

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

108

RSA-294-2017 (O&M)

Date of Decision : 01.10.2018

Abhay Ram (since deceased) through LRs.

..... Appellants

Versus

Ved Parkash and others

.... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI**

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Present: Mr. K.S. Khehar, Advocate  
for the appellants.

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**AJAY TEWARI, J. (ORAL)**

This appeal has been filed against the judgments of the courts below dismissing a suit filed by the appellants.

The case of the appellants was that they and the respondents were relatives. On 13.02.2009, a family settlement was arrived at as per which the appellants had agreed to relinquish their rights in favour of the respondents-defendants qua agricultural land but no such settlement was arrived in respect of the residential plots and bara. In pursuance to the above said family settlement the respondents-defendants got scribed a release deed in their favour on 10.09.2009 and called the appellants for putting their thumb impression on 14.09.2009 on the above release deed for registration. The appellants having faith on the respondents-defendants reached the Registrar Office and executed the document and got the same

registered. However, they later came to know that by fraud the respondents had got included the bara and the residential plots also in the release deed illegally without there being any agreement on the part of the appellants for the same.

The case of the respondents-defendants was that no fraud had been practiced upon the appellants & the release deed had been genuinely executed.

Both the courts below held that the appellants were not able to prove that any fraud had been practiced on them and consequently dismissed the suit.

Counsel for the appellants has argued that on the alleged deed it was not written that it was read over and explained to the executant and this vindicates the stand that the appellants had signed it in good faith, being near relatives, without understanding its true import. He has relied upon a judgment of the Supreme Court in the matter of ***Benga Behera and Another vs. Braja Kishore Nanda and others, 2007(3) R.C.R. (Civil) 240*** and has drawn the attention of this Court to paragraph No.14 of the judgment which is as under:-

*“14. If he had put his signature before the testatrix had put her thumb impression on the sale deed and the Will, he does not answer the requirement of attesting witness. He was not aware of any other person attesting the Will and the sale deed. P.W.9, therefore, failed to prove execution or attestation of the Will. Not only he did not take any instruction from the testatrix before the Will was scribed, but the same was done on the dictation of P.W.7. There is nothing on record to show that the testatrix understood the meaning, purport and contents of the Will. She had put her thumb impression in his presence. There*

*is nothing on record to show that the Will was read over and explained to the testatrix and she had put her thumb impression upon understanding the contents and purport of the Will and put her thumb impression as admission thereof. A certificate to that effect was in ordinary course required to be given by the scribe of the Will, particularly when the same had been found to be given by him in the sale deed executed by her on the same day which was marked as Ext.16.”*

There can be no doubt about this proposition of law but the facts of that case and the facts of this case are starkly differently. In that case a Will had been set up by a lady wherein her legal representatives were completely excluded and not even mentioned. The case of those legal representatives was that Will was a forgery. The Supreme Court held that there were no attesting witnesses also and it was in that context that the whole judgment was rendered. In the present case, the appellants admitted execution of the release deed. They only claimed that they had not intended to include the residential plot and the bara. In the case before the Supreme Court, it was for the legatee to prove the Will and the onus was on him. In the present case, the onus was on the appellants to disprove the registered release deed. In the present case, both the scribe and the registrar had testified that the contents of the documents were explained at the relevant time and nothing had been elicited from them in their cross-examination. In the circumstances, the omission in the document that it was read over and explained would not be fatal.

In the totality of circumstances, I am not persuaded that the findings of fact recorded by the courts below are either based on no evidence or based on such a perverse misreading of evidence so as to justify

interference of this Court in second appeal.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

October 01, 2018  
*ashish*

( AJAY TEWARI )  
JUDGE

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|---------------------------|---|--------|
| Whether speaking/reasoned | - | Yes/No |
| Whether reportable        | - | Yes/No |