

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 3.3.2020

RSA No. 2787 of 2018 (O&M)

Kuldeep and others

---Appellants

versus

Roop Ram and others

---Respondents

RSA No. 3714 of 2018 (O&M)

Kuldeep and others

---Appellants

versus

Roop Ram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. C.M.Munjal, Advocate
for the appellants

Rekha Mittal, J.
CM No. 7237-C of 2018

Allowed as prayed for.

Delay of 5 days in refiling the appeal stands condoned.

Main case(s)

This order will dispose of RSA Nos. 2787 and 3714 of 2018 as these have emerged out of the same judgments and decrees and involve identical question of law and facts for adjudication. For facility of reference, facts are taken from RSA No. 2787 of 2018.

Kuldeep Singh and others claiming to be successors in interest of Amar Singh @ Umrao Singh sought declaration that plaintiffs and proforma defendants are owners in possession of property, detailed in para 1 (unnumbered) of the judgment of trial court by assailing release deed No.

179 dated 11.2.2000 and mutation No. 2799 on the basis thereof being the result of fraud, thus, liable to be set aside.

The appellants-plaintiffs averred that Amar Singh @ Umrao Singh solemnized two marriages. The defendants are descendants from first marriage with Surji. After death of Surji, Amar Singh @ Umrao Singh married with Ompati. Plaintiffs No. 1 and 2 and proforma defendants are born out of second wedlock of Amar Singh @ Umrao Singh. It is further pleaded that taking advantage of old age of Amar Singh @ Umrao Singh, defendants No. 1 and 2 got executed release deed dated 11.2.2000 by playing fraud and misrepresentation. The suit property was not ancestral property rather self acquired property of Amar Singh @ Umrao Singh and as such the release deed could not be executed.

Both the courts have consistently held that appellants-plaintiffs have failed to plead much less prove that release deed No. 179 dated 11.2.2000 is vitiated by misrepresentation or fraud, thus, liable to be set aside.

Much stress was laid by the appellants that since the suit land was self acquired property of Amar Singh @ Umrao Singh, he could not execute the release deed by taking shelter of notification dated 19.4.2000 issued by the Government of Haryana whereby Article 55 of the Indian Stamp Act, 1899 (in short “the Act”) was substituted and stamp duty was reduced to Rs. 15/-.

Counsel for the appellants, in response to a query, is not in a position to advance any convincing arguments, whether Amar Singh @ Umrao Singh could get the release deed set aside by raising a plea that suit property was his self acquired property, therefore, the release deed could not

be executed by affixing meager amount of stamp duty, taking advantage of aforesaid notification. As per the settled position in law, no one can be allowed to take advantage of his own wrong. If Amar Singh @ Umrao Singh could not challenge the release deed on the aforesaid ground, the appellants-plaintiffs who are claiming right to the suit property through Amar Singh @ Umrao Singh possibly cannot challenge the release deed by raising the issue of improper stamp duty. This apart, the question of payment of requisite stamp is a matter between executant of the document and the State Government and in case the documents is not duly stamped, the same can be impounded by the State, by invoking the relevant provisions of the Act. In this view of the matter, I find myself unable to accept contention of the appellants that concurrent findings recorded by the courts suffer from an error much less perversity that would call for intervention.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine.

(Rekha Mittal)
Judge

3.3.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No