

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

**RSA-1535-2020 (O&M)
Decided on : 06.05.2022**

Mahabir Prasad

. . . Appellant

Versus

Suresh Kumar

. . . Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Keshav Pratap Singh, Advocate
for the appellant.

MANJARI NEHRU KAUL, J. (Oral)

Instant appeal has been filed by the Appellant-plaintiff to assail the concurrent findings recorded by both the Courts below.

Parties hereinafter shall be referred to on the basis of their original positions in the suit.

In brief, the case set out by the plaintiff is as follows; the plaintiff was owner in possession of 1/8th share in khewat No.737 khatoni No.997 total area 107 kanal 0 marla situated within the revenue estate of village Pali, Tehsil and District Mahendergarh as per jamabandi (2008-09). His father had executed a decree in his favour. The plaintiff was doing his business at Hyderabad. Even the defendant and other co-sharers were residing at other places. Plaintiff would occasionally visit the village for collecting rent as the suit land had been leased out by him for cultivation on account of his ill-health. On the asking of the defendant i.e. his brother, the plaintiff agreed to execute a power of attorney in favour of the defendant, for the management of the suit land, since the plaintiff was keeping

indifferent health. The plaintiff accompanied the defendant to the Courts at Mahendergarh for the requisite formalities in the aforementioned regard. It was on the asking of the defendant and trusting him, the plaintiff affixed his thumb impressions/signatures on some papers under the mistaken impression that he was signing on a power of attorney in favour of the defendant for managing his land. About 7-8 years prior to the institution of the suit in question, the plaintiff was told by the defendant that he had no right, title or interest in the suit property and it was only then the plaintiff realized and learnt that under the garb of execution of power of attorney, the defendant had played a fraud and got executed a release deed No.2340 dated 05.09.2002 in his favour and thereafter even got the mutation No.4762 dated 27.05.2003 executed.

On being put to notice, defendant disputed the submissions made by the plaintiff by filing his written statement. It was submitted that after 05.09.2002, the plaintiff had no right or interest over the suit property. It was further submitted that it could not be digested that the plaintiff, who admittedly was a matriculate, would not have been able to distinguish between a release deed and a power of attorney. It was submitted that in fact 13 years prior to the institution of the suit in question on 05.09.2002, the plaintiff had obtained an amount of Rs.2.25 lacs from the defendant for investing in his business. For compensating the defendant and also to save the expenses, which would have been incurred qua the sale deed and gift deed, the plaintiff of his own accord offered to execute a release deed in favour of the defendant on 05.09.2002. Thereafter, mutation No.4762 dated 27.05.2003 was rightly entered and registered in the name of defendant wherein he was shown as owner in possession. Hence, it was submitted that

the averments made by the plaintiff that a fraud had been played upon him, was bereft of any merit.

On the basis of evidence led, both the Courts below by way of concurrent findings dismissed the suit as well as the appeal filed by the plaintiff.

Learned counsel while impugning the judgments and decree passed by the Courts below *inter alia* contends that both the Courts below gravely erred in not appreciating that the appellant was residing at Telangana whereas the suit property was situated in District Mahendergarh (Haryana). The defendant Suresh Kumar while stepping into the witness box as DW-3 admitted that he had himself offered to the plaintiff that he be appointed as his attorney to manage his property. Learned counsel has submitted that the release deed had been got executed fraudulently by the defendant taking advantage of the old age and frail health of the plaintiff, in collusion with Bashashar Dayal, who too had accompanied him and the defendant to the Court at Mahendergarh, when the fraud was played upon him after making him sign on the release deed instead of the power of attorney. The plaintiff submits that the release deed was a mere paper transaction and not binding on him. He also submits that it could not be believed that the plaintiff, who was married having sons and daughters, would have still executed a release deed in favour of the defendant. He further submits that the suit property had devolved upon the share of the plaintiff vide a decree, hence, it had lost its character of being an ancestral or coparcener property. Resultantly, the release deed in question could not have even been executed. He thus, submits that in the circumstances it leaves no manner of doubt that a fraud had been played upon the plaintiff by

the defendant by fabricating a release deed under the garb of execution of power of attorney and thereafter getting it executed in his favour. Furthermore, he submits that since the defendant had been sending him rent qua the suit properties regularly, he had no occasion to ever doubt or suspect that the defendant had got the release deed executed instead of a power of attorney. However, as soon as the plaintiff learnt about the fraud played upon him in the year 2015, he instituted the suit in question

Heard learned counsel for the appellant(s) and perused the material on record.

Though the learned counsel has laid a great deal of stress on the factum of a huge fraud having been played upon the appellant, however, no cogent much less convincing evidence was produced by the appellant in support of his submissions. This Court finds it difficult to believe that the appellant, who admittedly is a literate person and was earlier working and now running his independent business in Hyderabad, would not have gone through the contents of the document i.e. release deed allegedly fabricated by the defendant, before affixing his thumb impression/signatures. This Court cannot ignore the deposition of the appellant himself, during his evidence before the trial Court, wherein he admitted during his cross-examination that he was well versed with the procedure carried out in the Tehsil office, qua the registration and execution of documents like power of attorney, release deed etc. Furthermore, it has also not been disputed by the appellant that he did appear before the scribe as well as in the office of Sub Registrar when the alleged release deed bearing the signatures of the appellant was executed and registered way back in the year 2002. It was almost after 13 years of the execution of the release deed in the year 2015,

the appellant alleged that it had been fraudulently procured by the defendant. Still further, though the learned counsel for the appellant vehemently argued that the defendant had been sending the rent/lease money with respect to the suit land to the appellant and which was one of the reasons that the appellant did not even suspect the defendant, however, strangely he did not produce before the trial Court any evidence in support of his aforementioned submissions. The appellant neither pleaded about the receipt of any rent/lease money from the defendant nor proved it by way of any other documentary evidence before the Court below. Not only this, there was no evidence led from which the appellant could show that the suit land had been leased by him to somebody during the preceding 13 years prior to the institution of the suit in question.

As a sequel to above, no ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of any merit is dismissed accordingly. The judgments and decree passed by the Appellate Court is affirmed.

(MANJARI NEHRU KAUL)
JUDGE

May 06, 2022
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<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>