrimonial discord. Moreover, the property can be transferred in the family with stamp duty.

All these factors weighed in the mind of the Courts below while rendering the concurrent finding of fact and law. The argument of Mr. Mittal has not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 11, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No