

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

**RSA No.6874 of 2016 (O&M)
Date of Decision.12.03.2018**

Mir Singh

.....Appellant

Vs

Sukhdei and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Varun Gupta, Advocate
for the appellant.

-. -

AMIT RAWAL J.(ORAL)

C.M. 17874-C of 2016

For the reasons stated in the application, delay of 61 days in re-filing the appeal is condoned.

Application is allowed.

C.M. No.17876-C of 2016

For the reasons stated in the application, delay of 23 days in filing the appeal is condoned.

Application is allowed.

RSA No.6874 of 2016

The appellant-plaintiff is in regular second appeal against the concurrent finding of fact whereby the suit challenging the Release Deed dated 22.09.2006 in favour of defendant Nos.2 and 3 as well as sale deed dated 07.04.2011 in favour of defendant No.4 with consequential relief of permanent injunction had been dismissed by the trial Court and upheld by the lower Appellate Court.

The appellant-plaintiff instituted the suit challenging the act of Defendant No.1-Sukhdei of execution of registered release deed in favour of Dara Singh and Bhagat Singh i.e. defendant No.2 and 3 respectively in respect

of land prescribed therein i.e. 28 bighas 2 biswa 4 biswani on the premise that it was a result of fraud played upon her by defendant No.2 and 3. The aforementioned release deed did not have the appropriate stamp papers in view of the amendment in the Indian Stamp Act i.e. Haryana Amendment Act, 2000. The challenge was also laid to sale deed dated 07.04.2011 whereby defendant No.2 and 3 had further passed on title to defendant No.4. It was stated that the suit property at the hands of Sukhdei was ancestral in nature.

The aforementioned suit was contested by defendant No.1 to 3 and 5 on the premise that the release deed was legal and just as well as the sale deed dated 07.04.2011. Both the aforementioned documents carry presumption of truth being registered one. Defendant No.4 filed separate written statement and took up the plea that he was bona fide purchaser of the suit land for a valuable consideration as per the provisions of Section 41 of the Transfer of Property Act.

The plaintiff filed the replication controverting the aforementioned pleas.

On the basis of pleadings, the trial Court framed the following issues:-

- “1. Whether the suit of the plaintiff is entitled to a decree for declaration and permanent injunction as prayed for? OPP*
- 2. Whether the suit of the plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the suit is not maintainable in the present form?*
- 5. Relief.”*

The plaintiff examined himself as PW1, Ramesh Kumar Kakkar

as PW2 and tendered into evidence following documents:-

- Ex.P1 : Copy of jamabandi for the year 1985-86.
- Ex.P2 : Copy of jamabandi for the year 1985-86.
- Ex.P3 : Copy of mutation No.4066.
- Ex.P4 : Copy of sale deed dated 07.04.2011.
- Ex.PW2/A to Ex.PW2/C: Copies of legal notice dated 28.4.11.
- Ex.PW2/D to Ex.PW2/F: Postal receipts of legal notice.
- Ex.P5 : Copy of mutation No.3788.
- Ex.P6 : Copy of mutation No.917.
- Ex.P7 : Copy of mutation No.244.
- Ex.P8 : Copy of Death Certificate of Sukhdei.
- Ex.P9 : Copy of sale deed dated 22.09.2006.

On the other hand, defendants examined Shyamlal as DW1, Dara Singh as DW2, Vinod Kumar as DW3, Devender Singh as DW4 and tendered into evidence following documents:-

- Ex.D1 : Copy of resolution dated 02.04.2014.
- Ex.D2 : Copy of Delhi High Court order dated 16.03.2012.
- Ex.D3 : Certified copy of sale deed dated 7.4.2011.
- Ex.D4 : Certified copy of release deed dated 22.09.2006.
- Ex.D5 : Copy of mutation No.4066.
- Ex.D6 : Certified copy of mutation No.3788.
- Ex.D7 : Copy of sale deed dated 03.08.2011.
- Ex.D8 : Copy of mutation No.4474.
- Ex.D9 : Copy of mutation No.4474.

Ex.D10 to Ex.D12: Copies of jamabandi for the year 1985-86.

Ex.D13 to Ex.D16: Copies of Khasra Girdawari

Ex.D17 : Copy of sale deed.

The trial Court on the basis of preponderance of the evidence dismissed the suit, which has been upheld by the lower Appellate Court, hence second appeal.

Mr. Gupta, learned counsel appearing on behalf of the appellant-plaintiff submitted that the suit property at the hands of Sukhdei was ancestral and therefore, she could not alienate the property as the appellant-plaintiff was son of brother of Phool Singh, her husband, therefore, he was class II heir as both the husband and wife did not have child. The status of defendant No.2 has been reflected in the release deed as grand-son, which is factually incorrect. No evidence has been placed on record to establish that there was grandson of Sukhdei, therefore, a fraud was played upon Sukhdei. The release deed was not on appropriate stamp papers, which as per the 2000 amendment was required to be affixed. The aforementioned document was not legally permissible or admissible or would have a force in law. All these factors have not been looked into by both the Courts below, therefore, there is illegality and perversity.

In order to buttress his arguments, he further submitted that the property was ancestral in nature and therefore, the appellant-plaintiff had a right by birth.

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. Gupta. For the purpose of challenging the registered document on the basis of fraud, misrepresentation and coercion, Order 6 Rule 4 CPC statutorily provides that a person has not only to plead the fraud but to prove the same.

Sukhdei concededly died in the year 2011, for, all the five years she was

alive, she was not affected with the aforementioned document nor she filed any complaint to the police for having played fraud upon her. It has been seen by this Court that many claimants erupt after demise of a person claiming right in the property on various grounds including the fraud. The registered document carries a presumption of truth. The ingredients of fraud have not been proved to the hilt for enabling this Court to form an opinion in favour of the appellant-plaintiff.

The nature and character of the property as ancestral has to be proved as per Para 221 of the 21st Edition of Mulla Hindu Law whereby a person has to be 4th generation in lineage. No documentary evidence has been placed on record to prove the same. Even otherwise, the High Court Rules and Regulations as approved by this Court in **Banta Singh and others Vs. Phuman Singh and others 1972 PLJ 275**, the original excerpt is required to be placed on record. The aforementioned evidence is conspicuously wanting and therefore, in my view, the appellant-plaintiff has failed to discharge the onus as enshrined under Article 101 of the Indian Evidence Act.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for consideration in the second appeal. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 12, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No