

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

119

RSA-5434-2019 (O&M)

DATE OF DECISION: 16.01.2020

RAJMAL AND ORS

... Petitioner(s)

Versus

SANTOSH AND ORS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Munish Kumar Garg, Advocate for the appellants.

ANUPINDER SINGH GREWAL, J. (ORAL)

CM-15443-C-2019

This is an application for condonation of delay of 39 days in refiling the appeal.

For the reasons stated in the application, the same is allowed and delay of 39 days in refiling the appeal is condoned.

MAIN CASE

The appellants have challenged the judgments of the Courts below whereby suit for declaration to the effect that the release deed 4131 dated 12.12.2011 executed by defendant set No.2 in favour of defendant set No.1 is illegal, null, void, false, frivolous and a result of undue influence and coercion and, therefore, not binding on the rights of the plaintiff and defendant set No.3 and for permanent injunction restraining the defendant set No.1 from interfering into peaceful possession of plaintiffs and other co-sharers in the land comprised in Khewat No.126 Khatoni No.186 total measuring 159 kanal 3 marla vide jamabandi for the year 2002-2003 situated in revenue estate of village

Nirjan, Tehsil and District Jind and further from alienating the same to anybody in any manner.

Learned counsel contends that defendant No.3 Thambu Ram, who had executed the release deed, was not in a good mental condition to do so and undue influence had been exerted on him by defendant set No.1. He has referred to the deposition of defendant No.1 Santosh and Defendant Set No.4 Rajesh to suggest that they had exerted undue influence upon defendant No.3 Thambu Ram. He also contends that the release deed had been executed on 12.12.2011 and Thambu Ram had expired on 17.12.2011. He was over 80 years of age and was unwell and had been confined in hospital and, therefore, the circumstances around the execution of the release deed were fraught with suspicion.

Heard.

The plaintiffs had filed civil suit for declaration that release deed 4131 dated 12.12.2011 executed by defendant Set No.2 in favour of the defendant Set No.1 is illegal, null, void, false, frivolous, bogus, fraudulent and is a result of undue influence and coercion and is not binding upon the rights of the plaintiffs and defendant set No.3 and for permanent injunction restraining the defendant set No.1 from interfering into peaceful possession of plaintiffs and other co-sharers in the land comprised in Khewat No.126 Khatoni No.186 total measuring 159 kanal 3 marla vide jamabandi for the year 2002-2003 situated in revenue estate of village Nirjan, Tehsil and District Jind and further from alienating the same to anybody in any manner.

It is also not in dispute that Thambu Ram during his life time had given separate shares to all his 7 sons and after doing so, the land which had been retained by him had been given through the release deed to the defendants set No.1. In the event of the property being coparcenary and joint family after its partition amongst the coparcenors, the property which devolves on the share of Thambu Ram, he was at liberty to give it to anybody as per his wish. Therefore, the contention of the petitioner that it was a coparcenary property and he could not have executed a relinquish deed with regard to the same, has been rightly rejected by the courts below. With regard to the undue influence, which has been pleaded by the appellants plaintiffs, findings of fact had been recorded that the appellants plaintiffs had not been able to produce credible evidence. Merely because Thambu Ram was related to the other defendants, it could not be said that they had exercised undue influence. It is incumbent upon the party, which pleads undue influence, to lead cogent evidence with regard thereto. There is also no evidence that Thambu Ram was not in a fit mental condition to execute the release deed. What has been pleaded and led in evidence is that Thambu Ram, prior to his death, was not keeping well and suffering from old age ailments and was admitted in hospital. No doctor has been examined to indicate the nature of the illness which would throw light on his possessing adequate mental faculties to execute the release deed or any other evidence which would indicate that he was not in a fit state of health. The onus was on the plaintiff to do so but from the findings of

fact, which had been recorded by the courts below, it is evident that the same had not been done.

Consequently, I do not find any ground to interfere in the findings of fact recorded by the courts below. The appeal stands dismissed.

Misc. applications also stand disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

16.01.2020.

SwarnjitS

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