

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 657 of 2013 (O&M)

Date of Decision: 02.03.2020

Shamsher and Others

... Appellant(s)

Versus

Sunny (minor son) and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Harkesh Manuja, Advocate
for the appellants.

Mr. Tribhuvan Dahiya, Advocate
for the respondents.

Anil Kshetarpal, J.

The plaintiff through his legal representatives has filed regular second appeal against the findings of fact arrived at by the learned first Appellate Court reversing the judgment & decree passed by the learned trial Court.

Deceased Smt. Lado challenged the correctness of registered transfer deed executed by her on 28.11.2001 in favour of her minor grandson, namely Sunny, whose father late Sh. Subhash son of Smt. Lado, died in the year 1999. It has come on record that Smt. Lado was residing with the family of late Sh. Subhash. The registered release deed has been proved by examining one attesting witness and the scribe. It has also come on record that after the death of Subhash, his wife Smt. Savitri entered into a “kareva” (customary marriage) with another brother (Ballu) of her deceased husband, who also lateron adopted Sunny as his own son. Ballu has also expired.

The learned trial Court decreed the suit filed by her on the ground that Smt. Savitri wife of late Sh. Subhash was in a dominating position and, therefore, the inference of undue influence was drawn.

The learned first Appellate Court, after re-appreciating the entire evidence, reversed the aforesaid finding.

This Court has heard learned counsel for the parties and with their able assistance, gone through the judgments passed by both the Courts below.

Learned counsel for the appellant has submitted that the learned first Appellate Court has erred because the finding of learned trial Court with regard to undue influence has not been reversed. The suit filed by the plaintiff is not barred by limitation and as such, finding of the learned first Appellate Court is erroneous because the inference of knowledge cannot be drawn only on account of the fact that one attesting witness was known to Narinder, another grandson of Smt. Lado.

On the other hand, learned counsel for the respondents has submitted that the learned trial Court also did not record any categorical finding of undue influence. He further submitted that the release/transfer deed is a registered document having photographs of the executants and the attesting witnesses. He further read over the statement of Smt. Lado, who admitted that she has great love for her grandson (Sunny), but since Smt. Savitri is not behaving properly, therefore, she has filed the suit. She has further stated that she has no objection if Smt. Savitri behaves properly.

This Court has analyzed the arguments of learned counsel for the parties.

No doubt, the learned first Appellate Court has not specifically reversed the finding with regard to undue influence recorded by the learned

have re-examined the entire issue. Smt. Lado had transferred the property inherited from her husband as well as Ballu in favour of Sunny, her grand son.

Undue influence is defined under Section 16 of the Indian Contract Act, 1872. A party who claims that a written contract is void on account of undue influence is required to establish the same by preponderance of evidence. The inference of undue influence cannot be drawn merely on the basis of suspicion or circumstances. The statement of Smt. Lado, noted above, clearly leads the Court to only one conclusion that she has filed the present suit only because she is not happy with her daughter-in-law i.e. Smt. Savitri. Still further, Narinder, another grandson of Smt. Lado, has appeared in evidence as PW.2 and indirectly admitted that Smt. Lado had given her property to Sunny. Still further, it has come in evidence that the remaining members of the family were living separately and Smt. Lado used to reside with the family of her son Subhash.

In view of the aforesaid fact, this Court does not find any good ground to interfere.

Dismissed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

March 02, 2020
“DK”

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