

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

**RSA No.2882 of 2018 (O&M)
Date of decision: May 14, 2018**

Om Parkash and another

...Appellants

Versus

Krishan Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vimal Kumar Gupta, Advocate
for the appellants.

INDERJIT SINGH, J.

CM No.7400-C of 2018

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 44 days in filing the appeal, is condoned.

RSA No.2882 of 2018

Appellants Om Parkash and Fateh Singh have filed this regular second appeal against Krishan Kumar and other contesting respondents and Jagbir @ Jagvir and Surender Singh, proforma respondents, challenging the judgment and decree dated 30.08.2014 passed by learned Addl. Civil Judge (Senior Division), Jhajjar, whereby suit filed by the plaintiffs-respondents No.1 and 2 for permanent injunction was decreed and judgment and decree dated 22.12.2017 passed by learned Addl. District Judge, Jhajjar, vide

which the appeal filed by the appellants-defendants was dismissed.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that plaintiffs Krishan Kumar and Mukesh Kumar filed a suit against Om Parkash and other defendants for declaration and permanent injunction to the effect that judgment and decree dated 29.10.2010 passed in civil suit No.407/2005 titled as 'Om Parkash vs. Fateh Singh and others' are illegal, null and void and not binding upon the rights of the plaintiffs along with consequential relief of decree for permanent injunction, restraining the defendants from interfering in the peaceful possession and ownership of plaintiffs over the 1/6th share in the suit property.

The case of the plaintiffs, as noted down in the impugned judgment dated 30.08.2014 are as under:-

2. Succinctly, the case of the plaintiffs that the aforementioned non ancestral agricultural suit land upto the extend of 1/6th share was exclusively owned and was in cultivating possession of their grand father Sh.Fateh Singh son of Sh.Jas Ram, in consonance with the family settlement and as acquired from his sister through a court decree; Even Sh.Fateh Singh/the defendant No.2 gave his entire ancestral land to his four sons equally through court decree. Further averred that as their grand father Sh.Fateh Singh was residing with them, accordingly pleased with the care and concern of the family members of the plaintiffs, he voluntarily, out of free consent and sound deposing mind has duly and validly executed and got registered the release/relinquish deed bearing No.1108 dated 03.08.2005, (hereinafter referred to as the “registered released deed”) in favour of the plaintiffs (who are his real grand sons) qua the suit land, since then the plaintiffs are in the actual, physical, specific and peaceful cultivating possession of the suit land. Aggrieved by the aforementioned, their uncle Sh. Om Parkash/ the defendant No.1 without having any locus standi (as the defendant No.2 is still alive and never challenged the release deed till date), on false and fictitious grounds, instituted a civil suit No.407/2005 on 13.09.2005 (hereinafter referred to as the “impugned civil suit”) against the plaintiffs and the defendants No.2 to No.5 for the declaration and permanent injunction, challenging the due

execution of the aforementioned registered release deed. Mischievously and with mala fide intentions, the defendant No.1 sued the plaintiffs as minors through their natural father and guardian ad-litem. Sh.Rajender Singh, who was also defendant No.4 (admittedly Sh.Rajender was not duly appointed guardian ad litem, has not duly represented and protected the interest of the minors, was holding interest adverse that of the minors) in the aforementioned impugned civil suit. Further averred that the defendants No.1, No.2 and No.4 being strong headed, mischievous and greedy persons have threatened the parents of the plaintiff to get cancelled the aforementioned registered release deed, in pursuance of that the aforementioned defendants in a clandestine manner and without the free consent and sound disposing mind of Sh. Rajender/father of plaintiffs, fraudulently obtained his signatures on certain blank documents, consequently misused the same in obtaining/procuring the aforementioned impugned judgment and decree on the basis of unreasonable compromise, which ex facie is obtained by playing fraud upon the parties as well as the Hon'ble Court, collusion of parties having adverse interest, result of gross negligence on part of the guardian/Sh.Rajender, who admittedly was not duly appointed guardian ad litem, has not duly represented and protected the interest of the minors, was holding interest adverse that of the minors, patently has not filed admitted written statement out of free consent, through never appeared before the court nor executed any documents nor engaged any counsel, prejudicial to interests of minors and in flagrant violation of law specifically the mandatory provision of Order 32 Rule 7 CPC 1908 which forbids "the guardian from entering into any agreement or compromise, on behalf of a minor, with reference to a suit without leave of the court" which is essentially lacking in the instant case. Hence, the present suit.

Notice was given to the defendants, who filed written statement and the case of the defendants, as noted down in the judgment dated 30.08.2017 passed by learned Addl. Civil Judge (Sr. Divn.), Jhajjar, is as under:-

"3. In pursuance to the notice, the defendants No.1 to No.4 (hereinafter referred to as the "contesting defendants") appeared and filed their written statement vehemently denying that Sh.Fateh Singh son of Sh.Jas Ram has voluntarily, out of free consent or sound disposing mind has executed and got registered the alleged relinquish deed bearing No.1108 dated 03.08.2005, in favour of the plaintiffs (who are his real grand

sons) qua the suit land, though he always intended to transfer the same in favour of his sons in equal share. Further averred that the parties to the instant suit are Hindu by birth and are close relatives, accordingly the suit land is an ancestral property/coparcener property of parties, wherein the defendants have right by birth. Further averred that the plaintiffs in collusion with their parents Sh.Rajender Singh and Smt.Promila illegally, fraudulently, by exerting undue influence, taking undue benefit and advantage of old age and illiteracy of Sh. Fateh Singh, have got executed and registered the relinquish deed bearing No.1108 dated 03.08.2005 qua the 1/6th share of Sh.Fateh Singh in the ancestral suit property, without free consent and sound disposing mind of Sh. Fateh Singh, even Sh.Fateh Singh has challenged the validity and legality of the alleged release deed by instituting a civil suit, which is pending before the Hon'ble civil court, Jhajjar, Haryana. Furthermore, averred that Sh.Fateh Singh was never in specific possession of the suit land in consonance with the alleged family settlement. Accordingly, the defendant No.1 has successfully challenged the aforementioned alleged released deed vide "the decree and judgment dated 29.10.2010 passed in civil suit No.407/2005 titled as Om Parkash Vs. Fateh Singh and others" to the effect of declaring the release deed as illegal, null and void and not binding upon the rights of the defendants alongwith consequential relief of decree for permanent injunction. Furthermore, vehemently denied that the aforementioned judgment and decree was based upon unreasonable compromise, fraud, collusion or result of gross negligence on part of the guardian/Sh.Rajender, who was duly appointed guardian ad litem, has duly represented and protected the interest of the minors, was never holding interest adverse that of the minors or prejudicial to interests of minors. Further denied the test of the contentions of the plaintiffs by specifically submitting that the contesting defendants are owner in actual, physical, specific and peaceful possession of the suit property. Furthermore had taken certain additional objections with regard to the non maintainability of the present suit; the suit is bad for non-joinder and mis-joinder of necessary parties; the plaintiffs are estopped from filing the the present suit by its own act and conduct; the plaintiffs have no locus standi to file the present suit; the suit of plaintiffs is highly time barred, accordingly prayed for the dismissal of the suit."

Defendants No.5 did not appear and he was proceeded ex-parte.

From the pleadings, following issues were framed:-

- "1. Whether the judgment and decree dated 29.10.2010 passed in civil suit titled as 'Om Parkash Vs. Fateh' is

- illegal, null and void, liable to be set aside?OPP*
2. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
3. *Whether the plaintiff has no locus standi to file the present suit?OPD*
4. *Relief.”*

Plaintiffs examined Mukesh Kumar-plaintiff No.2 as PW-1 and tendered into evidence his affidavit. He also produced certified copy of plaint dated 12.09.2005 in civil suit No.407/2005 titled as 'Om Parkash vs. Fateh Singh and others' as Ex.P1 along with certified copy of power of attorney dated 02.05.1986 bearing thumb impression of Sh.Rajender as guardian as Ex.P2, certified copy of written statement dated 30.05.1986 filed by defendants No.1, 5 and 6 as Ex.P3 transpiring that the release deed was duly and validly executed and registered, the certified copy of power of attorney dated 25.07.2001 of defendants No.2 to 4 as Ex.P4, certified copy of admitted written statement dated 25.07.2006 filed by defendants No.2 to 4 as Ex.P5, certified copy of the affidavit dated 21.08.2007 of Sh.Om Parkash as PW1 as Ex.P6 transpiring the nil cross examination despite opportunity, certified copy of the affidavit dated 10.03.2010 of Sh.Fateh Singh as DW-1 as Ex.P8 transpiring the admission of Sh.Fateh Singh to the effect that 'he has full right to transfer his property by way of release deed in favour of his grandsons i.e. Sh.Krishan and Sh.Mukesh, accordingly, the registered relinquish deed bearing No.1108 dated 03.08.2005 is legally valid and binding upon the parties along with the subsequent sanctioned mutation in favour of the above beneficiaries. He also proved other documents including copy of judgment and decree dated 29.10.2010.

On the other hand, defendants examined defendant No.2-Fateh Singh as DW-1 and defendant No.4-Surender as DW-2.

Learned Civil Judge (Jr. Divn.), Jhajjar, vide impugned judgment and decree dated 30.08.2014 decreed the suit by stating that the judgment and decree dated 29.10.2010 passed in civil suit No.407/2005 tilted as 'Om Parkash vs. Fateh Singh and others' is void and not binding upon the rights of the plaintiffs along with consequential relief of injunction restraining the defendants, from interfering into the peaceful possession of the plaintiffs in the suit property, except in due course of law. An appeal was filed and learned Addl. District Judge, Jhajjar, vide impugned judgment and decree dated 22.12.2017, dismissed the appeal.

Aggrieved from the above-said judgments, present regular second appeal has been filed.

From the perusal of the record, I find that the case of the plaintiffs is that agricultural land upto the extent of 1/6th share was exclusively owned and was in cultivating possession of their grandfather Sh.Fateh Singh, in consonance with the family settlement and as acquired from his sister through a Court decree . Defendant No.2 gave his entire ancestral land to his four sons equally through court decree. Fateh Singh voluntarily, out of free consent and sound deposing mind, has duly and validly executed and got registered the release/relinquish deed bearing No.1108 dated 03.08.2005 in favour of the plaintiffs, who are real grandsons qua the suit land. Aggrieved by the aforementioned relinquish deed, their uncle Om Parkash-defendant No.1 without having any locus standi, as defendant No.2 is still alive and never challenged the release deed till date, filed the civil suit No.407/2005 on 13.09.2005 against the plaintiffs and defendants No.2 to 5 for declaration and permanent injunction challenging the registration of release deed. As per the case of the

plaintiffs, in that suit, a compromise was effected against interest of the plaintiffs by their guardian. No permission was taken from the Court for compromise and further no affidavit of counsel was also placed on record to show that compromise is in favour of the minors.

The perusal of the record itself shows that this compromise was against the interest of the minors as the plaintiffs were minors at that time when the suit was filed. Even, as per compromise, nothing has been given to the minors. Rather, minors have been divested of the ownership and the released deed has been got set aside by the decree which was passed in favour of Om Parkash and further, the property was given by Fateh Singh to his four sons on the basis of it. It shows that this compromise was effected against the interest of the minors and against the specific provisions by not taking leave of the Court and by not filing the affidavit that compromise is in the interest of the minors. Therefore, by discussing all these facts along with the evidence, the suit decreed in favour of Om Parkash was declared null and void by holding that compromise is not in the interest of minors. The Court also discussed Order 32 Rule 7 CPC 1908, which forbids 'the guardian from entering into any such agreement or compromise, on behalf of a minor, with reference to a suit without leave of the court and provides that any such agreement entered into without leave of the Court, shall be voidable against all the parties except the minors. Admittedly, Sh.Rajender, guardian, was not duly appointed guardian and has not duly represented and protected the interest of the minors and was holding interest adverse that of the minors. The compromise is also unreasonable. The release deed was set aside and the property was given to other person including guardian of the minors, which clearly shows that guardian was having adverse interest

against the minors.

The perusal of the findings given by both the Courts below shows that these are correct, as per evidence and law and concurrent findings have been given while appreciating the evidence in right perspective. No substantial question of law arises in this regular second appeal.

In view of the above discussion, I find that judgment and decree dated 30.08.2014 passed by learned Addl. Civil Judge (Senior Division), Jhajjar and judgment and decree dated 22.12.2017 passed by learned Addl. District Judge, Jhajjar, in appeal are correct and as per law and the same are upheld.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No