

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

RSA-5064-2014 (O&M)
Date of decision: 28.11.2019

Chhotu Ram and another

...Appellants

Versus

Ram Parsad and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ashish Verma, Advocate for the appellants.

Mr. Rajesh Lamba, Advocate for respondent No.1.

Mr. Rakesh Gupta, Advocate for respondent No.3.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Chhotu Ram and Hardwari Lal, both sons of Bhaira Ram son of Kishna Ram, resident of Village Banwali, Tehsil & District Fatehabad had brought a suit for declaration with consequential relief of permanent injunction against the defendants Ram Parsad, Lichhma Devi, Shanti Devi and State of Haryana. As per version of the plaintiff, defendant No.1 is their nephew being son of their sister. He was a co-sharer in the land measuring 51K-12M comprised in khewat No.22 khatoni No.26, situated at Village Kirdhan, Tehsil & District Fatehabad as per jamabandi for the year 2002-03. He transferred his 1/40 share i.e. 1K-6M of land to the plaintiff No.1 and 1/80 share i.e. 13 marlas of land to plaintiff No.2, vide release deed No.555 dated 07.06.2007, registered in the office of Joint Sub Registrar, Bhattu Kalan, Tehsil & District Fatehabad. The actual physical

possession was also delivered to the plaintiffs and ever since, the plaintiffs are owners in possession of those properties. As pleaded by the plaintiffs, they handed over the release deed to the halqa patwari, namely, Krishan Kumar, who had assured them that their names would be incorporated in the revenue record. About six months prior to filing of the suit, the plaintiffs visited the office of Halqa Patwari to obtain the copy of mutation, however, they were told that the original release deed had been lost and a certified copy of the same be obtained from the office of Sub Registrar Fatehabad, which be given to Patwari so as to get the mutation entered. The plaintiffs obtained certified copy of the release deed and gave it to Halqa Patwari, who assured to do the needful very soon; that some days prior to filing of the suit, defendant No.3 Smt. Shanti Devi tried to interfere in possession of the plaintiffs over the suit properties. When the plaintiffs carried out enquiries, they came to know that defendant No.1 Ram Parsad had executed release deed No.1421 dated 15.10.2009 in favour of defendant No.2 Lichmma Devi with regard to 2K-11M of land including the suit properties and mutation No. 4919 had also been entered and sanctioned on the basis of that release deed on 30.10.2009; that defendant No.2 had then executed a release deed bearing document No.1509 dated 03.11.2009 in favour of defendant No.3 regarding 9 kanals 9 marlas of land including the suit properties. In that way, the sale deed is also illegal, null and void, not binding upon rights of the plaintiffs. According to the plaintiffs, they requested the defendants several times to admit their claim and to treat the release deed No.1421

dated 15.10.2009, mutation No.4919 dated 30.10.2009 entered and sanctioned on the basis of impugned release deed and sale deed No.1509 dated 03.11.2009 as illegal, null and void but in vain, rather, defendant No.3 threatened to interfere in the possession of the plaintiffs over the suit properties and to alienate the same. Feeling aggrieved, the plaintiffs brought the suit in question.

On being put to notice, all the respondents appeared and filed separate written statements. Respondents No.1 to 3 filed separate written statements. In the written statement filed by defendant No.1, he had taken various legal objections. On merits, contending that he had executed release deed in favour of defendant No.2 only, whereas, the land measuring 12 kanals and remaining land i.e. 1K-19M was released in favour of the plaintiffs by him out of love and affection and as per mutual settlement. The answering defendant was blind by birth and by taking benefit of this fact, defendant No.2 got executed the release deed in question regarding 51 marlas of land, though the release deed was to be executed regarding 12 marlas of land. In that way, defendant No.2 cheated the answering defendant. He contended that he has no objection in case the impugned release deed and impugned sale deed are set aside. However, in the end, he prayed for dismissal of the suit.

In the written statement filed by defendant No.2 had also taken up various legal objections, on merits, contending the answering defendant, her mother Smt. Dayawanti and her brother Charan Singh had sold the suit properties along with other land i.e. total land measuring 9K-9M to defendant No.3 for a consideration of Rs.4,72,500/-. That was so

done, vide registered sale deed No.1509 dated 03.11.2009 and the entire consideration amount was paid by defendant No.3 to them and they had delivered the possession to defendant No.3. In that way, defendant No.3 is owner in possession of 9K-9M of land. According to such defendant, defendant No.2 had also purchased 9K-9M of land from Smt. Kaushalya Devi widow of Badri Parshad, Bala Devi, Laxmi daughters of Badri Parshad, Smt. Shobha wife of Satpal, Smt. Suman wife of Charan Singh and Ram Kumar son of Ram Chander for a sum of Rs.4,72,500/- which was paid by defendant No.3. The sale deed No. 1508 dated 03.11.2009 was executed and got registered in favour of defendant No.3 after receiving the entire sale consideration. The possession was also delivered to her. According to such defendant, release deed No.555 dated 07.06.2007 is fake, false and bogus, which was never executed by defendant No.1 in favour of plaintiffs. This was not incorporated in the revenue record even and if it is proved that alleged release deed dated 07.06.2007 was executed by defendant No.1, then the answering defendant was not aware of the same. The plaintiffs were never in possession of the suit properties and it is the answering defendant who was in possession of the suit properties even prior to execution and registration of the release deed No.1421 dated 15.10.2009 in her favour. Refuting remaining assertions, such defendant prayed for dismissal of the suit.

In the written statement filed by defendant No.3, she had also raised various legal objections and on merits, contending that she is a bona fide purchaser for consideration. She had purchased the suit

properties along with some other land from defendant No.2 her mother Smt. Dayawanti and her brother Charan Singh for a sum of Rs.4,72,500/- after inspecting the revenue record and after making due enquiry from the villagers. At that time, the suit properties were in possession of defendant No.2. On the basis of sale deed, the possession was also delivered to her. In addition to suit properties, the answering defendant had purchased some other land from khewat No.22 as per sale deed No.1508 dated 03.11.2009 from Smt. Kaushalya Devi and since then, the answering defendant is owner in possession of the purchased property. In the end, such defendant also prayed for dismissal of the suit.

The plaintiffs filed replication to the written statement of defendants No.2 & 3, controverting the allegations therein, reiterating the averments made in the plaint.

From the pleadings of the parties, following issues were framed:-

1. Whether the release deed No.1421 dated 15.10.2009 executed by defendant No.1 in favour of defendant No.2 whereby land 2 kanals 11 marlas situated in village Kirdhan was transferred, is wrong, against law and facts result of collusion between defendant No.2 and 3 and the revenue officials so also mutation No.4919 sanctioned on its basis on 30.10.2009? OPP
2. Whether the sale deed No.1509 dated 03.11.2009 executed by defendant No.2 and others, selling 9 kanals 9 marlas land to defendant No.3 wherein 1 kanal 19 marlas land of plaintiff was also sold is wrong, against law and facts result of collusion between defendants No.1 to 3 and revenue officials? If so, to what effect? OPP.

3. If issues No.1 & 2 are decided in favour of the plaintiffs then whether the plaintiffs are entitled to permanent as well as mandatory injunction and the defendants are liable to be restrained from creating any encumbrance over the land of his ownership and the defendant No.4 is liable to be directed to be sanctioned the mutation in favour of the plaintiffs on the basis of release deed No.555 dated 07.06.2007 in their favour? OPP.
4. Whether the suit is collusive with defendant No. 1? OPP.
5. Whether the plaintiffs have no locus standi to file the present suit? OPD.
6. Whether the suit is not maintainable in its present form? OPD.
7. Whether the release deed No.555 dated 07.06.2007 relied upon by the plaintiffs is false, fictitious, bogus? If so, to what effect? OPD
8. Whether the suit is bad for want of proper Court fees? OPD
9. Whether the civil Court has no jurisdiction to entertain the present suit? OPD.
10. Whether the defendant No.3 is bonafide purchaser of land for valuable consideration? If so to what effect? OPD
11. Relief.

Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

During the course of their evidence, the plaintiffs examined Ballor Singh, Naib Tehsildar as PW1, Chhotu Ram-plaintiff No.1 as PW2, Rohtas son of Hardwari Lal as PW3, Darshan Kumar, Tehsildar as PW-4, Suresh Kumar Bhattu, Advocate as PW5 and Narender Singh as

PW6, besides tendering various documents. In rebuttal, defendant No.1 Ram Parsad appeared as DW1, besides examining Dr. Vinod Sharma, Medical Officer, Govt. Hospital, Fatehabad as DW2, Hardutt Singh as DW3, Ajit Singh as DW4 and Smt. Shanti Devi-defendant No.3 as DW5 and after tendering various documents, defendants closed their evidence.

After hearing arguments, the trial Court of Civil Judge (Sr. Divn.) Fatehabad decided issues No.1 to 3 against the plaintiffs and in favour of the defendants, issues No.4, 7 & 10 were decided in favour of the defendants and against the plaintiffs, whereas issues No.5,6,8 & 9 were not pressed by the defendants and as such were decided in favour of the plaintiffs and against the defendant and vide judgment and decree dated 17.11.2012, the trial Court dismissed the suit of the plaintiffs.

The plaintiffs felt aggrieved by the said judgment and decree passed by the trial Court and had preferred an appeal before Addl. District Judge, Fatehabad, who vide judgment and decree dated 18.04.2014 dismissed the appeal.

Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court, by way of filing a Regular Second Appeal, notice of which was given to respondents/defendants, however, only respondents No.1 & 3 have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the judgments and decrees passed by the Courts below are not sustainable. The plaintiffs are basing their claim

on registered release deed No.555 dated 07.06.2007, said to have been executed by their nephew Ram Parsad defendant No.1 in their favour. A registered document does carry presumption of due execution. There is nothing on record to show that Ram Parsad has initiated any proceedings against the plaintiffs so far for setting aside of the said release deed. Defendant No.1 in the written statement filed by him has not denied the execution of such release deed by him in favour of the plaintiffs. It was only he, who could have challenged the release deed in favour of the plaintiffs on any ground but it has not been done. Therefore, it is to be taken as a legal and valid document. PW5 Suresh Kumar Bhattu, Advocate who had drafted the release deed had categorically stated that he did so at the instance of Ram Parshad; he had read over and explained the contents to the parties in the presence of witnesses Balwan Nambardar and Narender and the parties after admitting the same to be correct, appended their thumb impressions/signatures thereon, the witnesses had also signed the document; he had also put his stamp and signed the document. PW6 Narender, the attesting witness also proved its due execution; in addition stating that at the time of registration of the said release deed, Tehsildar had read over and explained the contents to the parties, who had put their thumb impressions/signatures in the presence of witnesses. Therefore, the execution of that release deed stands duly proved. As a result of this deed, the earlier owner defendant No.1 was not left with any right or title in the suit properties. Merely, because mutation was not sanctioned on the basis of such release deed

does not have much effect, since, it is settled law that mutation does not confer any title. It merely records the change of ownership. Defendants No.2 & 3 cannot take advantage of the fact that mutation was not sanctioned on the basis of release deed by defendant No.1 in favour of the plaintiffs, more particularly, when release deed is a registered document.

Registration of a document is notice to the entire world. It is duty of the revenue officials to keep the revenue record upto date. If for any reason, the mutation on the basis of release deed by defendant No.1 in favour of the plaintiffs could not be incorporated in the revenue record, that does not mean that defendants No.2 & 3 can take advantage of that fact by default. As already stated, once, defendant No.1 parted with the ownership and possession of the suit properties by way of execution of release deed No.555 dated 07.06.2007 in favour of the plaintiffs, he was no longer owner of the suit properties, since the title stood transferred to the plaintiffs. He could not possibly have executed another deed qua those properties in favour of defendant No.2 and if he did so, the release deed in favour of defendant No.2 to the extent of suit properties is null and void. Similarly, defendant No.2 Smt. Lichhma Devi on the basis of release deed by defendant No.1 in her favour could not have executed any sale deed in favour of defendant No.3 and if she had done so, the same is illegal, null and void. Under the circumstances, plea of bona fide purchaser of defendant No.3 is certainly not acceptable.

The Courts below by misappraisal of evidence and wrong interpretation of law rejected the claim of the plaintiffs; that wrong needs

to be undone, by way of acceptance of the present appeal, since the judgments passed by the Courts below have resulted in miscarriage of justice. Those judgments are set aside. Resultantly, the suit filed by the plaintiffs for declaration with consequential relief of permanent injunction is decreed in favour of the plaintiffs and against the defendants.

With such observations, the appeal stands allowed with costs.

28.11.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No