

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

RSA No. 1330 of 2018(O&M)

Date of decision: 8.10.2018

Malti Devi (deceased) through her LRs Sukhpal Singh and others
.....Appellant

VERSUS

Sukhbir Singh and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vikram Rathore, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

CM No.12350-C of 2018

Heard.

Allowed as prayed for.

Affidavit of Sh. Vikram Rathore, Advocate, is taken on
record.

Disposed of accordingly.

RSA No.1330 of 2018

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration with permanent injunction and joint possession as consequential relief by challenging release deed bearing No.6199/1 dated 12.03.2010 in respect of 1/4th share in land measuring 51 kanal 16 marlas was dismissed by the trial Court vide judgment and decree dated 13.10.2014 that came to be affirmed in appeal by the Additional District Judge, Kaithal.

Smt. Malti Devi daughter of Sh. Kundan inherited 1/4th share in suit land on the basis of inheritance to her father Sh. Kundan with her siblings Kitab Singh, Sube Singh and Smt. Gaindi Devi. Smt. Malti Devi purportedly executed release deed dated 12.03.2010 in favour of Sukhbir son of Kitab Singh, her nephew. She challenged the release deed being illegal, null and void and not binding upon her rights and sought declaration that she is joint owner in possession of suit land and permanent injunction restraining the respondent/defendant from alienating the suit land or raising any construction thereon without partition or interfering in possessory rights of the appellant/plaintiff.

The Courts have recorded consistent findings negating plea of the plaintiff/appellant that the release deed has been prepared in the circumstances pleaded by the appellant or the same is the result of misrepresentation etc.

The sole submission made by counsel for the plaintiff/appellant is that Raj Kumar, Namberdar DW-3 examined by the respondent/defendant to prove the release deed, had stated in para 3 of affidavit filed by way of examination in chief that Malti Devi put her signatures when the release deed was registered by Sub Registrar, Kaithal but in his cross examination, he had stated that Malti Devi is illiterate and she affixes her thumb impression. He further denied that portion A to A1 in his affidavit is wrong wherein he had stated about putting signatures by Malti Devi. It is vehemently argued that this discrepancy in the case of respondent is sufficient to assail correctness of judgments passed by the Courts.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

Before adverting to the submissions made by counsel for the appellant, it is pertinent to note that civil dispute is to be decided on the basis of balance of probabilities. There cannot be any dispute that statement of a witness is to be read as a whole and a litigant cannot take advantage of a single sentence in a statement. The mere fact that Raj Kumar DW-3, in para 3 of the affidavit, has mentioned about putting signatures by Malti Devi is not sufficient to hold that the judgments passed by the Courts suffer from perversity or raise a question of law that needs determination in second appeal particularly in the circumstances that in para 2 of the affidavit, he had categorically stated that after the release deed was prepared by Ramesh Gupta, Vasika Nawis, the same was read over to Malti Devi and Malti Devi after understanding and accepting it correct put her thumb impressions and he (Raj Kumar) signed the same and Parmod Kumar, another witness also signed it. In this view of the matter, no error much less perversity can be noticed in judgments impugned, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs. As the appeal has been decided on merits, application for condonation of delay of 375 days in re-filing the appeal is of academic relevance only.

OCTOBER 8, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no