

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

RSA No.4315 of 2017 (O&M)

Date of decision : 23.10.2018

Singh Ram

...Appellant

Versus

Mangal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Naveen Gupta, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.11195-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 48 days in re-filing the present appeal is condoned.

Application is allowed.

CM No.11196-C of 2017

Application is allowed, as prayed for.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below challenging a transfer deed (release deed) executed by Ami Lal and Smt. Sarti Devi in favour of defendants dated 28.08.2006.

It has come on record that Smt. Sarti, defendant No.6 was initially married with Umero Singh @ Umrao, brother of Ami Lal. Couple was blessed with sons-late Sh. Ram Singh (defendant Nos.1 to 4 are sons of late Sh. Ram Singh) and Chet Ram. It has come in evidence and not disputed that Sarti after the death of Umero Singh @ Umrao contracted the customary marriage i.e. karewa with Ami Lal. Ami Lal and Smt. Sarti both executed a transfer deed in favour of defendant Nos.1 to 5. Ami Lal remained alive for almost a period of three years and Sarti was alive even on the date of institution of the suit. The plaintiff claims that he is son of Ami Lal and Sarti i.e. from the second marriage of Smt. Sarti. He has challenged the transfer deed on the ground of fraud.

Both the Courts have found that the plaintiff has failed to prove that the transfer deed is result of fraud. A transfer deed is a document duly registered by the Sub-Registrar which also bears the photograph of the Executants as well as the attesting witnesses. Ami Lal, during the lifetime, did not challenge the transfer deed. Smt. Sarti defended the transfer deed in the present suit.

Both the Courts after examining the evidence have found that the transfer deed is not result of fraud.

Learned Senior Counsel appearing on behalf of the appellant has submitted that two attesting witnesses of the transfer deed have filed the affidavits that Sarti and Ami Lal were very old and Ami Lal was not in conscious state of mind for many years. He submitted that in view of the aforesaid affidavits of the attesting witnesses, the document should be declared to be result of fraud.

In the considered view of this Court, the argument is wholly without any substance. A registered transfer deed cannot be set aside and held to be illegal, result of fraud, merely because two witnesses have stated that the Executants were old and one of the Executant was not in his senses. Smt. Sarti, as noted above, has filed the written statement admitting that she transferred the property in favour of defendant Nos.1 to 5. Still further, Ami Lal remained alive for almost period of three years. Photograph of Ami Lal printed on the transfer deed clearly shows that no doubt he is old but looks agile. Still further the transfer is not in favour of any third party.

Learned First Appellate Court has also found that the property transferred through release deed had been inherited by her from her first husband i.e. Umero Singh @ Umrao.

Learned Senior Counsel further submitted that the plaintiff had a pre-existing right in the property and, therefore, at least share of Ami Lal should be granted to him. It may be mentioned here that both the Courts have concluded that the plaintiff-appellant has failed to prove that the property is ancestral. Such finding of fact is not proved to be erroneous.

Learned counsel has further submitted that the transfer deed (release deed) cannot be an instrument of transfer. This Court does not find any force therein. Hon'ble the Supreme Court has already held that the release deed is an instrument by which title is released in favour of a person who has some right. Reference in this regard can be made to the judgment reported as **AIR 1967 (Supreme Court) 1395, Kuppuswami Chettiar Vs. A.S.P.A. Arumugam Chettiar and another** and judgment of this Court in **2011(2) Punjab Law Reporter 44, Harjot Singh and others Vs. Gurjit**

Kaur and others.

In view of the aforesaid, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No