

RSA-5041-2017 (O&M)

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

**RSA-5041-2017 (O&M)
Date of decision : 26.03.2019**

Bohti Devi (deceased) through LRs

... Appellant

Versus

Vikram Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Kumar Jain, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-3457-C-2019

For the reasons stated in the application, which is supported by an affidavit, the application is allowed and the appeal is restored to its original number.

MAIN CASE

The appellant-plaintiff is in the present regular second appeal against the concurrent finding of fact, whereby the suit claiming declaration and joint possession by laying challenge to the release deed Nos.3857/1, 3858/1 dated 28.09.2001, 217/1 dated 10.04.2007 and subsequent mutations, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that the aforementioned release deeds were never executed by her, but it was an act of fraud and misrepresentation having played upon. The defendants were non-else, but the grandson of the

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plaintiff. Her husband was the owner of the land measuring 125 kanals 4 marlas mentioned in the suit property. The plaintiff and other co-sharer of the land, filed the suit, which was decreed and sale deed dated 11.06.1997 was executed in favour of the plaintiff and other co-sharer and plaintiff acquired 3/50th share in land measuring 144 kanals and ownership was duly incorporated in the revenue record, vide mutation No.1316. After the death of her husband, she used to reside with her elder son Mamu Ram. She being simpleton lady was made to believe to mortgage her land, resulting into, the alleged release deeds.

The defendants opposed the suit and stated that it was volunteer act of the plaintiff. The suit was barred by law of limitation, much less, not maintainable.

The plaintiff in support of the pleadings examined two witnesses and tendered in evidence Ex.PA to Ex.PG, whereas the defendants examined seven witnesses and brought on record many documents.

Mr. Jain, learned counsel appearing on behalf of the appellant-plaintiff submitted that the ingredients of fraud as per the provisions of Order 6 Rule 4 of the Code of Civil Procedure, have been proved to the hilt, particularly when the defendants did not deny the fact that the plaintiff is a simpleton lady. There was no occasion for execution of the release deeds and her intention was only to execute the mortgage deed and the impugned judgments non-suiting the plaintiff qua admission in the evidence is based upon the conjectures as the entire tenor and mode of the examination and cross-examination has to be looked into.

I am afraid the aforementioned argument is not sustainable as

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the art of cross-examination is recognized under law as per the provision of the Indian Evidence Act, enabling to put question for the purpose of impeaching the veracity of the witnesses. It is a case, where the plaintiff admitted that she came to know about the fraud, after 2-3 years of the execution of the release deeds, whereas the suit has been filed in the year 2011. For all intents and purposes, the suit was barred by law of limitation and cannot be brought within Article 59 of the Limitation Act.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Jain, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

26.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**