

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

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**RSA No.482 of 2021 (O&M)
DATE OF DECISION: 13th AUGUST, 2021**

Rachna and another

.... Appellants

Versus

Satya Narain Sharma and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. Manoj Kaushik, Advocate,
for the appellants.

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RAJBIR SEHRAWAT, J. (Oral)

This is a regular second appeal filed by the appellants; challenging the concurrent judgment and decrees passed by the Courts below; whereby the suit filed by the appellants was dismissed. In the suit, the relief sought was; a declaration to the effect that respondent No.2 had wrongly executed the release deed in favour of respondent No.1.

The basis given in the plaint for the said prayer was that the appellants and the respondent No.2 constituted a joint Hindu family and the suit property comprising khewat No.2261, khatoni No.2724, khasra and killa Nos.181//6/1 (6-18), measuring 0 kanal 17 marlas was mutated in favour of respondent No.2. Therefore, the suit property became the co-parcenary property of appellants and respondent No.2. The appellant No.1 got her right in the same from the date of her marriage, whereas, appellant No.2 got his right in the same by birth. Therefore, release deed

No.1786 dated 01.06.2010 executed in favour of respondent No.1 is illegal, null and void and not binding on the parties.

A bare perusal of the judgment passed by the Court below shows that the suit property has been held to be self acquired property in the hands of respondent No.2. The property had come to respondent No.2 by way of inheritance from the side of his mother. Therefore, this Court does not find any illegality in the findings recorded by the Court below that the property was self acquired property of respondent No.2 and not the co-parcenary property as is claimed by the appellants. The second point, which is sufficient to defeat the claim of the appellants is that, as per the record, the release deed was executed on 01.06.2010, whereas, the marriage of appellant No.1 with respondent No.2 had taken place on 19.07.2010. A letter (Ex.D-1) written by the Child Development Project Officer, Bhiwani, has been led in evidence, in which the Child Development Project Officer has intimated that as per the official records the marriage between appellant No.1 and respondent No.2 had taken place on 19.07.2010. Although, appellant No.1 may be right in submitting that the said document has not been proved, in accordance with law, however, the factum of marriage of appellant No.1 and respondent No.2 was specifically pleaded by appellant No.1 in her plaint and it was asserted therein that marriage had taken place on 16.05.2010 and not on 19.07.2010. Once the specific plea was raised by appellant No.1 as a plaintiff, then it was bounded duty upon her to lead positive evidence to prove the said fact. However, no evidence, whatsoever, has been led by the appellants on this aspect so as to prove the date of marriage to be 16.05.2010. Obviously, appellant No.1, as a plaintiff,

could not have taken advantage of an alleged weakness of the case of the defendants. Hence, appellant No.1/plaintiff failed to prove even this fact that she had become a member of even joint Hindu family before the date of execution of the impugned release deed.

In view of the above, finding no illegality or perversity with the findings recorded by the Courts below, the present appeal is dismissed.

13th AUGUST, 2021
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>