

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

RSA-332-2021(O&M)

Date of decision:06 .07.2021

Mukesh Rani

.....Appellant

Versus

Seema Rani

.....Respondent

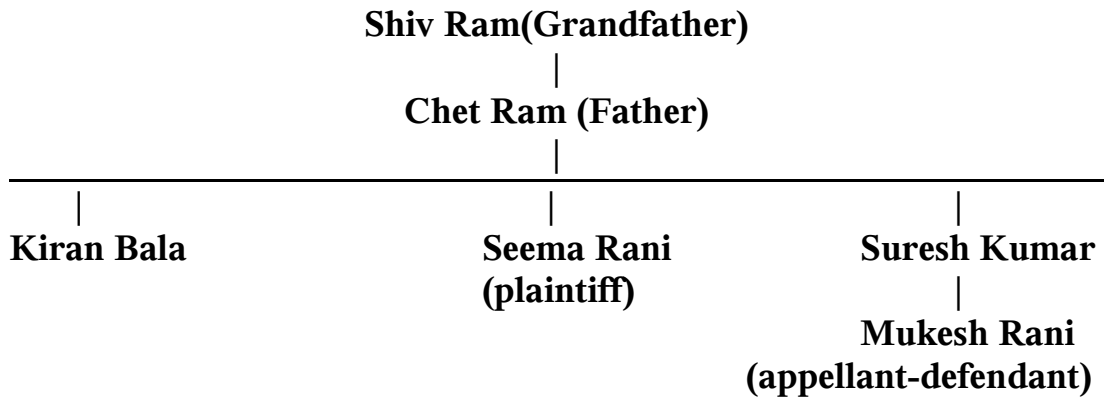
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rahul Deswal, Advocate, for the appellant

ANIL KSHETARPAL, J.

The defendant is the appellant. She has filed an appeal against the judgment and decree passed by the learned Additional District Judge, Gurugram on 09.12.2021. Learned Additional District Judge has reversed the judgment and decree passed by the learned trial court on 15.07.2016. The trial court had dismissed the suit filed by the plaintiff-respondent for declaration that the Will dated 05.10.2011, allegedly executed by Late Sh. Chet Ram is illegal and fraudulent and the defendant-appellant be restrained from interfering in the peaceful possession of the plaintiff over the suit property as also restrained her from alienating the suit property.

Before this Bench proceeds to discuss the facts of the case, it would be appropriate to draw a genealogical tree to understand the inter se relationship between the parties:-



Seema Rani, daughter of Late Sh. Chet Ram filed the present suit against Mukesh Rani (appellant herein), who is daughter-in-law of Late Sh. Chet Ram. In other words, the plaintiff has filed a suit against her sister-in-law (the brother's wife).

The plaintiff came to the court asserting that Late Sh. Chet Ram had executed two registered release deeds transferring his entire property in favour of his children. The first registered release deed was executed by Late Sh. Chet Ram on 24.11.2010 with respect to 3/4th share of the land measuring 11 kanals 2 marlas situated in village Baj Ghera, Tehsil and District Gurugram. Thereafter, Late Sh. Chet Ram again executed another release deed in favour of Seema Rani with respect to the remaining 1/4th share on 24.12.2010. The plaintiff has submitted that the defendant in collusion with her husband has got a Will registered on 05.102.2011 from Late Sh. Chet Ram with regard to the suit property. The plaintiff claims that such Will is illegal and fraudulent.

The defendant contested the suit and pleaded that she used to serve her father-in-law and Late Sh. Chet Ram executed the registered Will due to love and affection. The defendant further pleaded that the release deed in favour of the plaintiff dated 24.12.2010 is result of fraud.

Learned trial court framed the following issues:-

“(1) Whether the plaintiff is entitled to a decree for declaration to the effect that the Will no.567, dated 5.10.2011 is illegal, null and void, on the grounds as prayed for? OPP.

(2) Whether the plaintiff is entitled to a decree for permanent injunction thereby restraining the defendant from getting the land, detailed in para no.1 & 2 of the plaint, mutated?OPP

(3) Whether the suit is not maintainable in the present form? OPD.

(4) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.

(5) Whether the suit is bad for non-joinder and mis-joinder of the necessary parties? OPD

(6) Whether the plaintiff has concealed the true and material facts from the Court? OPD.

(7) Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD.

(8) Relief.”

The plaintiff successfully proved the execution of two release deeds by examining herself as well as Sh. Narender. On the other hand, defendant failed to prove the alleged registered Will dated

05.10.2011 as no attesting witness was examined.

However, learned trial court dismissed the suit on the ground that the plaintiff has failed to prove that the property in question is an ancestral property. Learned trial court found that as a matter of fact the property was received by Late Sh. Chet Ram from his father Sh. Shiv Ram through a document. The court held that since it has not been proved that the property was inherited from four previous generations, therefore, it is not an ancestral property.

The plaintiff filed the appeal which as noticed above has been allowed.

Learned counsel representing the appellant contends that Late Sh. Chet Ram had executed a registered Will on 05.10.2011. He further submits that since the plaintiff failed to prove that the property was ancestral, hence, no release deed could be executed.

This Bench has considered the submissions made by the learned counsel for the appellant and with his able assistance perused the paper book. It is not in dispute that the plaintiff-respondent is the daughter of Late Sh. Chet Ram. It is also not in dispute that Late Sh. Chet Ram had received the property from his father Sh. Shiv Ram. It is also not in dispute that the defendant-appellant has failed to lead evidence to prove the execution of the Will dated 05.10.2011. Since the defendant-appellant has failed to prove the Will in accordance with Section 68 of the Indian Evidence Act, 1872, which requires that atleast one attesting witness, alive and available must be examined in the court, hence, both the courts have correctly held that the defendant has failed to

prove the Will.

Next argument of the learned counsel is with regard to the validity of the release deed. A release deed is an instrument of transfer of the property unless from the reading of recital therein it is established that the executor never intended to transfer the immovable property within the family members. The transfer of the property is permissible amongst the family members through a release deed on payment of lesser stamp duty as compared to the sale deed/convenience deed. The State Government has issued instructions in this regard. Hon'ble Supreme Court in more than one judgments has laid down that if on examination of the recital it is clear that the deed of release intended to transfer title then such release deed would amount to transfer to the title of immovable property worth more than Rs.100/-. Reliance in this regard can be placed on a judgment passed by the Hon'ble Supreme Court in '**Kuppuswami Chettiar vs. A.S.P.A. Arumugam Chettiar and another**' AIR 1967 SC 1395. Para 6 of the aforesaid judgment is extracted as under:-

“6. Counsel next submitted that a release can only enlarge and existing title of the releasee, and there can be no release in favour of a releasee who has no interest in the property. He relied on the following observation in [Hutchi Gowder v. Bheema Gowder](#) 1959-2 Mad. L.J. 324 at p.337 (AIR 1960 Mad. 33 at p. 41). "A release deed can only feed title but cannot transfer title" and another observation in [S. P. Chinnathambiar v. V. R. P. Chinnathambiar](#), 1953-2 Mad.LJ 387 at p.391: (AIR 1954 Mad. 5 at p.8), "Renunciation must be in favour of a person, who had

already title to the estate, the effect of which is only to enlarge the right. Renunciation does not vest in a person a title where it did not exist. Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate. But in this case, we are not concerned with a release in favour of the holder of a limited estate. **Here, the deed was in favour of a person having no interest in the property, and it could not take effect as an enlargement of an existing estate.. It was intended to be and was a transfer of ownership. A deed called a deed of release can, by using words of sufficient amplitude, transfer title to one having no title before the transfer. The cases relied upon by counsel are not authorities for the proposition that the operative words of a release deed must be ignored.** In S. P. Chinnathambiar's case 1953-2 Mad.LJ 387 at p.391: (AIR 1954 Mad. 5 at p.8) , the document could not operate as a transfer, because a transfer was hit by s. 34 of the Court of Wards Act, and viewed as a renunciation of a claim, it could not vest title in the release. [In Hutchi Gowder v. Bheema Gowder](#) 1959-2 Mad. L.J. 324 at p.337 (AIR 1960 Mad. 33), the question was whether a covenant of further assurance should be enforced by directing the defendant to execute a release deed or a deed of conveyance, and the Court held that the defendant should execute a deed of conveyance. These decisions do not lay down that a deed styled a deed of release cannot, in law, transfer title to one who before the

transfer had no interest in the property.”

In view of the aforesaid position of law, there could hardly be any doubt about the transfer of ownership through aforesaid two release deeds. The first release deed was executed on 24.11.2010 in favour of the plaintiff, Kiran Bala and Suresh Kumar. Subsequently, Late Sh. Chet Ram transferred the remaining 1/4th share in favour of Seema Rani-plaintiff. Both the release deeds have been registered under the Indian Registration Act, 1908. Still further, even as per the finding of the learned trial court, the property had come to Late Sh. Chet Ram from his father-Shiv Ram.

Keeping in view the aforesaid facts, there is no merit in the appeal and the same is hereby dismissed.

All the pending miscellaneous applications, if any, also stand disposed of.

06.07.2021
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No