

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5365 of 2017(O&M)

Date of Decision: 23.5.2018

Gunwanti and another

---Appellants

versus

Narender and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Kulvir Narwal, Advocate
for the appellants**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by the appellants seeking declaration that they are the owners in possession of agriculture land measuring 7 kanal 16 marlas situated in village Butana Kundu, Tehsil Gohana District Sonapat being the successors-in-interest of Smt. Chhano, erstwhile owner of the suit land who died on 29.1.2013, has been dismissed. It has been averred that the respondent/defendant by playing fraud upon Smt. Chhano managed to procure the release deed bearing No. 5036 dated 20.2.2007 and got sanctioned mutation No. 4790 in his favour but the same are illegal, null and void and not binding upon rights of the appellants as Smt. Chhano never executed the release deed in favour of the respondent nor appeared before the petition writer and Sub Registrar for execution and registration thereof.

The trial court, on the basis of pleadings of the parties, framed issues reproduced in para 5 of the judgment of said court. Having heard counsel for the parties in the light of materials on record, the trial court answered issues No. 1 and 2 against the appellants and resultantly, suit was dismissed with costs. The appeal preferred by the unsuccessful plaintiffs did not find favour with the District Judge, Sonapat vide decision dated 17.8.2017 whereby judgment and decree passed by the trial court were affirmed without any variance.

Still feeling dissatisfied, the present appeal has been preferred by the plaintiffs/appellants.

The first submission made by counsel for the appellants is that Smt. Chhano was a *pardanashin* lady, therefore, there was no occasion for her to cause appearance before the petition writer and Sub Registrar for executing the document in question. To substantiate his contention, it is argued that on the release deed, background of photograph of Chhano is different from the background shown in the photograph of the beneficiary, stated to be clicked in the same room, sufficient to prove that the respondent has been able to manage and manoeuvre the things.

The second submission made by counsel is that under Article 55 of Schedule I-A to the Indian Stamp Act, 1899, the Government of Haryana made a provision for execution of release deed in respect of joint Hindu family coparcenary property on payment of nominal stamp duty in favour of brother or sister (children of renouncer's parents) or son or daughter or father or mother or spouse or grand children or nephew or niece or coparcener of the renouncer. It is argued with vehemence that as the respondent/defendant does not come within the purview of relatives in

whose favour release deed can be executed by taking benefit of the notification issued by the State of Haryana, release deed cannot be held to be valid and liable to be set aside on this score. In addition, it is argued that as the property in question is self-acquired property of Smt. Chhano, therefore, the release deed could not be executed by invoking the provisions of notification aforesaid.

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

So far as plea of the appellants that Smt. Chhano was a *pardanashin* lady, the same has been rightly rejected by the Court in Appeal by holding that a factual plea cannot be allowed to be raised for the first time in appeal. In this view of the matter, appellants cannot derive any advantage to their contention from the alleged factum of Chhano being a *pardanashin* lady. With regard to background of three photographs on second page of release deed, in the photograph of the executant, some records appear to have been stacked in the racks whereas other two photographs have been taken against a plain wall. However, one ventilator type structure in the photograph of the executant is also there in the other two photographs and that proves that all the photographs were taken in the same room but at different angles. In this view of the matter, the appellants cannot derive any advantage from the factum of different background in the three photographs.

The property in question is not proved to be joint Hindu family coparcenary property. Respondent/defendant does not fall in the category of relatives envisaged in the notification issued by the Government of Haryana. However, the release deed can be treated as a gift deed under

Section 123 of the Transfer of Property Act. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Kuppuswami Chettiar vs. A.S.P.A.Arumugam Chettiar and another 1967 AIR (SC) 1395**. A relevant extract therefrom, reads as follows:-

“The question is whether Ex. B-1 on its true construction conveyed properties to the respondents. [In T. Mammo v. K. Ramunni, AIR 1966 Supreme Court 337 at p. 340](#) this Court held :

" a registered instrument styled a release deed releasing the right, title and interest of the executant in any property in favour of the releaser for valuable consideration may ,operate as a conveyance, if the document clearly discloses an intention to effect a transfer".

In the present case, the release was without any consideration. But property may be transferred without consideration. Such a transfer is a gift. Under [s. 123](#) of the Transfer of Property Act, 1882, a gift may be effected by a registered instrument signed by ,or on behalf of the donor and attested by at least two witnesses. Consequently, a registered instrument releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses. Exhibit B-1 stated that the releasor was the owner of the properties. It showed an intention to transfer his title and its operative words sufficiently conveyed the title. The instrument, on its true construction, took ,effect as a gift. The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses.”

Counsel for the appellants has not advanced any arguments if

the release deed does not satisfy the requirement of a Gift deed under Section 123 of the Transfer of Property Act. That being so, contention raised by the appellants to challenge the release deed on this score is also untenable.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

23.5.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No