

RSA No.6097 of 2015 (O&M)

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

RSA No.6097 of 2015 (O&M)

Date of decision: 15.01.2018

Karam Singh

.....Appellant

versus

Harnek Singh (since deceased) through his LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. J.S. Khattar, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

CM-15247-C of 2015

For the reasons mentioned in the application, same is allowed.

Delay of 46 days in refiling the accompanying appeal is condoned.

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Through this Regular Second Appeal challenge has been laid to the judgment and decree dated 09.04.2015 of the First Appellate Court, reversing the judgment and decree of the trial Court dated 17.04.2014.

Put pithily, appellant-plaintiff filed a suit for declaration to the effect that he was owner in possession of the suit land measuring 9 bighas 12 biswas situated at Village Manakpur, Tehsil and District Ambala, laying challenge to the agreement/writings dated 23.10.2001 and 15.02.2002 executed by him regarding the suit land alleging that the same were illegal and wrong being the result of fraud and mis-representation.

Simultaneously, relief of permanent injunction was also sought for restraining the respondents-defendant from alienating or transferring the suit land in any manner whatsoever. It was pleaded that Harnek Singh

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predecessor-in-interest of the respondents-defendant, though was the real son of the appellant-plaintiff, but was not having cordial relations with him. Deceased Harnek Singh was regularly coercing the appellant-plaintiff for transferring the suit land in his favour. Finally in collusion with the ex-sarpanch and local police, he succeeded in obtaining the aforesaid agreement/writings dated 23.10.2001 qua land measuring 5 bighas 9 biswas comprising khasra No.888/307/129 from the appellant-plaintiff by exercising undue influence and coercion upon him. In fact, deceased Harnek Singh with the help of police got challaned the appellant under Sections 107/151 Cr.P.C. by getting recorded a false DDR No.33 dated 07.03.2002 and obtained two different agreement/writings on 15.02.2002 forcibly and illegally from the appellant-plaintiff.

Deceased Harnek Singh contested the suit by filing written statement, wherein he while denying the allegations pleaded that all the three writings aforesaid were executed by the appellant-plaintiff with his own free will and consent, because of inter se relationship of father and son in between them. That apart, appellant-plaintiff had also agreed to give more land to him as per his share in the ancestral property.

After framing of issues, appellant-plaintiff filed an application under Order 6 Rule 17 CPC for amendment of his plaint, but before its decision defendant Harnek Singh died and upon the application of the appellant-plaintiff, widow of Harnek Singh namely, Shinder Kaur, daughter Rupinder Kaur and one lady Smt. Palwinder Kaur step-mother of deceased Harnek Singh were impleaded as party.

Smt. Palwinder Kaur so-called step-mother of deceased Harnek Singh filed consented written statement admitting the claim of the appellant-plaintiff. After framing of necessary issues and recording

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evidence of both the sides, the trial Court decreed the suit of the appellant-plaintiff vide judgment and decree dated 01.10.2010.

On coming to know of the said judgment and decree dated 01.10.2010, widow and daughter of deceased Harnek Singh challenged the same by way of first appeal pleading that Palwinder Kaur being step-mother of deceased Harnek Singh and second wife of the appellant-plaintiff, was not the legal representative of deceased Harnek Singh from any angle.

The First Appellate Court after hearing both the sides, vide judgment and decree dated 04.12.2012 set aside the judgment and decree of the trial Court dated 01.10.2010 and remanded the case for fresh decision.

Resultantly, the trial Court after hearing both the parties vide fresh judgment and decree dated 17.04.2014 decreed the suit of the appellant-plaintiff in toto.

Being aggrieved, respondents-defendant challenged the said judgment and decree dated 17.04.2014 before the First Appellate Court, who while reversing the findings of the trial Court, dismissed the suit vide judgment and decree dated 09.04.2015 holding that all the aforesaid writings were genuine and valid, in favour of deceased Harnek Singh duly executed by the appellant-plaintiff voluntarily and, therefore, he had no case in his favour.

Learned counsel for the appellant contended that the First Appellate Court failed to appreciate that deceased Harnek Singh, who was none else, but real son of the appellant-plaintiff, by getting challaned the appellant under Sections 107/151 Cr.P.C. with the help of local police under coercion and threat got executed two writings dated 15.02.2002 from the appellant and since the same were the result of undue influence, mis-

representation and fraud, therefore, had no binding effect upon the

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appellant. Similarly, writing dated 23.10.2001 was got executed from the appellant in connivance with the ex-sarpanch and local police by deceased Harnek Singh. The judgment of the trial Court was well-reasoned being based on evidence, therefore, the First Appellate Court ought not to have set aside the judgment and decree of the trial Court dated 17.04.2014.

Having given anxious consideration to the submissions made by learned counsel for the appellant, I find the instant appeal completely devoid of any merit for the reasons to follow.

Admittedly, the suit land as well as the other property in the hands of the appellant was ancestral in nature and, thus, was having the character of coparcenary property in between him and his only son deceased Harnek Singh inasmuch as other son of the appellant namely, Swaran Singh, from his second wife had expired in his childhood and his share had devolved upon his second wife namely, Smt. Palwinder Kaur.

The appellant in his cross-examination specifically admitted the birth of four daughters and one son from his second wife and the death of his son Swaran Singh and that all his daughters were married.

The first document/writing, to which challenge has been laid by the appellant is Ex.PW4/B dated 23.10.2001 (original of which is Ex.D1). From the testimony of DW5 Anil Kumar Verma, Stamp Vendor and DW4 Mela Singh, an official of the D.C. Office, Ambala, it was well proved by the respondents-defendant on the record that the same was executed by the appellant-plaintiff with his own free will and consent inasmuch as aforesaid witnesses categorically testified that appellant-plaintiff had purchased the stamp paper for the execution of the aforesaid writing/agreement.

The appellant-plaintiff has also laid challenge to other two writings/documents Ex.PW3/A (original of which is D2) and Ex.PW4/C on

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the ground that same were got executed from him under undue influence, coercion and threat by deceased Harnek Singh with the help of local police and in connivance with the ex-sarpanch. The respondents-defendant again were able to prove the due execution of the above documents by the appellant-plaintiff with his own free will and consent without any undue influence or threat from any corner inasmuch as DW3 Kashmiri Lal Verma, Document Writer, deposed that writing/agreement Ex.D2 was drafted by him under the instructions of appellant-plaintiff "*Dastardar*". The contents of the same were read-over and explained to Karam Singh and after admitting the same to be correct, Karam Singh had affixed his thumb impression on the same at point 'D'.

DW6 Vikas Man, Stamp Vendor, while corroborating the statement of DW3 Kashmiri Lal Verma, Document Writer, testified that the stamp papers for the agreement Ex.D2 were purchased by Karam Singh himself and he had made entry to this effect in his register at Sr. No.21549 dated 15.02.2002. Writing/agreement PW4/C, though it is executed on non-judicial stamp paper and has been referred to as "*Ikrarnama Khangri*" (family settlement) in between the appellant-plaintiff and deceased Harnek Singh, has also been attested by as many as six witnesses.

Now it has to be looked into that as to whether any undue influence, coercion or threat was exercised upon the appellant-plaintiff at the time of execution of documents Ex.D1 and D2 by getting recorded a false DDR against him and confining the appellant-plaintiff in police custody for one day. Man may speak lie but circumstances not. DDR No.33 dated 07.02.2002 (Ex.PW2/A) was got recorded by respondent Shinder Kaur against his own husband deceased Harnek Singh as well as against his father-in-law appellant Karam Singh. According to the search

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memo Ex.PW2/B, both of them were arrested, challaned and medico-legally examined. Appellant-plaintiff Karam Singh was found under the influence of liquor. According to the aforesaid DDR, father and son quarrelled with each other and they both were kept in custody for a night in the police station. Therefore, it does not lie in the mouth of the appellant-plaintiff that deceased Harnek Singh had any undue influence over the local police.

Since both the aforesaid documents/writings Ex.D2 and Ex.PW4/C are of 15.02.2002 and the appellant-plaintiff was confined in police station only for one night of dated 07.02.2002, therefore, it cannot be presumed or assumed from any angle that both the aforesaid documents could be got executed from the appellant-plaintiff after eight days of his release from the police custody.

It is pertinent to mention here that DW8 Ashok Kumar, typist in Sessions Court Record Room, while bringing the case file of civil appeal No.117 of 2012 testified that a compromise dated 15.02.2011 Ex.DW1/1 was lying on the Court file. Therefore, from any angle the plea of fraud, mis-representation, undue influence and coercion taken by the appellant-plaintiff was not proved by him.

From the statement of DW1 Baldev Singh, ex-sarpanch, it has come on the record that appellant-plaintiff was having more than 100 bighas of land and he had alienated most of the land due to his vices, including consumption of liquor and narcotics and that he had transferred around 22 bighas of land in the name of his second wife Palwinder Kaur. This witness further deposed that his behaviour towards his lonely son from his first wife namely, Harnek Singh was discriminating and biased due to a step-mother in the house. This witness also testified that appellant-plaintiff with his own

free will and consent had voluntarily transferred 9 bighas and 12 biswas of

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land to the respondent in his presence. While executing documents Ex.D1, Ex.D2 and Ex.PW4/C, the appellant had bound himself to not to claim any right or title in the land measuring 9 bighas 12 biswas given by him to the respondents-defendant in partition.

Since different witnesses examined by the respondents clearly proved the due execution of the aforesaid documents voluntarily by the appellant-plaintiff, therefore, the same have rightly been held genuine by the First Appellate Court inasmuch as during the pendency of the litigation, as discussed above, compromise Ex.DW1/1 was also effected between the parties duly signed by the appellant-plaintiff, whereby he had agreed to waive of his rights in 2 killas of land in favour of widow and daughter of deceased Harnek Singh, which had earlier been given to deceased Harnek Singh in lieu of withdrawal of a cheating case against the appellant-plaintiff.

I have gone through the impugned judgment of the First Appellate Court and find no ambiguity or illegality in the same. No question of law muchless substantial arises for consideration in this appeal.

In view of the discussion above, this appeal being devoid of any merit, is hereby dismissed.

January 15, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.