

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

**RSA No.2884 of 2018 (O&M)
Date of decision: May 14, 2018**

Fateh Singh

...Appellant

Versus

Rajinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

INDERJIT SINGH, J.

CM No.7405-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.2884 of 2018

Appellant Fateh Singh has filed this regular second appeal against respondents Rajinder Singh, Mukesh Kumar and Krishan Kumar, challenging the judgment and decree dated 30.08.2014 passed by learned Addl. Civil Judge (Senior Division), Jhajjar, whereby suit filed by the plaintiff-appellant for permanent injunction was dismissed and judgment and decree dated 22.12.2017 passed by learned Addl. District Judge, Jhajjar, vide which the appeal filed by the appellant was also dismissed.

I have heard learned counsel for the appellant and have gone

through the record.

From the record, I find that Fateh Singh plaintiff-appellant filed a suit against defendants Rajender, Krishan Kumar and Mukesh Kumar for permanent injunction to the effect that registered relinquishment/release deed bearing No.1108 dated 03.08.2005 executed in favour of defendants No.2 and 3, whereby the plaintiff without free consent and sound deposing mind, alleged to have relinquished his 1/6th share in the ancestral property/coparcener property in favour of the beneficiaries/defendants, is null and void and not binding upon the rights of the plaintiff and consequently, the plaintiff be declared as owner in possession qua his 1/6th share in the suit property/land as fully described in the head note of the plaint.

The case of the plaintiff is that the parties to the suit are Hindu by birth and are close relatives i.e. defendant No.1 is son of the plaintiff, accordingly, defendants No.2 and 3 are the grand sons of the plaintiff. It is further averred that the plaintiff has other three sons namely Sh.Om Parkash, Sh.Jagbir alias Jagvir and Sh.Surender exclusive of Sh.Rajender Singh (defendant No.1). The suit land is an ancestral property/co parcener property of parties, wherein the plaintiff is having 1/6th share. It is the case of the plaintiff that defendants in collusion with Smt.Promila (wife of the defendant No.1 and natural guardian/mother of defendants No.2 and No.3), illegally, fraudulently, by exerting undue influence, taking undue benefit and advantage of old age and illiteracy of the plaintiff, has executed and got registered the relinquish deed bearing No.1108 dated 03.08.2005 qua the plaintiff's 1/6th share in the ancestral suit property, without free consent and sound deposing mind of the plaintiff. Furthermore, the

plaintiff never executed the aforementioned release deed. It is further stated that the defendants being strong, mischievous and greedy persons, on the basis of the impugned release deed, have threatened to alienate the suit property, without having any right, title or interest.

On the other hand, defendants appeared and filed their written statement and denied that plaintiff has involuntarily or without free consent or without sound disposing mind has executed and got registered the relinquish deed bearing No.1108 dated 03.08.2005, in favour of defendants No.2 and 3 (who are his real grandsons). It is further stated that suit land is neither an ancestral property nor a co parcener property of the parties, as the suit property was an absolute property of the plaintiff and he was absolute owner in possession of the same and thus voluntarily, out of free consent and sound disposing mind, he has relinquished the aforementioned suit property in favour of defendants vide duly executed and registered relinquish deed bearing No.1108 dated 03.08.2005 and since then, the contesting defendants are owner in exclusive, specific, actual, peaceful possession of the same.

From the pleadings, following issues were framed:-

1. *Whether the plaintiff is owner in possession of the disputed property and the release deed dated 03.08.2005 executed in favour of the defendants No.2 and 3 is wrong, illegal, null and void and not binding upon the rights of the plaintiff and the same is liable to be set aside? OPP*
2. *If issue No.1 is proved, whether the plaintiff is entitled for injunction restraining the defendants from alienating the suit property in any manner whatsoever?OPP*
3. *Whether the suit of the plaintiff is not maintainable in the present form.? OPD.*
4. *Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD*
5. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.*

7. *Relief.*

Plaintiff examined PW-1 Umed Singh, PW-2 Surender and also examined himself as PW-3. On the other hand, defendants examined DW-1 Krishan Kumar, defendant No.2, who attained the age of majority during the pendency of the proceedings, DW-2 Subhash Chand, RC Clerk, DW-3 Mahender Singh, Licenced Deed Writer and DW-4 Satyavir Singh, Numberdar.

Learned Civil Judge (Jr. Divn.), Jhajjar, vide impugned judgment and decree dated 30.08.2014 dismissed the suit. An appeal was filed and learned Addl. District Judge, Jhajjar, vide impugned judgment and decree dated 22.12.2017 dismissed the appeal also.

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

From the perusal of the record, I find that learned Civil Judge (Jr. Divn.), Jhajjar has dismissed the suit by holding that there is no cogent evidence on record to prove the ancestral nature of the property except the bald statement of the plaintiff, which is unsubstantiated. The plaintiff's witnesses candidly admitted that they are not in possession of any documents/record to reflect the plaintiff's ownership or possession over the suit property and accordingly, suffered their ignorance qua essentials of the plaintiff's version. The Court further held that it is settled law that no admission can make a property as an ancestral property because there can be no admission against statue and therefore, the Court held that the property in dispute is not a joint Hindu family property. The plaintiff is alleging that property in question was ancestral/co parcener property. Even, if it is taken

that the plaintiff himself is karta of the property and he has executed the relinquish/release deed in favour of defendants No.2 and 3 and he himself, is now alleging that it was an ancestral property. The coparceners have right to challenge the transfer of the ancestral property without any legal necessity but here the plaintiff himself executed the released deed and he himself is saying that it is an ancestral property and cannot be transferred. Furthermore, as already discussed, there is nothing on the record to show that this property was inherited by Fateh Singh from his ancestors. The Court below has further held that plaintiff is also not in possession of the suit land, therefore, the plaintiff should have asked for declaration along with possession but he has not asked for the possession. Defendants No.2 and 3 were minors at the time of released deed. There is no cogent evidence as to how the minors have influence over their grandfather Fateh Singh, who executed this release deed. Fateh Singh also took the plea that he was not of sound disposing mind but he has not filed the present suit through guardian and he himself has filed the suit and further appeared as a witness as PW-3, which shows that at the time of filing of this suit and appearing in the Court, he was of sound disposing mind. Further, the release deed has been executed in the year 2005 and this suit has been filed in the year 2013 and plaintiff kept silent for about eight years and has not challenged this release deed.

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