

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

RSA-4694-2014 (O&M)

Reserved on : August 16, 2022

Pronounced on : August 23, 2022

Punam Rani and another

...Appellants

Vs.

Jagbir Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vikram Singh, Advocate
for the appellants.

Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate
for respondents No.1 and 2.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is to set aside the judgment and decree dated 02.08.2014, passed by the lower Appellate Court, vide which the judgment and decree dated 19.11.2011 passed by the trial Court decreeing the suit of the appellants/plaintiffs was set aside and the suit was dismissed.

Brief facts of the case are that the appellants/plaintiffs filed a suit for declaration with consequential relief of permanent injunction praying for a decree that release deed/relinquishment deed dated 22.8.2006 bearing registration No.1611/1 and the subsequent mutation

No.721 sanctioned on 9.9.2006 be declared as *null and void* and not binding on the right of plaintiffs with a further prayer that the defendants be restrained from further alienating, transferring the suit land in any manner and that plaintiffs be declared as joint owners in possession of the suit land in equal shares.

Petitioner/plaintiff No.1 Punam Rani is widow of Mahinder Singh, whereas plaintiff No.2 Divya Kajla is minor daughter of Mahinder Singh, whereas original defendant No.1 Jagbir Singh and defendant No.2 Satbir Singh are real brothers of Mahinder Singh and subsequently added defendant No.3 Harnandi Devi is mother of Mahinder Singh and the defendants.

The case as set up by the plaintiffs is that Mahinder Singh was owner of the land as described in the plaint and has inherited the same from his father Sarup Singh, who had inherited the same from his father Ram Singh by way of natural succession and, therefore, the properties are ancestral properties in the hands of Mahinder Singh. Mahinder Singh had suffered a relinquishment deed in favour of his brothers-defendants No.1 and 2 on 22.8.2006, which was registered in the office of Sub Registrar, Gharaunda, District Karnal, followed by sanctioning of mutation No.721. The plaintiff has challenged the relinquishment deed as well as the mutation on the ground of fraud, misrepresentation by pleading; (a) that release deed executed by Mahinder Singh is not valid as the plaintiffs have a right in the suit land being ancestral; (b) the defendants have played a fraud with the

plaintiffs and Mahinder Singh, who was suffering from serious illness and had expired in a short time after the execution of release deed and, therefore, the same is an outcome of misrepresentation; (c) the rights of the plaintiffs being the legal heirs of Mahinder Singh are not protected in the release deed; (d) defendants No.1 and 2 being real brothers were in dominating position and by misrepresenting the facts, they procured the released deed. It is also submitted that even the mutation was sanctioned hastily and, therefore, both the release deed and mutation be declared as *null and void*.

Defendants No.1 and 2 filed the written statement and contested the suit by setting up of defence that plaintiff No.1 never lived with her husband Mahinder Singh and used to live in her family house, whereas the defendants No.1 and 2 were taking care of Mahinder Singh, who was residing with them. It is also stated that Mahinder Singh was absolute owner of the suit property as it was a self acquired property. It is also stated that Mahinder Singh, voluntarily, of his own free will, without any pressure or coercion registered the relinquishment deed on 22.8.2006 in the office of Sub Registrar, Gharaunda, District Karnal and, later on, mutation No.721 was also sanctioned. It was denied that suit property was the ancestral property. Another plea is taken that no particulars of fraud or misrepresentation are detailed in the plaint and, therefore, in the absence of the same, the fraud is not proved. It is also submitted that the plaintiff No.1 was having strained relationship with her husband Mahinder Singh and she never cared about the welfare of

her husband Mahinder Singh. The allegation of misrepresentation of facts were also denied.

Later on, defendant No.2 Harnandi, mother of Mahinder Singh was also arrayed as defendant No.3.

The trial Court framed the following issues :-

- "1. Whether the release deed dated 22.8.2006 and mutation No.721 are illegal, null and void and not binding on the rights of the plaintiffs and the defendants are liable to be restrained from alienating the suit land, illegally and forcibly ? OPP.
2. Whether the suit is not legally maintainable ? OPD.
3. Whether the plaintiff has no *locus standi* to file and maintain the present suit ? OPD.
4. Whether the plaintiff has no cause of action? OPD.
5. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD.
6. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction ? OPD.
7. Whether the present suit is an abuse of process of law? OPD.
8. Relief."

Plaintiff-Punam Rani herself appeared as PW1 and tendered her affidavit as Ex.PW1/A and reiterated the pleadings of the plaint.

PW2, the Registry Clerk in the office of Sub Registrar, Gharaunda proved the relinquishment deed as Ex.PW2/A.

One Krishan appeared as PW3 and supported the case of the plaintiffs. Similar is the statement of Karan Singh, who appeared as PW4.

PW5 Rajinder Singh also supported the version of the plaintiffs. The plaintiffs also tendered into evidence copy of the mutation No.759 as Ex.P1, copy of mutation No.721 as Ex.P2, copy of mutation No.639 as Ex.P3, copy of mutation No.629 as Ex.P4, copy of *Jamabandi* for the year 2007-2008 as Ex.P5, copy of *Jamabandi* for the year 2002-03 as Ex.P6, copy of *Jamabandi* for the year 1997-98 as Ex.P7, copy of *Jamabandi* for the year 1955-56 as Ex.P8, certified copy of statement of Dr. Rohit as Ex.P9, certified copy of FIR No.318 dated 6.10.2008 as Ex.P10 and closed the evidence of plaintiffs vide his separate statement recorded on 4.2.2011.

In the evidence of respondent-defendant No.1 Jagbir Singh appeared as DW1 and tendered his affidavit as Ex.DW1/A and reiterated the facts as pleaded in the written statement.

Suresh Kumar, Ahlmad in the Court of Civil Judge, Junior Division, Karnal appeared as DW2 and brought the case file titled "State Versus Jagbir " bearing FIR No.318/08 under Sections 302, 420, 467,

468, 201, 471 and 120-B/34 IPC. He also tendered the certified copy of the facts of the case as Ex.DW2/A.

Defendant No.2 Satbir Singh appeared as DW3 and again reiterated his version and tendered the copy of mutation No.721 dated 9.9.2006 as Ex.DW3/B.

Vinod Kumar, Patwari Halqa, Raipur Jattan appeared as DW4 and proved mutation No.629 as Ex.DW4/A, mutation No.639 Ex.DW4/B, mutation No.721 as Ex.DW4/C and mutation No.759 as Ex.DW4/D and, thereafter, the evidence was closed.

Later on, the defendants No.1 and 2 moved an application for leading additional evidence and tendered into evidence a judgment dated 15.9.2011 passed in a criminal complaint No.38/3 of 2011 as Ex.DX. In rebuttal, the plaintiffs tendered certain documents, which were marked, as Mark 'A' to Mark 'E'.

The trial Court while deciding the issue No.1 recorded a finding in favour of the plaintiffs by observing that the relinquishment deed is procured by the defendants by misrepresentation of facts as Mahinder Singh was not in sound disposing mind at the time of execution/ registration of the relinquishment deed dated 22.8.2006 Ex.PW2/A. The reasons for recording such findings was that Mahinder Singh died after 16-17 days of the registration deed; the mutation was sanctioned on 9.9.2006, i.e. the date when Mahinder Singh had died; DW4 Vinod Kumar, Patwari Halqa has though tendered the mutation

No.721 but the same was not complete and the mutation was sanctioned on Saturday, which was a non-working day; it is not explained in the relinquishment deed, why Mahinder Singh had excluded his wife and minor daughter, i.e. the plaintiffs and Mahinder Singh was suffering from Tuberculosis and used to take oxygen for 16-18 hours a day and, therefore, he was not in a sound and disposing mind to execute the impugned relinquishment deed.

However, the trial Court recorded a finding in Para 35 of the judgment that the land is not proved to be ancestral and rather it is a self acquired property of Mahinder Singh. The trial Court also recorded a finding in para 39 that the allegations of forgery are not proved. Accordingly, the suit was decreed by the trial Court holding that the relinquishment deed as well as mutation No.721 are *null and void* and not binding on the plaintiffs and further a decree for joint possession that plaintiffs and defendant No.3 are owner in possession of the suit in equal share, i.e. 1/3rd share each, along with consequential relief of permanent injunction restraining the defendants No.1 and 2 from alienating the suit land in any manner, was granted.

The defendants No.1 and 2 preferred an appeal before lower Appellate Court and have taken various grounds for challenging the judgment and decree of the trial Court. The lower appellate Court vide impugned judgment and decree dated 2.8.2014 allowed the appeal and dismissed the suit. For a reference, the findings recorded by the lower

Appellate Court reads as under :-

“Issue No.1.

In this case, the plaintiff No.1 Punam Rani in order to establish that the relinquishment deed dated 22.8.2006 and further mutation No.721 are illegal, null and void, herself appeared in the witness box as PW1 and tendered her affidavit Ex.PW1/A reiterating the averments of the plaint and further examined PW2 Gurpal Singh, Registry Clerk, who proved the relinquishment deed as Ex.PW2/A. PW3 Krishan son of Zile Singh, PW4 Karan Singh and PW5 Rajinder Singh through their affidavits Ex.PW3/A, Ex.PW4/A and Ex.PW5/A, respectively, also supported the case of the plaintiffs. The plaintiff has also produced and proved on record documents Ex.P1 to Ex.P10 in support of their evidence.

In order to rebut the evidence of plaintiffs, the defendants No.1 & 2, namely, Jagbir Singh and Satbir Singh appeared in the witness box as DW1 & DW3 and filed their affidavits Ex. DW1/A and Ex.DW3/A respectively therein reiterating the averments of the written statement. They have also examined Suresh Kumar, Addl. Ahlmad as DW2, who proved certified copy of the facts of case titled State Vs. Jagbir bearing FIR No.318/08 as Ex.DW2/A as well as Vinod Kumar, Patwari Halqa Raipur Jattan as DW4, who proved mutation No.629 as Ex.DW4/A, mutation No.639 Ex.DW4/B, mutation No.721 as DW4/C and mutation No.759 as Ex.DW4/D.

10. Learned counsel for the appellants-defendants No.1&2 argued that the relinquishment deed was a registered document, which was registered before Sub Registrar on dated 22.08.2006. It is not the case of the plaintiff No.1 that her husband was unsound mind or not mentally fit. Rather, the judgment was challenged on two grounds i.e. fraud and misrepresentation. It was argued that the learned Trial Court without pleadings of the plaintiffs has given findings to the effect that Mahinder Singh deceased was not in sound disposing mind. The learned Trial Court further held in Para No.37 of its judgment that the relinquishment deed was a result of misrepresentation and no grounds of misrepresentation has been explained in the entire judgment, therefore, the same is liable to be reversed. The learned counsel for the appellants-defendants further argued that plaintiff Punam Rani was residing separately from her husband and they had their matrimonial dispute. Even for the sake of arguments it is presumed that Mahinder Singh was residing with the defendant and he was suffering from Tuberculosis, but that does not mean that he was not in a sound disposing mind and no such evidence has been led by the plaintiffs in this case. The learned counsel for the appellants-defendants has submitted before this Court that a doctor was examined in a criminal complaint and in the statement Ex.P9 made by Dr. Rohit he gave his opinion that patient Mahinder Singh was required oxygen @ two liters per minute with nasal prong for sixteen to eighteen hours per day and therefore, he was not in a fit state of mind. It is submitted by learned counsel for been the appellants-defendants that this doctor has not been

examined before the learned Trial Court. No opportunity was given for cross-examination of the said doctor, rather the complaint filed by the plaintiff was dismissed and later on revision petition filed before the learned Addl. Sessions Judge was also dismissed on 28.10.2013 wherein it was observed that no such incident occurred as alleged by the plaintiff-complainant and it was further observed that plaintiff could not establish any forgery while getting the relinquishment deed suffered by the deceased Mahinder Singh in favour of the appellants-defendants. It is further argued that this complaint was filed by the plaintiff as to extract money and put pressure upon the defendants so that they could leave the property in their favour. No fraud or misrepresentation has been proved. The property in the hands of the deceased Mahinder Singh was his self acquired property and it cannot be termed as ancestral property.

11. It is further contended on behalf of learned counsel for the appellants-defendants that deceased Mahinder Singh received property from his grandfather through a registered will. The deceased Mahinder Singh has also received some property from his father, which was later on inherited by all the LRs including the plaintiff, therefore, it does not lie in the mouth of the plaintiff that the property in the hands of Mahinder Singh as ancestral property, rather it was his self acquired property and as an absolute owner by way of relinquishment deed he has transferred his property in favour of appellants-defendants on dated 21.08.2006. It is further submitted that the plaintiff herself admitted while appearing in the witness box that she was having a

matrimonial dispute and she was not residing with her husband. She was seeking maintenance allowance under Section 125 Cr.P.C. and her application was rejected by the learned Trial Court because she was not residing with her husband although he was suffering from Tuberculosis. It is contended by learned counsel for the appellants-defendants No.1 & 2 that as plaintiff No.1 was not residing with her husband Mahinder Singh and was not taking care of him in his last days. As the appellants-defendants were taking care of Mahinder Singh and all of his expenses were borne by them, whereas plaintiff was residing with her mother, Mahinder Singh had relinquished his share in favour of appellants-defendants No.1 & 2. It is contended by learned counsel for the appellants-defendants that in order to grab the property a false criminal case was registered by the plaintiff with the allegations that her husband was murdered, but later on all the allegations were found false and lastly the complaint was dismissed and the revision petition filed by the plaintiff-complainant was also dismissed by the learned Court. So, the property was given by deceased Mahinder Singh to his brothers who were serving him in the last time of his age and therefore, he opted to register relinquishment deed. Learned counsel for the appellants-defendants has referred to various case law, which are as :- **Mst. Sham Kaur Vs. Hari Singh 1971 C.L.J. 702 (P&H); Harnek Singh Vs. Sukhdev Singh 2002(1) Civil Court Cases 59 (P&H); Rvinder Pal Vs. Satish Kumar and another 2009 (4) P.L.R. 119 (P&H); Harjit Singh and others Vs. Gurjit Kaur and others 2011 (2) PLR 44 (P&H); Subhas Chandra Das Mushib Vs. Ganga Prasad Dass Mushib and others 1967 AIR (SC) 878; 1967(1) SLR 331 (S.C.); Afsar**

**Shaikh and another Vs. Soleman Bibi and others;
and Jagjit Singh Vs. Divisional Commissioner,
Patiala & Ors. 2012(2) PLJ 295 (P&H).**

12. On the other hand, the learned counsel for the respondents-plaintiffs arguments that Mahinder Singh had succeeded the suit land in a natural succession, therefore, the suit land was an ancestral property in his hands. The plaintiffs came to know after the death of said Mahinder Singh, who died on 09.09.2006 that defendants No.1 & 2 had procured a relinquishment deed bearing No.1611/1 dated 22.08.2006 Ex.PW2/A registered with Sub-Registrar, Gharauda from Mahinder Singh by playing a fraud upon said Mahinder Singh as well as plaintiffs because said Mahinder Singh was suffering from tuberculosis and was not in a sound disposing mind and as such, the relinquishment deed is a result of fraud and misrepresentation. It was further argued by learned counsel for the respondents-plaintiffs that mutation No.721 Ex.P2 was entered and sanctioned on the basis of aforesaid relinquishment deed in favour of defendants No.1 & 2, but the said mutation was entered and sanctioned on 09.09.2014, the day on which said Mahinder Singh had died. It was further argued that 09.09.2006 was holiday, being Saturday, but even then said mutation was entered and sanctioned on 09.09.2006 when the dead body of Mahinder Singh was lying at his house for cremation. It was further argued that the suit land in the hands of Mahinder Singh was an ancestral property and therefore, he was not competent to execute the relinquishment deed in favour of defendants No. 1 & 2.

13. Now the Court has to see :-

Point-I Whether the property in the hands of deceased Mahinder Singh was ancestral property or his self-acquired property?

Point-II Whether the relinquishment deed 22.08.2006 and further mutation was a result of fraud or misrepresentation?

Point-I

14. It is submitted on behalf of learned counsel for the appellants-defendants No.1 & 2 that admittedly, the disputed property received by the deceased came in his possession from his grandfather through a registered Will. The total share 480/3353 in the land measuring 167B-13B, comprised in Khewat No.32/33, Khatoni No.51, 52, 53, and 54 total Kittas 45 situated in village Raipur Jattan Tehsil Gharaunda, was transferred in favour of his brother Jagbir Singh and Satbir Singh through a registered relinquishment deed. The grandfather of deceased Mahinder Singh had executed a registered Will and on the basis of registered Will, the property was received by Mahinder Singh son of Sarup Singh. Therefore, this Court is of the opinion that the property in dispute was self acquired property in the hands of Mahinder Singh. It is contended on behalf of learned counsel for the appellants-defendants that the property in the hands of Mahinder Singh was not ancestral even under Punjab Custom, the expression

'ancestral property' has a special connotation. It is not sufficient to prove that the last male-holder had inherited it from his grandfather, and as such, it was his ancestral property. It has to be established of the parties that is to say, the party asserting it to be ancestral, has to show -

- (a) that it was owned by the common ancestor; and
- (b) that it had descended to the party or parties concerned by inheritance and in no other manner.

Both these elements are positive and if either of them is missing the land cannot be said to be ancestral. Both of them must be cogently established and the law does not accept mere conjectures, surmises or assumptions as a substitute for proof. Reference in this regard can be made from case law titled **Mst. Sham Kaur Vs. Hari Singh etc. 1971 C.L.J. 702 (P&H)**. Therefore, it can be safely held that the property in the hands of Mahinder Singh was his self acquired property as in this case relinquishment deed was suffered by Shri Mahinder Singh in favour of his two brothers. The suit land was his self-acquired property because it was received from his grandfather through a registered Will. Ratio of judgment as held in case law titled **Harjot Singh and others Vs. Gurjit Kaur and others 2011(2) PLR 44 (P&H)** is applicable to the fact and circumstances of this case. It was held by the Hon'ble Punjab and Haryana Court as under :-

“Relinquishment deed Suit land was self acquired property of deceased father of plaintiff - daughter - He transferred his land in favour of his grand sons as his son had already died He had affixed his

thumb impression on some release deeds but affixed his signatures on the impugned release deed. The impugned release deed cannot be discarded on that ground and would have the effect of transferring title in the land in favour of defendants who had no pre-existing right or title in the land - Held that, the suit was rightly dismissed by trial Court - Appeal allowed - Impugned judgment of lower appellate Court set aside."

Point No.II

15. The plaintiffs in their pleadings have taken a specific stand that the release deed/relinquishment deed allegedly executed by Mahinder Singh since deceased is not a valid document because the defendants have played a fraud with the plaintiffs as well as with the husband of plaintiff No.1 and father of plaintiff No.2 Shri Mahinder Singh (now deceased), who was suffering from illness and he expired on 09.09.2006. The alleged relinquishment deed is a result of fraud and mis-representation.

16. The respondents-plaintiffs admitted the fact that the relinquishment deed was registered before the Sub-Registrar by her husband. Onus was on the plaintiffs to establish the plea of fraud or mis-representation. Learned counsel for the respondents-plaintiffs has argued that no attesting witness was called by the appellants-defendants to prove due execution of the relinquishment deed, which has been observed by the learned Trial Court. It is submitted by the learned counsel for the appellants-defendants that it was not necessary for the appellants to have called the attesting

witness to the relinquishment deed because there was no dispute of its registration. It was not disputed that the relinquishment deed was never registered by the competent person or by the competent Officer. The learned counsel for the appellant has drawn my attention to Section 68 of the Indian Evidence Act, 1872, which is reproduced as under :

68. Proof of execution of document required by law to be attested. - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

17. It is clear that it was not necessary for the defendants/appellants to have called an attesting witness to prove the execution of any document because it was not Will, it was a registered relinquishment deed, which was registered in accordance with the provisions of the Indian Registration Act, unless its execution by the person by whom it purports to have been executed is specifically denied. There was no denial to its execution

by the plaintiff, therefore, there was no need for the appellants-defendants to have called the attesting witness. Endorsement by Sub-Registrar that executant had acknowledged execution before him amounts to attestation. Reference in this regard can be drawn from **Pentakota Satyanarayana Vs. Pentakota Seetharatnam, AIR 2005 SC 4362**. Therefore, this Court is of the opinion that relinquishment deed was validly executed by the executor Mahinder Singh son of Sarup Singh.

18. Now it has to be seen as to whether the execution of relinquishment deed dated 22.08.2006 was a result of fraud and mis-representation. In this case, admittedly, the brothers of the deceased Mahinder Singh were cultivating the land because he was suffering from ailments and the plaintiff was not residing with her husband. The registered document before the competent authorities carries presumption of correctness, therefore, the relinquishment deed cannot be set aside merely making bald allegations without its proof. In support of his arguments, learned counsel for the appellants-defendants has referred to the case law reported as **Prabhu Lal Versus Laxmi and others, PLR 2006(3) 426**. In this case, it was held by the Hon'ble High Court of Punjab and Haryana that once it is proved that the statement was made in the Court, the Court proceedings carry presumption of correctness, merely on the basis of illiteracy, such statement cannot be put to naught. In this case, the plaintiff has to establish that any fraud or mis-representation was committed while executing relinquishment deed. General allegations are not

sufficient. As it is stated on behalf of learned counsel for the plaintiff that the mutation was sanctioned on Saturday. The mutation proceedings are totally summary proceedings which are initiated by the revenue officers. The revenue officers are duty bound in terms of the statute to enter mutations in exercise of their administrative functions. The revenue entries from the mutation are entered only with a view to update the revenue record. There is nothing illegal if the mutation is sanctioned on Saturday because the record is available with the revenue officials and they work themselves in their offices after office working hours. Therefore, this allegation cannot be a ground to establish that a fraud. Like in other charges whether made in civil or criminal proceedings, the plea of fraud must be established beyond reasonable doubt. However, suspicious may be the circumstances, however strange the co-incidence and however grave the doubts, suspicion alone, can never take the place of proof. Reliance in this regard can be drawn from the case law titled **Union of India Vs. M/s Chaturbhai M.Patel & Co. 1976 C.L.J 166 (S.C.)** Therefore, this Court is of the opinion that there is no element of fraud or mis-representation, as alleged by the plaintiffs.

19. I have heard learned counsel for the parties and perused the case law as referred above. As it is clear that Mahinder Singh appeared before the Sub-Registrar and got his land relinquished in favour of his two brothers, therefore, the relinquishment deed was validly executed and it cannot be said that it was a result of fraud or obtained by way of misrepresentation. It was further observed by the Hon'ble Supreme Court of India

in case titled **Ranganayakamma and another Versus K.S. Prakash (D) by L.Rs. and others, 2008(3) RCR (Civil) 601** that sisters giving the property to their brother by taking Rs.One only, it is not illegality, it is out of love and affection and the consent decree passed pursuant to a settlement arrived at between two branches and it was acted upon. Once the consent decree is acted upon, the question of reopening the entire suit by setting aside the decree would not arise.

20. In view of above discussion, the findings of learned Trial Court under issue No.1 is liable to be reversed as the relinquishment deed was validly executed by deceased Mahinder Singh in favour of appellants-defendants. Hence, issue No.1 is decided against the plaintiffs-respondents and in favour of appellants-defendants.”

Both the counsel for the appellants and the respondents have handed over the photocopies of the pleadings, oral evidence as well as documentary evidence of the trial Court record.

The following substantial questions of law are framed :-

- (i) Whether Mahinder Singh deceased could execute a release deed in favour of respondents even though the respondents have no right, title or interest in the suit property?
- (ii) Whether the onus is on the plaintiff to prove that release deed in question is the result of fraud and misrepresentation in view of Section 111 of the Indian Evidence Act ?

The learned counsel for the appellants has assailed the findings of the lower Appellate Court on the grounds that; firstly in the relinquishment deed, nothing has been stated about the marital status of Mahinder Singh i.e. about the appellants, being the wife and minor daughter. It is also argued that reasons are not given as to why the appellants were ousted from their right to inherent the property.

Counsel for the appellants has next argued that it has come in evidence that Mahinder Singh was critically ill as he was suffering from tuberculosis and his lungs were not working and, therefore, he was put on oxygen at the fag end of his life and was given oxygen for 16-18 hours everyday and, therefore, at that stage when he executed the relinquishment deed, he was not in a sound disposing mind to think about his good or bad and taking advantage of the same, his two real brothers, i.e. defendants No.1 and 2, being in a dominating position, got the relinquishment deed executed in their favour. Counsel for the appellants has next argued that Mahinder Singh died on the intervening night of 8/9.9.2006 and on the same day, the mutation was sanctioned by the Revenue Official, which shows that the defendants acted in a haste to get the mutation sanctioned. Counsel for the appellants has further argued that in the relinquish deed itself, Mahinder Singh has written that the land is ancestral and he has inherited the same from his father and grandfather and, therefore, the Courts below have wrongly assumed that the land is self-acquired property of Mahinder Singh. Counsel for the appellants has argued that from the evidence led by the appellants, it is clear that Mahinder Singh was not

capable of thinking good or bad, therefore, by exerting misrepresentation, the defendants succeeded in getting the relinquishment deed executed in their favour. It is next argued that even with regard to his mother Harnandi, who was, later on, added as defendant No.3, nothing is stated in the relinquishment deed.

Counsel for the appellants has, thus, argued that findings recorded by the lower Appellate Court is illegal as the plaintiffs/appellants, being the widow and daughter of Mahinder Singh, are entitled to inherit the property owned by him and the relinquishment deed is not an outcome of act of good management and, therefore, the judgment of the lower Appellate Court be set aside and that of the trial Court be restored.

In reply, the learned Senior Counsel has argued that firstly, from bare perusal of the plaint, no grounds to challenge the relinquishment deed on grounds of fraud or misrepresentation are made out as per Order VI Rule 4 CPC and, therefore, both the Courts below have concurrently held that the plaintiffs/appellants have failed to prove the element of fraud. Counsel has further argued that even before the lower Appellate Court, the plaintiffs/appellants never filed any cross-objection challenging the findings of the trial Court that the plaintiffs/appellants have failed to prove that any fraud was acted upon by the defendants with Mahinder Singh.

Learned Senior Counsel further submits that both the Courts have also recorded a finding that the land in dispute is not proved to be ancestral property as the property came in possession of Mahinder Singh by way of a Will and it became the self acquired property of Mahinder Singh.

Learned Senior Counsel further submits that even on this aspect the findings recorded by the trial Court were never challenged by the plaintiffs/appellants before the lower Appellate Court by filing any cross appeal. Therefore, on both counts, there is a concurrent finding of fact that neither the plaintiffs/appellants could prove the fraud nor could prove that the land in dispute is an ancestral in nature.

Learned Senior Counsel has further argued that it has come in the evidence that 6-7 months after the marriage of Mahinder Singh and appellant-Punam Rani, she left the matrimonial home as Mahinder Singh was diagnosed with tuberculosis and she even filed a petition under Section 125 Cr.P.C. for maintenance which show that she was not residing with Mahinder Singh. Learned Senior Counsel has also submitted that it was defendants No.1 and 2, who were taking care of Mahinder Singh, even when he was critically ill and required the company of his wife, she had never taken care of her husband-Mahinder Singh.

Learned Senior Counsel for the respondents has referred to the cross-examination and statement of PW1 Punam Rani to submit that in examination-in-chief, she has nowhere disclosed about the litigation initiated by her against Mahinder Singh, i.e. a petition under Section 125 Cr.P.C. as well as subsequent complaints filed by her against the defendants. Learned Senior Counsel further submits that even the examination-in-chief of the plaintiff-Punam Rani is silent about the health condition of Mahinder Singh. Learned Senior Counsel has then referred to the cross-examination of PW1 Punam Rani, who stated that her marriage was solemnized with Mahinder

Singh on 17.2.2002 and her husband after 1½ years became ill as he was diagnosed with tuberculosis and his lungs were not working. Learned Senior Counsel has also submitted that this witness further admitted in her cross-examination that she separated from her husband and family after 7-8 months. In further cross-examination, plaintiff-Punam Rani has stated that she had filed a petition under Section 125 Cr.P.C. and her application for interim maintenance was dismissed by the Court. This witness further stated that at the time of death, her husband was hale and hearty. She has admitted that after the death of her husband, she has given a complaint in the Police Station, Gharaunda, but no action was taken. Learned Senior Counsel then referred to statement of PW2, the Registry Clerk in the Office of Sub Registrar, Gharaunda, who in cross-examination has stated that when both the parties appeared, the photographs were taken and then the Sub Registrar executed the registry in the presence of the witnesses, who have identified the parties. Learned counsel further submits that PW3 Krishan admitted in cross-examination that he is involved in number of criminal cases and therefore, he is not trust worthy witness.

It is next submitted that it has come in the statement of DW1 Jagbir Singh as well as DW3 Satbir Singh, both real brothers of Mahinder Singh that they were taking care of Mahinder Singh, when he was ill and plaintiff No.1 had left his company and the entire treatment was provided by the defendants, who have spent huge amount on treatment of Mahinder Singh. Learned Senior Counsel further submits that DW4 Vinod Kumar, Halqa Patwari has proved the mutation Nos. 629, 639, 721 and 759

Ex.DW4/A to DW4/D. In cross-examination, no question or suggestion was given to this witness regarding authenticity of these documents as the cross-examination was 'nil' after giving the opportunity to cross-examine. Learned counsel argued that the plaintiffs have not asked his witness about the nature of land or for sanctioning of mutation on 9.9.2006 in public meeting (Jalsa-aam) held by the Tehsildar and sanctioned the mutation and in the absence of any cross-examination, the trial Court has wrongly recorded the findings that the Parat Patwar is not produced.

Learned Senior Counsel has further argued that Mahinder Singh was an educated man, having the qualification of M.A. and even in the relinquishment deed, under his signatures, he has mentioned as M.A. as he was conscious of the fact that the plaintiffs are likely to challenge the same at the subsequent stage. Learned Counsel has further submitted that both the witnesses, namely, Balwan Singh, Numberdar and Jasbir Singh had also appeared at the time of registration of the release deed and the computerized photographs of all the persons, including Mahinder Singh were taken. Learned Counsel has then referred to the mutation Ex.P2/Ex.DW4/C, i.e. mutation No.721, which was sanctioned on the basis of the impugned release deed submitted that the same was entered by Vinod Kumar, Patwari on 30.8.2006 and it was sanctioned on 9.9.2006 by the Tehsildar in Jalsa-aam, i.e. common gathering. Learned Counsel has again referred to the statement of DW4 Vinod Kumar to submit that no cross-examination was offered by the plaintiffs/appellants to ask him any question about 9.9.2006, being a Saturday; when a special camp was held by the revenue officials in

this regard. Therefore, the trial Court has wrongly drawn an adverse inference in this regard.

Learned Senior Counsel has submitted that the trial Court has wrongly held that the day when Mahinder Singh died, on the same day the mutation was sanctioned. Rather, the mutation was entered on 30.8.2006 and on 9.9.2006, on verification of the Numberdar, the same was sanctioned by the Tehsildar.

Learned Senior Counsel has then referred to FIR No.112 dated 4.7.2002 Ex.D1, registered under Section 379 IPC and then referred to FIR No.318 dated 6.10.2008 Ex.P10 under Sections 302, 201, 420, 467, 468, 476, 120-B IPC, registered at Police Station Gharaunda, which was registered against the defendants No.1 and 2, their wives and son by plaintiff No.1 Punam Rani with the allegation that they have committed the murder of Mahinder Singh after getting the release deed executed in connivance with the revenue officials. Learned Senior Counsel has further submitted that on 7.4.2009, the SHO Police Station Gharaunda, submitted the cancellation report after seeking report from FSL, Madhuban and obtaining the opinion from the Deputy District Attorney, Office of Superintendent of Police, Karnal that Mahinder Singh died a natural death.

Learned Senior Counsel has further submitted that thereafter, plaintiff No.1 Punam Rani filed a private complaint, which was also dismissed by the trial Court vide judgment Ex.DX dated 15.9.2011

and even the revision filed by plaintiff No.1 was dismissed by the Additional Sessions Judge, on 28.10.2013.

Learned Senior Counsel has then referred to the judgment Ex.DX of which para Nos. 7 and 8 reads as under :-

"7. Considering the above evidence on record and the statements of all the complainant witnesses, no case under any Section 15 made out against any of the accused persons CW7 (wrongly mentioned as CW6), CW10 Rajinder and CW8 Karan Singh, who reiterated the version of the complaint and supported the testimony of the complainant are not eye witnesses or even remote witnesses of the alleged incident of murdering of the deceased husband. Further as alleged by the complainant that the oxygen supply to his husband was removed when she entered the room deserves no merit as it has been clearly brought to the knowledge of the Court by means of Ex.CW3/F in a report from Vallabh Bhai Patel Chest Institute University of Delhi in which it has been laid down that the prescribed hours for which the patient needed the oxygen supply was only 16-18 hours daily and interruption of oxygen therapy for short durations especially during eating, walking etc. can be allowed without appreciable consequences. These interruptions usually will not lead to sudden death.

8. The forged release deed as alleged by the complainant in favour of the alleged accused could not be established to be forged by any evidence brought on record by the complainant. The Lamberdar has testified to the fact that deceased husband had come and executed the release deed in his presence on his own

will. The mere fact that he was accompanied by his brothers does not falsify the deal as due to the deceased husband's medical condition it was important for him to be accompanied by somebody. Since, there was no forgery, so, no offence can be made out under Sections 467, 468 and 471 of the Indian Penal Code."

Learned Senior Counsel has referred to judgment of the Hon'ble Supreme Court 1976 AIR 712, **Union of India Vs. M/s Chaturbhai M. Patel and Co.**, wherein it has been held that the fraud like any other charge whether made in civil or criminal proceedings must be established beyond reasonable doubt and, however, suspicious may be circumstances or strange the coincidences or grave the doubts, suspicion alone cannot take the place of proof.

Learned Senior Counsel has then submitted that both the Courts below have rightly held that the plaintiff has failed to prove the fraud. The learned Counsel has then referred to 1967 AIR (Supreme Court) 878, **Subhas Chandra Das Mushib Vs. Ganga Prasad Das Mushib and others**, to submit that under Order VI Rules 4 and 2 read with Order VII Rule 1, in order to find out whether any undue influence is exercised by a party, the Court should scrutinize the pleadings to find out that a plea has been taken and full particulars are given before recording a finding whether undue influence was exercised or not.

Learned Senior Counsel has further submitted that in the absence of such pleadings in the plaint, the lower Appellate Court has rightly dismissed the suit. Learned Senior Counsel has then referred to

2009(4) PLR 119, **Ravinder Pal Vs. Satish Kumar and another**, to submit that this Court has held that under Section 68 of the Evidence Act, there is no requirement of examination of the attesting witness for the purpose of establishing the execution of a registered deed unless its execution is denied by the person, who had executed the same.

Learned Senior Counsel has argued that since the case of the plaintiff is not based on any fraud or impersonation, the findings recorded by the trial Court that the attesting witnesses were not examined, is erroneous and are rightly set aside by the lower Appellate Court.

Learned Senior Counsel has then referred to judgment 2011(32) RCR (Civil) 677, **Harjot Singh and others Vs. Gurjit Kaur and others**, wherein this Court has held that the suit land was self-acquired property, a release deed cannot be discarded on the ground that it will have the effect of transferring the title of the land in favour of the defendant, who has no pre-existing right or title in the land. Learned Counsel has submitted that the trial Court has wrongly recorded a finding that in such eventuality only a sale deed could be executed and not the relinquishment deed is, thus, erroneous and rightly set aside by the lower Appellate Court.

Learned Senior Counsel has lastly relied upon 2007(1) RCR (Civil) 199, **Prabhu Lal Vs. Laxmi and others**, wherein this Court has held that the family settlement between the brothers and sisters do not require any registration.

In reply, the counsel for the appellant has argued that the lower Appellate Court has erroneously set aside the judgment of trial Court though the findings recorded by the trial Court are based on correct appreciation of the facts.

After hearing learned counsel for the parties, the following undisputed facts emerges:-

- (a) Ram Singh, grandfather of deceased Mahinder Singh, who was husband of plaintiff No.1 and father of plaintiff No.2 as well as the real brother of defendants No.1 and 2 and son of defendant No.3 executed a Will dated 30.5.1996 in favour of his son Sarup Singh and grandsons Jagbir Singh, Satbir Singh and Mahinder Singh in four equal shares. Ram Singh died on 30.8.1997 and vide mutation No.629 Ex.DW4/A, 85 Bighas 07 Biswas of land mutated in favour of the aforesaid four persons. Sarup Singh, father of Mahinder Singh also made an oral Will in favour of his three sons Jagbir Singh, Satbir Singh and Mahinder Singh qua his share of land vide mutation No.639 Ex.DW4/B. Both the Courts below, on the basis of the same has held that the property acquired by Mahinder Singh was self acquired property;
- (b) As per the statement of plaintiff-Poonam Rani-PW1, she got married with Mahinder Singh on 17.2.2002 and Mahinder Singh fell ill after 1½ years as he was diagnosed with tuberculosis and his lungs were badly affected. In cross-examination of this witness she stated that after 7-8 months, she got separated with her husband and family and a daughter was born.

- (c) There is no documentary evidence; like Ration Card, Aadhar Card, Voters' List produced by the plaintiff No.1 to show that she was residing with Mahinder Singh as his wife in a common house/residence.
- (d) Mahinder Singh executed a release deed/conveyance deed in favour of his two real brothers defendant Nos.1 and 2 Jagbir Singh and Satbir Singh, respectively, qua 24 Bighas of land. The deed was executed on 22.8.2006 before the Sub Registrar and computerized photograph of executant Mahinder Singh, beneficiaries Satbir Singh and Jagbir Singh and two witnesses Balwan Singh Rajbir, Jagbir Singh were taken. Mahinder Singh signed in English by giving his qualification as M.A. In this relinquish deed, it is mentioned that the position over the land is already with his brother and he has released the ownership rights in their favour. However, nothing is stated about the right of the plaintiffs.
- (e) On the basis of the released deed mutation No.721 vide Ex.DW4/C regarding 24 Bighas of land was entered by Vinod Kumar, Patwari (PW4) on 30.8.2006 and the same was sanctioned by Assistant Collector 1st Grade on 9.9.2006 in a common gathering.
- (f) Vide another mutation No.759 Ex.P1 and Ex.DW4/D, the remaining land owned by Mahinder Singh was mutated in favour of his mother Harnandi-defendant No.3, plaintiff No.1 Punam Devi and plaintiff No.2-Divya Kajla qua 03 Kanals 19 Marlas of land and this mutation was sanctioned on 7.1.2009.
- (g) The plaintiff filed the present suit challenging the relinquishment deed/mutation and prayed for decree of joint possession of land in dispute. Plaintiff No.1 also

got registered FIR No.318 dated 6.10.2008 under Sections 302, 201, 420, 467, 468, 471, 120-B/34 IPC, Police Station Gharaunda against defendants No.1 and 2 their respective wives and one person alleging that after the released deed was executed, Mahinder Singh was murdered by them.

- (h) The police vide Ex.D2/A submitted a cancellation report on 7.4.2009 after obtaining the report of the FSL and taking the opinion of Deputy District Attorney, Office of Superintendent of Police, Karnal.
- (i) Aggrieved against the same, defendant No.1 filed a complaint under Sections 302, 201, 420, 467, 471, 120-B and 34 IPC in which after recording the statement of the complainant, the Chief Judicial Magistrate dismissed the complaint vide judgment dated 15.9.2011 Ex.CX holding that neither the forgery in execution of the release deed is proved nor the allegation of murder of Mahinder Singh is proved.
- (j) The plaintiff filed a revision before the Court of Additional Sessions Judge, which was dismissed on 2.8.2014.
- (k) In the instant suit, the plaintiff No.1 appeared herself as well as examined certain witnesses, qua whom the defendants led documentary evidence to show that they are involved in criminal cases and not persons of good conduct. In the cross-examination of plaintiff No1, she admitted that the photograph on the conveyance deed is the photograph of her husband and further stated that at the time of death her husband was hale and hearty.
- (l) In the cross-examination, this plaintiff No.1 also admitted that she has filed a petition under Section 125

Cr.P.C., in which the Court has dismissed her application for interim maintenance.

- (m) The trial Court dismissed the suit as noticed above, whereas the lower appellate Court reversed the findings. Hence, the present appeal.

After hearing learned counsel for the parties, I find no merit in this appeal for the following reasons :-

- (a) Both the Courts below have recorded a concurrent finding that the disputed land at the hands of deceased Mahinder Singh was self acquired property and it is not proved to be ancestral. Both the Courts below have also recorded the concurrent findings of fact that the plaintiff has failed to prove any forgery in execution of the release/conveyance deed. On both the accounts, the plaintiff did not file any cross appeal before the lower appellate Court when the defendant preferred appeal against the decretal of the suit.
- (b) The findings recorded by the trial Court that Mahinder Singh was given oxygen 16-18 hours a day at the time when he executed relinquishment deed would reflect that he was not in a sound not disposing mind is rightly reversed by the lower Appellate Court. None of the plaintiffs witness have stated that Mahinder Singh was not in a sound disposing mind and mere fact that he was critically ill due to tuberculosis and failure of lungs, nowhere suggests that he was not in a sound disposing mind.
- (c) In the absence of any medical evidence to suggest that Mahinder Singh was suffering from any mental illness, the trial Court has drawn a wrong presumption in this regard.

- (d) The findings recorded by the trial Court that the conveyance deed was obtained by misrepresentation is also rightly set aside by the lower Appellate Court as in terms order VI Rule 4 C.P.C. no such pleas of misrepresentation set up in the plaint. In view of the judgment of the Hon'ble Supreme Court **Subash Chandra's** case (*supra*) with regard to undue influence or misrepresentation, the Court, at the first instance, is to scrutinize pleadings to find out that a plea is made out in plaint with full particulars and in the instance, case there is no such pleadings in the plaint.
- (e) The findings recorded by the trial Court that the conveyance deed is not proved in view of Section 68 of the Indian Evidence Act is also not sustainable as the proviso under Section 68 of the Act say that where the execution is not denied by the person who has executed the same, there is no requirement of examination of attesting witnesses for execution of the documents. Reliance in this regard been placed on **Ravinder Pals's** case (*supra*). Admittedly, the own case of the plaintiffs is that the conveyance deed was got by asserting dominance over by the defendants over their brother Mahinder Singh and it is not the case that the document is not proved in terms of Section 68 of the Evidence Act. Therefore, the **question of law No.1** is decided in favour of the respondent.
- (f) Once both the Courts below have concurrently held that it was self acquired property of Mahinder Singh, he was competent to transfer the same in favour of his brothers defendants No.1 and 2 by way of executing the conveyance deed as it is so held in **Harjot Singh's** case (*supra*).

- (g) It is also well settled principle of law that where in a family settlement, between brothers and sisters the right the property is given from one to other, such settlement do not require registration as held in **Prabhu Lal's** case (*supra*).
- (h) The findings of the trial Court that the conveyance deed was executed by misrepresentation is otherwise not proved as the allegations is to be proved beyond doubt where the trial Court has recorded the finding only on the suspicion. In this regard reliance is placed on **Chaturbhai's** case (*supra*).
- (i) Learned appellate Court has rightly held on point No.1 that the property in the hand of deceased Mahinder Singh was self acquired property and on point No.2 that the relinquishment deed dated 22.8.2006 and the subsequent mutation was not an outcome of fraud or misrepresentation. Therefore, the **question of law No.2** is also decided in favour of the respondent.
- (j) The argument raised by the counsel for the appellants that the mutation was sanctioned on 9.9.2006, the day when Mahinder Singh died, though factually correct, however, a perusal of this mutation No.721 clearly show that mutation was entered on 30.8.2006 by PW4 Vinod Kumar, Patwari and it was sanctioned in a common gathering by the Naib Tehsildar/revenue official on 9.9.2006 on verification of the Lamberdar and presence of both the defendants No.1 and 2 was not marked on that day and, therefore, the findings recorded by the trial Court that it is an unnatural circumstance when Mahinder Singh died on the same day the relinquishment deed was sanctioned is not correct as on that day a

special gathering was held by the revenue officials in which the mutation was sanctioned by the Naib Tehsildar.

In view of the above, I find no illegality or infirmity in the judgment passed by the lower Appellate Court dismissing the suit of the respondent-plaintiff.

The present appeal is, therefore, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

August 23, 2022
satish

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No