

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

RSA No.5685 of 2017(O&M)

Date of decision:30.5.2018

Dhian Singh

.....Appellant

VERSUS

Rambhool Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Saurabh Bajaj, Advocate for the appellant.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit filed by the appellant to challenge the release deed dated 06.09.2007 qua share of the plaintiff/appellant and mutation sanctioned thereof was dismissed by the trial Court vide judgment and decree dated 30.03.2015 and the appeal preferred by the unsuccessful plaintiff did not find favour with the Additional District Judge, Karnal.

The appellant/plaintiff has challenged the release deed on the premise that land measuring 7 kanal 15 marlas out of land measuring 108 kanal 10 marlas was inherited by him from his mother who inherited the same from her father. He was cultivating the suit land through the respondent/defendant, his cousin brother. On the request of respondent, he agreed to execute a Special Power of Attorney in his favour to change the khasra girdwari entries. The respondent by playing fraud got executed the

aforesaid release deed and the same is liable to be declared illegal, null and void as no release deed can be executed qua self acquired property.

The respondent/defendant contested claim of the appellant with the averments that the appellant transferred the suit land out of his free will, consent and without any undue influence or coercion. The suit land was ancestral property and the suit has been filed with a mala fide intention to extract money.

The controversy between the parties led to framing of following issues:-

1. Whether the impugned registered release deed no.1273/1 dated 6.9.2007 registered with the office of Sub Registrar, Gharaunda and subsequent mutation No.13554 are illegal, null and void and not binding on the rights of the plaintiff? OPP
2. If issue No.1 is proved, whether the plaintiff is also entitled to the relief of joint possession and injunction thereby restraining the defendant from alienating or otherwise encumbering the suit land? OPP
3. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD
4. Whether the plaintiff has not come to the Court with clean hands and suppressed the true and material facts from the court? OPD
5. Whether the plaintiff is stopped from filing the present suit by his own act and conduct? OPD
6. Relief.

The parties adduced evidence in support of their respective claims.

Having heard counsel for the parties, in the light of materials on record, the trial Court negated plea of the appellant/plaintiff that the registered release deed in question is illegal, null and void and not binding on rights of the appellant/plaintiff. As has been noticed hereinbefore, findings recorded by the trial Court were affirmed in appeal decided on 12.09.2017.

Counsel for the appellant would argue that the land, subject matter of release deed, is not ancestral co-parcenary property and the respondent/defendant does not fall in the category of relatives in whose favour the release deed can be executed on payment of nominal stamp in the light of notification issued by the Government of Haryana, therefore, the release deed is not legally executed and liable to be set aside. Further submitted that as the release deed is a void document, limitation to file the suit is 12 years, thus, the suit is within limitation. In support of his contention, he has relied upon judgment of the Madras High Court **Palaniammal Vs. Rangasamy and others, 1999 AIHC 4394.**

Another submission made by counsel is that if the respondent claims himself to be owner of the land in question on the pretext that release deed can be treated as a gift deed, the same is not tenable as the document is not attested by two witnesses, envisaged under Section 123 of the Transfer of Property Act, 1882 (in short 'the Act'). In addition, it is argued that as gift deed would be rendered void for want of attestation by two witnesses in compliance of the provisions of Section 123 of the Act, suit filed within 12 years from the date of execution of document cannot be

said to be barred by limitation. For this purpose, reliance has been placed upon judgment of the Karnataka High Court **Smt. Flora Margaret Vs. A. Lawrence, 2001(1) Civil Court Cases 105** and that of the Bombay High Court **Sundrabai Sonba Tendulkar Vs. Ramabai Jayaram, (1947) 49 BOMLR 298.**

I have heard counsel for the appellant, perused the paper-book and records.

The appellant challenged the release deed primarily on the ground that a Special Power of Attorney was to be executed in favour of the respondent/defendant in order to facilitate change of khasra girdawari entries but the respondent played fraud and got executed the release deed. The Courts have consistently held that the appellant failed to establish his claim that release deed is the result of fraud practised by the respondent, admittedly, cousin brother of the appellant and is in possession of the land in question.

Counsel for the appellant has not advanced any argument much less meaningful to assail findings of the Courts negating his plea with regard to the release deed being the result of fraud, therefore, concurrent findings of the Courts, in this regard, are liable to be affirmed and ordered accordingly. No sooner, plea of fraud set up by the appellant is negated, he is deemed to be executant of the deed.

The question that calls for consideration is whether the appellant can wriggle out of the transaction by raising a plea that the suit property is self acquired property or to say that it was not ancestral property.

As per the settled position in law, a litigant cannot be allowed to take advantage of his own wrong. Indeed, the appellant is an active player in the transaction that culminated in a release deed, got executed and registered by the appellant. He certainly cannot be heard to say that the release deed was executed, contrary to spirit of notification issued by the Government of Haryana allowing exemption from payment of property stamp duty.

As plea of the appellant with regard to the release deed being the result of fraud has failed, contention of the appellant that limitation to challenge the release deed would be 12 years and not 3 years by relying upon judgment of the Madras High Court in **Palaniammal's case** (supra) wherein the release deed dated 16.02.1972 was held to be void and not voidable, therefore, the period of limitation to challenge the same is stated to be 12 years and not 3 years by relying upon earlier judgment of the Court **Ranganatha Gounder Vs. Kuppusami Naidu, (1976) 2 Madras Law Journal 128**, is highly misconceived and accordingly rejected. On the contrary, once plea of the appellant that release deed is the result of fraud is rejected, necessary knowledge of the document on his part is to be construed from the date of its execution and limitation to challenge such a document would start from the date the same came into existence. In this context, reference to expression 'a person is said to have notice' defined in Section 3 of the Act is relevant that reads as follows:-

“of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it”

In this view of the matter, suit filed by the appellant to challenge the release deed is clearly barred by limitation and findings recorded by the Courts qua the question of limitation are affirmed.

The submissions made by counsel in regard to requirements of a gift deed in the light of Section 123 of the Act and judgments relied upon the issue are alien to the controversy involved in the present case, therefore, cannot lend assistance to the appellant to seek any relief by setting aside the judgments and decrees passed by the Courts.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

MAY 30, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no