

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

RSA No. 77 of 2014 (O&M)

Date of decision : January 17, 2019

Sawali

.....Appellant

Versus

Sube Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

Mr. S.S. Khurana, Advocate
for the respondents.

LISA GILL, J.

Appellant - plaintiff is aggrieved of concurrent findings rendered against her by the learned Civil Judge (Junior Division), Rewari vide judgment and decree dated 14.05.2011 as well as by the learned Additional District Judge, Rewari vide judgment and decree dated 24.08.2013 and consequential dismissal of her suit.

Appellant – plaintiff filed a suit for declaration claiming to be the owner in possession of half share of agricultural land as detailed in the plaint. It was pleaded that the plaintiff acquired the suit land by way of inheritance from her father – Sadhu and mother Sarti.

At this stage, it is to be noticed that grandfather of the plaintiff – Lekhu had three sons Dhansi, Sadhu and Balwant. Dhansi had three sons namely Sube Singh (respondent No. 1), Rohtash (represented by his widow) and daughter Vidya Devi. Kundan has two sons Satyaved (respondent No. 2) Bir Singh (respondent No. 3) while Rohtash had four children i.e. Udai

Ram (respondent No. 5), Inderpal (respondent No. 6), Pavitra (respondent No. 7) and Kamlesh (respondent No. 8). Plaintiff was the only child of her parents i.e. Sadhu and Sarti. Sadhu passed away in the year 1976 and Sarti in about 1995. Plaintiff was married having five children of her own. Balwant son of Lekhu died issueless.

It was pleaded that in the end of April, 2007, defendant - Sube Singh came to the plaintiff's house in village Panchgaon and asked her to accompany him as their brother Rohtash (cousin brother of the plaintiff) was seriously ill. The plaintiff stayed with the defendant for about one month. She was taken to the Patwari and the Registrar's office in May, 2007 under the pretext that mutation of inheritance of her mother was to be sanctioned and for management of the plaintiff's share, power of attorney was required. Thumb impressions of the plaintiff were obtained on some papers. Plaintiff, however, came to know in the month of October, 2007 that defendants No. 1 to 3 namely Sube Singh, Satyaved, Bir Singh and deceased Rohtash got registered release deed dated 28.05.2007 purportedly executed by the plaintiff. Mutation No. 1848 was also wrongly sanctioned. Declaration was sought to the effect that the said release deed dated 28.05.2007 registered on 29.05.2007 was a result of fraud and misrepresentation, therefore, illegal, null, void and ineffective qua the rights of the plaintiffs.

Defendants resisted the suit while taking various preliminary objections. Averments on merits were denied. It was denied that the plaintiff had not executed a valid registered release deed in favour of her cousins on account of love and affection. It was denied that the plaintiff never intended to execute the release deed in favour of the defendants. Children of the

plaintiff and her other family members, it was claimed, pressurised the plaintiff to file the present suit. Plaintiff was alleged to have been instigated by her children to file the suit on account of rising prices of land. Dismissal of the suit was prayed for. Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the release deed dated 28.05.2007 and 29.05.2007, Vasika No. 1622 is illegal, null and void and liable to be set aside?OPP.
- ii) Whether the plaintiff is owner in possession of suit property detail in para no. 1 of the plaint?OPP
- iii) Whether the plaintiff is entitled for a decree of joint possession in alternative relief, as claimed?OPP
- iv) Whether the suit is not maintainable? OPD.
- v) Whether the plaintiff has no locus standi to file the present suit? OPD.
- vi) Whether the suit is barred by limitation?OPD
- vii) Whether the plaintiff has no cause of action to file the present suit? OPD
- viii) Relief.

Evidence was led by both the parties to substantiate their respective stands. Learned trial Court after consideration of the evidence on record as well as facts and circumstances of the case held that the registered release deed dated 28/29.05.2007 was duly proved by the defendants on the basis of evidence on record. Plaintiff, it was held, failed to prove her case thereby her suit was dismissed. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Rewari vide judgment dated 24.08.2013. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the plaintiff is a 80 year old Pardanashin woman. She has been be-fooled and

defrauded by her own cousins. There was no occasion for the plaintiff to have executed the release deed in favour of her cousins especially when she had five children of her own. Evidence on record, it is submitted, clearly points out to fraud and misrepresentation on the part of the defendants. Moreover, mere registration of the release deed in such a situation cannot be sufficient to prove its genuineness. It is further contended that no consideration ever passed to the plaintiff on execution of the said release deed. The so-called articles and cash of ₹20,000/- claimed to have been given to the plaintiff by the defendants after two days of the execution of the release deed cannot in any manner be taken to be consideration for the suit property. The alleged document is in contravention of Section 17 of the Registration Act. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 14.05.2011 passed by the learned Civil Judge (Junior Division), Rewari as well as judgment and decree dated 24.08.2013 passed by the learned Additional District Judge, Rewari be set aside. Consequently, suit filed by the appellant be decreed throughout.

Learned counsel for the respondents on the other hand while refuting the above said arguments submits that both the learned courts below have rendered concurrent findings of fact against the appellant – plaintiff after proper appreciation of the evidence on record. No ground is made out for any interference therein. Learned counsel for the respondents further vehemently argues that plaintiff in fact, had all love and affection for the defendants. She often used to stay at their village. The plaintiff's mother was well looked after by them in her old age till her death. Furthermore, the plaintiff had executed the release deed in question out of love and affection for the defendants out of her own free will and volition. It is submitted that

the plaintiff's children became greedy and pressurised the plaintiff to file the suit in question. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute regarding the relationship between the parties. Appellant – plaintiff's father Sadhu had two brothers Dhansi and Balwant. Balwant admittedly passed away issueless while Dhansi had four children with their respective progeny as mentioned in the foregoing paras. Plaintiff was the only child of her parents. Sadhu passed away in the year 1976 and Sarti i.e. mother of the plaintiff passed away in the year 1995. Sarti used to stay in her matrimonial village i.e. the village of the defendants and was looked after by them. Release deed (Ex. DW1/1) dated 28/29.05.2007 executed by the plaintiff in favour of the defendants is claimed to be the result of fraud and misrepresentation. It is relevant to note at this stage that the plaintiff has not denied her signatures on the release deed. There is practically no denial of the execution of the release deed inasmuch as the plaintiff while deposing as PW1 has clearly stated that certain documents were got signed by her. However, she being illiterate did not know the contents thereof. PW1 stated that in April 2007, Sadhu Singh had come to their house at Jainabad as Rohtash her cousin brother was seriously ill and wanted to meet the plaintiff. Plaintiff categorically admitted that she stayed with her cousins for over a month, even though Rohtash was alleged to be suffering merely from gastric pain. PW1 claimed that she was taken to the Patwari at Dahina after 10/15 days and asked to thumb mark certain papers. Thereafter PW1 stated that she was taken to Rewari and made to append her signatures on other documents. PW1 admitted that her

photographs were taken. In her cross examination, PW1 stated that at the time of execution of the release deed, her photographs were not taken and then improvised by saying that it was suddenly taken but she never questioned as to why her photographs were being taken. On one side PW1 stated that she had no love for the defendants neither did the defendants have any affection for her but at the same time she could not explain as to why she continued to stay with her cousins for over one month even when Rohtash was merely suffering from gastric pain only. It is apparent that PW1 was aware of being taken to Patwari and the Tehsildar but she never raised any objection, neither made any inquiries on this account. Per contra, defendants have duly proved execution of the release deed (Ex. DW1/1). Parma Nand (DW1) is one of the witness of the release deed. DW1 specifically stated that the release deed was prepared on the directions of the plaintiff, contents were read out and explained to the plaintiff who appended her thumb impressions after hearing and admitting the contents thereof to be correct. Deed Writer - Birender Kumar Sharma (DW2) also stated that he prepared the release deed on the instructions of the plaintiff, which was read over and explained to the plaintiff after which she appended her thumb impressions thereon. DW3 Kanwar Singh, another attesting witness of the release deed also testified to the same effect. Admittedly, the said release deed is a registered document. It has been held by the Hon'ble Supreme Court in **Prem Singh and others versus Birbal and others** 2006 (3) RCR (Civil) 381 that there is a presumption to a registered document being validly executed, onus of proof otherwise would necessarily be on the person who challenges the same. The Hon'ble Supreme Court in **Ranganayakamma and another versus K.S. Prakash (D) by L.Rs. and**

others 2008 (3) RCR (Civil) 601 has held that release deed is valid even without consideration.

In the present case, the plaintiff's father admittedly passed away in the year 1976 and her mother in the year 1995. It is not in dispute that the plaintiff's mother was living in the joint family alongwith the defendants. Their kitchen was also common. She died in the year 1995 after a period of about 19 years after the death of her husband. PW1 has stated that she used to cultivate suit land herself and sometimes gave the same to one Chandu and Parbhu on Batai. Apart from the fact that there is no evidence to this effect, PW2 Satish Kumar son of the plaintiff to the contrary has stated that he used to till the land. Paradoxically PW2 stated that he had sown wheat and sarson in March, 2007 and Bajra in the month of Sawan (August) whereas it is common knowledge that wheat crop is sown in the month of October-November and Bajra in the month of June. Therefore, the said testimonies are not worthy of any credence. Distance between the village of the defendants Jainabad and matrimonial village of the plaintiff Panchgaon was about 60-70 kilometres. Moreover, both the attesting witnesses of the release deed belong to the village of the plaintiff herself and whom she admittedly knew since her childhood. No enmity of the said witnesses with the plaintiff has been proved on record. There was no occasion for the said witnesses to have deposed against the interest of the plaintiff. It is rightly observed by the learned District Judge, Rewari that even if the appellant is taken to be a Pardanashin woman there was no occasion for the plaintiff to practice the same within her parental village. Perusal of the photographs on the release deed substantiates this observation.

Another argument raised by learned counsel for the appellant is

that husband of the plaintiff has not signed the release deed, therefore, the said document is not genuine. There is no requirement of the husband of the plaintiff to have signed the release deed for the document to be genuine and valid. Another plea raised by learned counsel for the appellant is that DW1 Parma Nand was admittedly not a Lamberdar of the village, therefore, there is no explanation as to why he attested the release deed. Moreover, DW1 admitted the plaintiff to be an 80 year old illiterate women, therefore, the same is reflective of fraudulent nature of the document. I do not find any merit in this argument. A perusal of the testimony of DW1 as well as the lengthy cross examination to which this witness was subjected, does not point to any such discrepancy which raises a doubt on his credibility. DW1 has admitted the plaintiff to be an illiterate 80 year old. He has truthfully stated that she may be observing Parda in her matrimonial village and he had no knowledge of the same. DW1 specifically stated that he had himself asked the plaintiff regarding the release deed. She had come out of her free will and volition for execution of the release deed. Husband of the plaintiff Banwari Lal was stated to be present at the time of the execution of the release deed. Learned counsel for the appellant is unable to deny that DW3 Kanwar Singh the other attesting witness of the release deed was the Lambardar of the village.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment and decree dated 14.05.2011 passed by the learned Civil Judge (Junior Division), Rewari as well as judgment and decree dated 24.08.2013 passed by the learned Additional District Judge, Rewari which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

January 17, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No