IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.1153 of 2018 (O&M)
Date of decision:20.02.2018

Kali Ram ... Appellant

Vs.

Darshana ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sant Lal Barwala, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit claiming declaration to the effect that he is owner in possession of land measuring 90 kanals 16 marlas being ½ share of 181 kanals 12 marlas comprised in khewat no.116/113, khatuni no.137 as per jamabandi for the year 2002-03 situated at village Sarsod, Tehsil and District Hisar; with a further declaration that the defendant had no concern, title or interest in the property as plaintiff had not executed and registered the release deed bearing no.1032 dated 30.07.2007 and consequently, mutation bearing No.2841 dated 5.9.2001 being illegal, null and void, has been dismissed by the trial Court and upheld by the Lower Appellate Court.

The appellant-plaintiff instituted the suit aforementioned on the relief as indicated above on the premise that he was not only mis-

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represented but fraudulently made to execute the registered release deed bearing No.1032 dated 30.07.2007 from the office of Sub Registrar Barwala in favour of the defendant as he never intended to do so nor was competent. The plaintiff being gentle, illiterate and rustic villager did not know the intricacy of law whereas, the defendant was very clever person despite the fact that she was his wife got the aforementioned documents surreptitiously.

The aforementioned suit was contested by the defendant on the ground that plaintiff was not the owner of land measuring 90 kanals 18 marlas being ½ share of total land measuring 181 kanals 12 marlas, whereas, the release deed was legal, competent, valid and without any pressure, much less, registered document carries a presumption of truth.

On the basis of the aforesaid pleadings, the trial Court after examination of the documents placed on record by both the respective parties as mentioned in paragraphs 6 and 7 of the judgment, dismissed the suit.

Mr. Sant Lal Barwala, learned counsel for the appellant-plaintiff submitted that judgments and decrees of both the Courts below suffer from illegality and perversity as both Courts have abdicated in not appreciating the fact that relationship between husband and wife were not cordial, therefore, there was no occasion for the appellant to execute the registered sale deed in favour of the defendant-respondent. The possession of the suit land always remained with the plaintiff. The contents of the documents, release deed Ex.P7 and Ex.D1 revealed that fraud had been played upon the appellant as it was self acquired property. He could not

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have parted with the entire property to wife during his life time. The witness failed to prove the execution of the document but the evidence has not been adverted to in correct perspective.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sant Lal Barwala, Advocate.

The registered document carries a presumption of truth. The plaintiff was owner of the property. The ingredients of fraud, as per provisions of Order 6 Rule 4 of Code of Civil Procedure, have not been proved. Even no witness has been examined to establish that release deed of July 2007 was executed by playing fraud and mis-representation upon the plaintiff. The suit was instituted on 06.09.2010, whereas, the document under challenge is dated July, 2007. No explanation has come forward in not challenging the aforementioned document within a period of three years. The registered document is required to be challenged within a period of three years. It is not a case of the appellant that he did not know about the document and acquired the knowledge only in the month of September, 2010 when he filed the suit. It has come on record that relationship between husband and wife became strange and suit was fall out of the same. I am of the view that the plaintiff has miserably failed to prove the ingredients of fraud.

In view of what has been observed above, I do not intend to differ with the findings rendered by both the Courts below which are based

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upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 20, 2018
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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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