

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA No.2033 of 2022
Date of decision dated **09.11.2022**

Ramphal

.....Appellant

vs.

Kuldeep and other

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. R. N. Lohan, Advocate, for the appellant.

HARKESH MANUJA, J (Oral)

By way of present appeal challenge has been made to the impugned judgments and decrees dated 09.12.2016 and 01.04.2022 passed by the Courts below whereby, a suit for declaration along with permanent injunction, filed at the instance of respondent No.1/plaintiff has been decreed.

The facts leading to the present case are that a suit for declaration came to be filed at the instance of respondent No.1/plaintiff, challenging the release deed dated 09.07.2012 executed by respondent No.2/defendant No.2 in favour of appellant/defendant No.1. The respondent No.1/plaintiff also prayed for grant of decree for joint possession as well as permanent injunction. The plea taken in the plaint was that the suit property in the hands of respondent No.2/defendant No.2 was ancestral in nature, the parties being governed by Hindu Law and as such, the respondent No.1/plaintiff was having right by birth, in the said

ancestral-copartionary property. It was further stated that the release deed was executed by respondent No.2/defendant No.2 in favour of appellant/defendant No.1 without there being any legal necessity besides the same being result of fraud and misrepresentation.

In response, two separate written statements were filed at the instance of appellant/defendant No.1 and respondent No.2/defendant No.2 respectively. The appellant/defendant No.1 denied the nature of suit property to be ancestral in the hands of respondent No.2/defendant No.2 and submitted that the release deed dated 09.07.2012 was a registered document, validly executed in his favour by his father i.e. respondent No.2. In his separate written statement, respondent No.2/defendant No.2 admitted the factum of execution of the release deed in favour of appellant/defendant No.1.

Vide order dated 18.11.2014, the following issues were framed by the trial Court :-

“1. Whether plaintiff is entitled for decree of declaration with joint possession and permanent injunction as prayed for on the grounds taken in the plaint? OPP.

2. Whether suit is not legally maintainable in the present form? OPD.

3. Whether plaintiff is stopped by his own act and conduct? OPD.

4. Whether plaintiff has suppressed material and true facts from the Court? OPD.

5. Whether suit is bad for want of proper court fee? OPD.

6. Whether plaintiff has no locus standi to file the present suit? OPD.

7. Relief.”

The trial Court vide judgment and decree dated 09.12.2016, decreed the suit in favour of respondent No.1/plaintiff by holding that the suit property in the hands of respondent No.2/defendant No.2 was ancestral in nature, as such, respondent No.1/plaintiff was having right in the same by birth resultantly the release deed dated 09.07.2012 was held to be illegal, null and void. Aggrieved against the judgment and decree dated 09.12.2016, the appellant/defendant No.1 filed first appeal, however, the same was dismissed by the Court of learned Additional District Judge, Jind vide impugned judgment and decree dated 01.04.2022.

Learned counsel for the appellant submits that although in the plaint, challenge to the release deed dated 09.07.2012 was made on the ground of fraud as well as mis-representation, however, the trial Court did not even frame any specific issue regarding the fraud nor even the Courts below recorded any specific finding on the point of fraud in favour of respondent No.1/plaintiff. Learned counsel for the appellant further submits that the release deed dated 09.07.2012 was ordered to be set aside merely by recording a finding that the suit property in the hands of respondent No.2/defendant No.2 was ancestral in nature.

I have heard learned counsel for the appellant and gone through the records of the case.

Mere fact that no issue on the point of fraud was ever framed by the Courts below cannot be termed to be fatal to the case of respondent No.1/plaintiff. Issue No.1 which relates to the relief of decree for declaration with joint possession as well as permanent injunction to respondent No.1-plaintiff includes even the factum of validity of release deed dated 09.07.2012 and is thus expensive and not restrictive in its scope & terms. Once the parties were conscious of the plea regarding fraud having been raised by the respondent No.1/plaintiff and vigilantly led their evidence during the trial, no such plea can be entertained at this stage regarding non framing of any specific issue on the plea of fraud at this belated stage in the second appeal which to my mind is otherwise fully covered under issue No.1. On the second point; that once concurrent findings of fact has been recorded in favour of respondent No.1/plaintiff that the suit property has been ancestral in the hands of respondent No.2/defendant No.2, and resultantly, the respondent No.1/plaintiff No.1 was having right in the suit property by birth, any alienation made at the instance of respondent No.2/defendant No.2 without there being any proof of legal necessity, at the cost of rights of respondent No.1/plaintiff has been rightly set aside being illegal, null and void. No other argument has been raised on behalf of the appellant by way of present appeal, challenging the concurrent findings of the fact recorded by both the Courts below.

In view of the discussion made hereinabove, I do not find any merit in the present case and the same is hereby dismissed.

Pending applications, if any, also stand disposed of.

09.11.2022
anil

(HARKESH MANUJA)
JUDGE

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