

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

RSA No.1439 of 2021 (O&M)

DATE OF DECISION: December 02, 2021

Raj Kumar Gupta

...Appellant

VERSUS

Nand Kishore and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Shiv Kumar, Advocate, for the appellant.

SUDHIR MITTAL, J.

Respondent No.1-Nand Kishore had filed a suit for a declaration with consequential relief of permanent injunction. The declaration sought was that family settlement dated 25.07.2013 and relinquishment deed of even date were illegal, null and void. It was further prayed that a declaration be granted that he is owner in possession to the extent of 1/7th share in the suit properties. Upon notice having been served, defendant No.2 filed his written statement and also preferred a counter claim. According to the counter claim, settlements dated 25.07.2013-Vasika No.4100, dated 23.07.2013-Vasika No. 4101 and that dated 25.07.2013-Vasika No.4102 as well as relinquishment deed dated 25.07.2013-Vasika No.4103 were illegal and void having been obtained through connivance and fraud. He, however, admitted that there was an oral

family settlement which was not reduced into writing faithfully. The suit as well as the counter claim were dismissed. Appeal filed by the counter claimant has also failed. Thus, he has filed the present Regular Second Appeal.

The trial Court has dismissed the counter claim by returning a finding that fraud has not been established. Although, the counter claimant has claimed that the oral family settlement was not faithfully reduced into writing, he could not prove the same. The learned lower Appellate Court, after examining the submissions of the appellant has held that fraud and misrepresentation need to be proved beyond reasonable doubt. The appellant has failed to do so. In fact, he has even failed to prove his case on preponderance of probability. There was evidence on record in the shape of statement of the lawyer who had drafted the deeds. He had stated that after drafting the same, copies were handed over to the parties who took them home. Registration was done on 25.07.2013. He also stated that the drafting was done in the presence of Sanjay Mehndiratta an independent witness. Being an educated person he would have gone through the contents of the settlements before signing the same.

Thus, both the Courts below have returned concurrent findings of fact that the appellant failed to prove that the deeds challenged by him were the result of fraud and misrepresentation.

Instead of attempting to show that the findings aforementioned were illegal or perverse, learned counsel of the appellant has argued that the deeds in question deserved to be set aside as the appellant has not received

anything under the said settlements. He has been given shop No.21, YMCA Chowk and property bearing No.C-12, Rishi Nagar, Chawla Colony, Ballabgarh. Shop No.21 is situated on Government land and is an illegal construction and property bearing No.C-12 was neither in the name of the father nor in the name of the mother of the appellant, it could thus not form part of the family settlement.

In view of the findings that the appellant was an educated person and was aware of the contents of the deeds before signing them, the argument cannot be accepted. Being a member of the family, he should have been well aware of the properties available for division. Thus, the plea taken at this stage appears to be an attempt to avoid the family settlement in hindsight as it appears to him that he could have secured a better deal.

The appeal has no merit and is accordingly dismissed.

December 02, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

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