

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.2540 of 2018 (O&M)
Date of Decision.20.05.2019

Karam Singh (since deceased) through LRs ...Petitioner

Vs

Malkiat Kaur and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Sethi, Advocate
for the petitioner.

Mr. Jagjit Singh, Advocate
for respondents No.1 to 3.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order whereby application of the petitioner-plaintiff for return of the original/registered Will dated 7.4.1972 (Annexure P-2) in suit No.637-C of 2006 titled as 'Karam Singh (since deceased) through LRs Vs. Malkiat Kaur and others' has been dismissed.

The petitioner-plaintiff instituted the suit for declaration to be owner in possession of share of various parcels of land described in the plaint by challenging the release deed bearing No.2607 dated 3.2.2006 allegedly executed by the plaintiff regarding the disputed land being result of fraud and misrepresentation and mutation bearing No.11631 dated 20.02.2006. In the aforementioned suit, following issues were framed:-

"1. Whether the release deed 2607 dated 3.2.2006 allegedly executed by the plaintiff in favour of the defendants is wrong, against law and facts, result of

fraud and null and void, not binding upon the rights of the plaintiff and the same is liable to be set aside? OPP

2. *Whether the mutation No.11631 dated 20.02.2006 entered and sanctioned on the basis of the above said release deed is also wrong, against law and facts and is liable to be set aside? OPP*

3. *If issues No.1 and 2 are proved, whether the plaintiff is owner in possession of the suit land as detailed and described in the head note of the plaint? OPP*

4. *Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPD*

5. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

6. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*

7. *Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD*

8. *Whether the plaintiff has concealed the true and material facts from the Court, thus, he is not entitled to any relief from the Court as prayed for? OPD*

9. *Relief.”*

The appeal was preferred by the defendants and the same vide judgment and decree dated 11.05.2017 dismissed and regular second appeal bearing No.3967 of 2017 was pending adjudication.

Mr. Sethi, learned counsel appearing on behalf of the petitioner submitted that in the aforementioned suit, it was alleged that plaintiff had already executed the registered Will dated 7.4.1972, therefore, there was no occasion for him to execute the release deed.

On the application submitted by the defendants, additional issue of Will was framed but this Court in civil revision set aside the order

and the question before the trial Court and the lower Appellate Court was only confined to the execution of release deed having been actuated out of fraud and misrepresentation. Attention of this Court was also drawn to para 17 of the lower Appellate Court judgment noticing the aforementioned fact. The Will is pertaining to other properties as well and therefore, Will is required for that purpose but the trial Court has not taken into consideration the said fact and dismissed the application on the premise that regular second appeal has been admitted, which in fact is pending for motion hearing.

Per contra, Mr. Jagjit Singh, learned counsel appearing for respondent No.1 to 3 supported the order saying that the order under challenge is perfectly legal and justified and does not call for interference, as original record would be required by this Court for decision of the aforementioned regular second appeal, despite the fact that the additional issue framed by the trial Court was set aside.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr. Sethi. It would be apt to reproduce relevant extract of the paragraph 17 of the judgment of the lower Appellate Court:-

“...It is further mentioned that as the issue regarding Will allegedly executed by Karam Singh in favour of the defendants No.4 and 5 has been struck down by Hon’ble High Court, so the evidence produced by the plaintiff regarding execution of the Will is not relevant and is not taken into consideration for deciding the present suit.”

A perusal of the Will revealed that it is not only pertaining to suit property but also to various other properties and in this regard, plaintiff may require original Will. From reading of the extracted portion of paragraph and the issue, it is evident that the controversy was not pertaining to the Will but only to the release deed allegedly executed by the petitioner-plaintiff to be a result of fraud and misrepresentation and the appellants in the regular second appeal are the beneficiaries of the release deed and not of the Will. The question of title in such circumstances did not arise at all but the trial Court has failed to take into consideration the aforementioned fact.

In view of such circumstances, the impugned order suffers from illegality and infirmity and the same is hereby set aside. The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

May 20, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No