

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

RSA No.2874 of 2022 (O&M)

Date of decision: 22nd December, 2022

Dr. Ashok Kumar Aggarwal

... Appellant

Versus

Pardeep Kumar Aggarwal

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate for the appellant.

MANJARI NEHRU KAUL, J.

Judgment Debtor is before this Court in Regular Second Appeal impugning concurrent findings recorded against him by trial Court vide order dated 09.10.2019 and affirmed by lower appellate Court vide judgment dated 06.09.2022.

The parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

Brief facts leading to the filing of the present appeal may be noticed as thus:-

The plaintiff/Decree Holder, along with his mother namely Radha Aggarwal, filed a suit for separate possession by way of partition of 2/3rd share in house No.B-I-1187 situated at Satsang Road, Civil Lines, Ludhiana (hereinafter referred to as, 'the suit property').

The preliminary decree was passed in favour of the plaintiff and the

same attained finality up to the Hon'ble Supreme Court vide Special Leave to Appeal (C) No.9530/2016 which was dismissed on 18.04.2016. Plaintiff's mother transferred her share to the extent of $1/3^{\text{rd}}$ in his favour vide transfer deed dated 04.12.2015, by virtue of which the plaintiff became owner to the extent of $2/3^{\text{rd}}$ share in the suit property. Plaintiff's mother died on 17.03.2017, thereafter, the plaintiff filed an application on 16.03.2018 for passing of final decree based on the preliminary decree in his favour to the extent of $2/3^{\text{rd}}$ share in the suit property. The defendant/Judgment Debtor raised objections qua the genuineness and validity of the transfer deed, which were dismissed by both the Courts below. Both the Courts below held that the appellant had not led any evidence to substantiate his plea of fraud and undue influence, therefore, in the absence of any evidence brought on record to dispute the validity of the said transfer deed, the plaintiff was entitled to $2/3^{\text{rd}}$ share in the suit property.

Learned senior counsel appearing for the appellant/Judgment Debtor/defendant has argued that the courts below failed to appreciate that the transfer deed dated 04.12.2015 had been gotten executed by the plaintiff by exercising undue influence over Radha Aggarwal (i.e. the mother of both Decree Holder and Judgment Debtor) as it was a matter of record that she was more than 80 years of age at that time. He has further argued that the plaintiff filed the application for passing of the final decree in the year 2018, after the

death of Radha Aggarwal, in the year 2017, even though the transfer deed was executed in the year 2015. Learned counsel has thus, urged that it was discernible that the plaintiff/Decree Holder was conscious that the transfer deed in question had not been executed with the free consent of Radha Aggarwal and in fact it was due to undue influence exercised over her by the plaintiff, which is why he waited till after her death to file the application for final decree. Learned senior counsel has further submitted that in the above circumstances, defendant/Judgment Debtor was entitled to 1/2 share in the 1/3rd share of Radha Aggarwal in the suit property, being her Class-I heir.

I have heard learned counsel for the appellant and perused the relevant material on record.

This Court does not find any merit in the submissions made by learned senior counsel for the appellant for the reasons to follow:-

Firstly, the transfer deed dated 04.12.2015 was admittedly a registered document and stood duly proved before the courts below. The onus to rebut the presumption attached to a registered document, i.e. the transfer deed in the present suit, was on the appellant. Though the defendant/Judgment Debtor alleged misrepresentation, fraud and undue influence, however, admittedly no evidence much less cogent was led by him before the Courts below to substantiate his allegations.

Secondly, an inference of undue influence cannot be drawn against the plaintiff merely because the application for final decree was

filed by the Decree Holder after the death of his mother Radha Aggarwal. It is a matter of record that the defendant/Judgment Debtor has neither disputed his mother i.e. Radha Aggarwal's signatures on the transfer deed nor has he led any evidence to rebut the validity of the transfer deed. Therefore, once the transfer deed executed by Radha Aggarwal in favour of the Decree Holder/plaintiff has been held to be valid, it would be of no consequence as to whether the plaintiff had filed the application for passing the final decree before or after the death of Radha Aggarwal.

On being pointedly asked, learned counsel for the appellant failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the courts below were either contrary to the record or suffered from any material illegality.

As a sequel to the above, this Court does not find any error in the concurrent findings recorded by the courts below. Resultantly, the instant appeal being devoid of any merit stands dismissed in limine.

(MANJARI NEHRU KAUL)
JUDGE

December 22, 2022

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No