

In the High Court of Punjab and Haryana at Chandigarh

RSA- 14364 of 2018(O&M)

Date of Decision:28.2.2019

Sunil

---Appellant

versus

Sumer Singh (since deceased) through his LR's

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Karan Singh, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 19491-C of 2018

Prayer in this application is for condoning delay of 163 days in refiling the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 163 days in refiling the appeal stands condoned.

Disposed of accordingly.

RSA No. 14364 of 2018

The present appeal directs challenge against concurrent findings of fact whereby suit filed by Sunil-plaintiff (appellant herein) to challenge release deed bearing No. 5297 of 14.7.2011 being illegal, void and not binding upon rights of the plaintiff was dismissed by the trial court vide judgment and decree dated 19.9.2013 and appeal preferred by unsuccessful plaintiff-appellant did not find favour with the Additional

District Judge, Sonapat and as such findings recorded by the trial court were affirmed without any variance.

The appellant challenged the release deed primarily on the ground that he is unmarried and drunkard. The respondent-defendant assured the plaintiff of getting him (plaintiff) married and the plaintiff believed version of the defendant. The defendant took him to Sonapat. Rajender, brother of the plaintiff came to know that defendant has forged document on 14.7.2011.

The sole submission made by counsel for the appellant is that on the back side of first page of the document, there is endorsement with regard to purchase of stamp paper but the said endorsement does not bear thumb impressions of the appellant nor it bears signatures or thumb impression of any other person with regard to purchase of stamp paper, sufficient to create doubt qua correctness and genuineness of the release deed and as such, findings of the courts negating plea of the appellant cannot be allowed to sustain. In support of his contention, he has relied upon judgment of this court **Mangat Singh vs. Rakesh Kumar Gupta and another 2014(4) RCR (Civil) 387.**

I have heard counsel for the appellant, perused the paper book and various documents annexed with the appeal.

There are consistent findings recorded by the courts rejecting plea of the appellant that release deed is the result of fraud/forgery. Counsel has failed to point out any tangible material on record sufficient to establish his plea that the document is the result of fraud when otherwise, in view of settled position in law, fraud is required to be proved akin to criminal charge even in civil litigation.

The appellant-plaintiff had raised the plea that he is a drunkard and taking advantage of that condition, document has been got executed from him. In his testimony on oath, the appellant has not even whispered about his drinking habit or the document being got executed taking advantage of any such condition of the plaintiff. Sunil, the appellant appeared in the witness box and tendered into evidence his affidavit Ex. PW2/A by way of examination in chief. In the opening lines of his cross examination, he would depose that he did not know what was written in Ex. PW2/A meaning thereby that the facts elicited in his examination in chief cannot be taken into consideration. He has admitted his photograph alongwith photograph of the attesting witnesses i.e. lambardar and Dilbag but stated that the same were clicked for taking of loan. The appellant introduced a new story during the course of evidence but failed to establish his plea that release deed was got executed under the circumstances pleaded in the plaint. On the contrary, the respondent besides examining himself produced both the attesting witnesses and scribe of the release deed in the Court. Counsel has failed to bring forth tangible material in their cross examination to challenge their credibility or to prove that their testimonies are not worthy of reliance. The appellant did not examine the stamp vendor to explain as to why endorsement on back of first page of the document does not bear signatures or thumb impressions of purchaser of the stamp paper. In the given circumstances, the mere fact that endorsement with regard to purchase of stamp paper does not bear singature or/and thumb impression of purchaser itself cannot be a circumstance to interfere in concurrent findings of fact or to say that a question of law arises for adjudication after notice to the contesting party. That being so, the

appellant can not derive any advantage to his contention from the referred judgment, rendered in light of peculiar facts and circumstances involved therein.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

28.2.2019

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No