

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

**RSA No.1472 of 2015 (O&M)
Date of Order:22.11.2018**

Jai Narain through Kiran Poonia

..Appellant

Versus

Sanjay Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goyal, Advocate,
for the appellant.

Mr. Bhupinder Singh, Advocate,
for respondent nos.1, 5 and 6.

Mr. J.C.Malik, Advocate,
for respondent nos.3 and 4.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Plaintiff, who has transferred through relinquishment deed his property in favour of his 2 sons and grand children of 3rd pre-deceased son, through a registered instrument has challenged the transfer of the property on the ground that it is on account of mis-representation.

Defendants contested the suit and pleaded that the relinquishment deed was executed on account of an earlier family settlement and in fact through the relinquishment deed only share of Raju, son of the plaintiff, has further been transferred in favour of Neeru, his wife as Raju, who was in relationship with some other lady.

Both the courts after appreciation of evidence have found that

the plaintiff who has retired as Executive Engineer from Delhi was not an illiterate person and once he admitted execution of the document and his signatures, there is no evidence of mis-representation.

Learned counsel for the appellant has argued that the circumstances prove that relinquishment deed was never intended to be a relinquishment deed and in fact he wanted to execute a Will. He submitted that the entire property was transferred in favour of children and grand children, which is not expected from an educated person. He further submitted that scribe has stated that the document was never read over to him. He further submitted that since the property was a self acquired property as held by the learned first appellate court, therefore, it is to be treated as a transfer deed and hence relinquishment, which is only permissible with respect to ancestral property is void.

This court has considered the submissions and gone through the judgments passed by the courts below.

As regards argument of learned counsel for the appellant with regard to circumstances, it may be noted that the transfer is in favour of one son, second daughter-in-law of the second son and 3rd in favour of grand children of pre-deceased son. Plaintiff has retired as an Executive Engineer from Delhi. The Executive Engineer cannot be equated with an illiterate person. Transfer is not to an outsider. Hence, the argument of learned counsel with regard to circumstances does not create a dent in the correctness of the judgment passed by the courts below.

As regard second argument that the scribe had never read over the relinquishment deed, it may be noticed that normally oral evidence cannot be used to create a doubt on the correctness of the registered

document. Still further Jai Narain has admitted that the document was read over to him by Raju, his son.

Next argument of learned counsel with regard to the fact that the relinquishment deed could not be executed since, the property has been held to be self acquired. It may be noted that once it is a registered document and on reading of the document, it is apparent that Jai Narain wanted to transfer the property, the difference would be only of stamp duty which can only be recovered by the State. The Hon'ble Supreme Court while dealing with such release/relinquishment deeds in the case of **Kuppuswami Chettiar v. Arumugam Chettiar, AIR 1967 SC 1395** have held that such release deed/relinquishment deeds are instruments of transfer of the property if found using words of sufficient amplitude. It has been held that transfer of title from one who was having no title, is a valid transfer through relinquishment deed. No doubt, learned counsel for the appellant has cited certain judgments which do not notice judgment passed by the Hon'ble Supreme court.

Still further, this court has also followed the judgment passed by the Hon'ble Supreme court in the case of **Harjot Singh and others v. Gurjit Kaur and others, 2011(2) PLR 44.**

Keeping in view the aforesaid facts, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the courts below.

The regular second appeal is dismissed.

November 22, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No