

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

**Regular Second Appeal No.762 of 2018 (O&M)
Date of Decision: February 05, 2018.**

Beer Sen

.....APPELLANT(s).

VERSUS

Sant Ram

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Balkar Singh, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Learned counsel for the appellant-plaintiff filed suit seeking declaration to the effect that release deed No.28 dated 06.04.2012 and subsequent mutation No.1963 dated 11.05.2012 are not binding on the rights of the plaintiff. He also sought the relief of permanent injunction to restrain the respondent-defendant from alienating the suit land and dispossessing the plaintiff.

Learned Additional Civil Judge (Senior Division), Kharkhoda (Sonipat) dismissed the suit filed by appellant-plaintiff with the observations in para 15 to 17, which read as follows:-

“15. On the other hand, the defendant has produced copy of joint written statement filed by the present plaintiff Beer Sen and defendant Sant Ram in another civil suit titled as *Ramesh Vs. Sant Ram* as

Ex.DW4/B in which vide para No.7 it has been stated by Beer Sen that he executed a release deed dated 6.4.2012 in favour of Sant Ram which is correct. He has admitted this release deed in his written statement. This civil suit *Ramesh Vs. Sant Ram* was dismissed in default. Other than this, the defendant has called the witnesses in the witness box regarding proof of release deed.

16. The oral evidence of the plaintiff is weaker than the documentary evidence of the defendant and the defendant has been able to show that the plaintiff has been taking advantage of this release deed in another civil suit. No rebuttal evidence has been led in this regard by the plaintiff.

17. In addition to the aforesaid circumstances, the release deed Ex.D-1 has been executed in the presence of Sub Registrar, Kharkhoda and therefore, it carries presumption of truth with it as it is a registered document. The oral evidence of only the plaintiff and his family members cannot rebut the presumption attached to this document.”

Not satisfied, the plaintiff filed appeal, which was also dismissed by learned Additional District Judge, Sonipat with the observations in para 11 of the judgment, which read as follows:-

“11. At the very outset, it is pertinent to mention here that release deed No.28 dated 6.4.2012 was executed and registered by Beer Sen in favour of his brother Sant Ram. A perusal of release-deed Ex.P3 goes to show that it bears the thumb impression and photographs of Beer Sen. This release-deed was duly witnessed by Jai Kishan Lamberdar -DW-5 and Bijender son of Siri Bhagwan, and the same was executed and registered in the office of Sub Registrar, Kharkhoda.

Earlier also, a civil litigation titled "*Ramesh & ors Versus Sant Ram & Anr.*" was filed, in which Sant Ram and Birsan (Birsan now appellant) has filed written statement dated 4.12.2012 (Ex.DW4/B), mentioning that Beer Sen has executed a release-deed No.28 dated 6.4.2012 in favour of defendant No.-1 Sant Ram legally to the extent of 5 Kanals of land. Release-deed dated 19.12.2011 and dated 6.4.2012 are legal and valid and are binding in all respects on the rights of the parties to the suit. Copy of order dated 02.12.2015 Ex.DW4/C passed in civil Suit titled as "*Ramesh & Anr. Versus Sant Ram & Anr.*" got to show that the suit was dismissed in default."

Learned counsel for the appellant has argued that though the release deed is a registered document and the appellant-plaintiff had admitted execution of the release deed in his written statement (Ex.DW4/B) filed in another suit but that suit was not decided on merits, as such, the admission by appellant-plaintiff regarding execution of the release deed could not be given any weight by the Courts below.

Release deed is a registered document and was within the knowledge of the appellant-plaintiff from the day, it was executed. Even in the earlier civil suit titled as "*Ramesh and others Vs. Sant Ram and others*", appellant-plaintiff had admitted execution of the release deed in the written statement filed by him. In these circumstances, the appellant-plaintiff stood debarred from challenging the legality of the release deed with the plea that his thumb impressions were obtained on some papers and the factum of the execution of release deed came to his notice when he filed written statement in the earlier suit. He had filed this suit after about five years of the

execution of the release deed. Both the Courts below after looking into facts and circumstances of the case, have rightly observed that plaintiff has not been able to prove that the release deed was illegally got executed and is not binding on his rights.

On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

February 05, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***