

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

**RSA No.4202 of 2017 (O&M)
Date of Decision.08.05.2019**

Bal Krishan and others

...Appellants

Vs

Subhash Chander and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Mamli, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed at the instance of the appellants-plaintiffs, who were not successful in claiming declaration by laying challenge to the release deed, Ex.P1 executed by defendant No.2-Chetan Dass, their father, in favour of defendant No.1, one of their brother. The suit was based upon pleadings that property at the hands of Chetan Dass was ancestral. He had no authority to execute the release deed impugned, as Chetan Dass received the agricultural land from his father vide collusive decree and mutation No.965 dated 25.10.1969 was also sanctioned.

Defendants opposed the suit and raised preliminary objections qua maintainability and stated that act of defendant No.2 for relinquishing right in the property was volunteer.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiffs are the owners in possession of 5/6th share in equal shares of the suit land as detailed

in head note of the plaint? OPP

2. Whether the release deed No.132 dated 11.05.2010 executed by defendant No.2 in favour of defendant No.1 qua the suit land is illegal null and void and is liable to be set aside? OPP

3. Whether the suit is false and frivolous and is liable to be dismissed with special costs, as alleged? OPD

4. Whether the suit is not maintainable in the present from? OPD

5. Whether the suit is bad for mis-joinder of parties and non-joinder of necessary parties? OPD

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

7. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD

8. Whether the civil court at Tohana has no jurisdiction to try and decide this suit? OPD

9. Whether the suit is bad for want of ad valorem court fee? OPD

10. Relief.”

Plaintiffs in support of pleadings examined two witnesses and brought on record Ex.P1 to P8 whereas defendants examined three witnesses and brought on record Ex.D1 to D4.

Mr. Mamli, learned counsel appearing on behalf of the appellants submitted that on 05.07.2010, Chetan Dass appeared in the Court and stated that he did not execute the release deed. It was ancestral property inherited from his forefathers. The release deed was without legal necessity and therefore, was liable to be set aside. Defendant No.1 at Delhi filed suit on the basis of Will dated 09.02.2006 qua claim of house at Delhi wherein there was an admission regarding the health condition of Chetan Dass. In fact,

Chetan Dass at the time of execution of release deed was not keeping good health and was suffering from a nephrological problem and died on 07.01.2011.

I am afraid aforementioned argument would not be sustainable, as the aforementioned statement cannot be believed in the absence of opportunity of cross-examination to defendant, for, Chetan Dass remained alive for a period of about six months as he died on 07.01.2011 whereas the suit was filed on 26.07.2010. As per the averment in the plaint regarding suit property at Delhi, the appellant has already sold his share and created third party right, which fact has been noticed from Ex.P9. The entire evidence brought on record revealed that Chetan Dass acquired the property from his own sources and not ancestral and therefore, could deal with the same in any manner. It is not matter of record that the entire property was sold but there are other parcels of land whereof plaintiffs are also beneficiaries as per Will dated 09.02.2006.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 08, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No