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

**RSA-9720-2018 (O&M)
Reserved on : 14.07.2022
Date of decision : 21.07.2022**

Smt. Sunheri

.....Appellant

versus

Maha Singh and Others

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mohit, Advocate for
Mr. Ravinder Phogat, Advocate for the appellant.

ALKA SARIN, J.

CM-18831-C-2018

This is an application for condonation of delay of 179 days in refiling the appeal.

For the reasons stated in the application, delay of 179 days in refiling the appeal is condoned.

CM stands disposed off.

RSA-9720-2018

The present regular second appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts dismissing her suit for declaration with a consequential relief of permanent injunction.

Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a civil suit for declaration to the effect that the release deed no.1467 dated 27.07.2009 is illegal, null and void and not binding upon her.

According to the plaintiff-appellant, her mother, Smt. Jiwani, was the owner of 1/3rd share in the land measuring 135 Kanal 9 Marla and after her death the plaintiff-appellant was owner in possession of her share in land measuring 45 Kanal 3 Marla. It was averred that the defendant-respondents had manipulated and obtained a false, frivolous and fabricated release deed dated 27.07.2009 executed by Smt. Jiwani in their favour which release deed was a result of fraud and misrepresentation. As per the plaintiff-appellant the suit property was ancestral and Smt. Jiwani was not competent to execute the release deed in favour of the defendant-respondents.

The suit was contested by the defendant-respondents. Defendant-respondent nos.1 and 2 in their written statement raised certain preliminary objections. On merits, while it was denied that the suit property was ancestral and as per the defendant-respondent nos.1 and 2 Smt. Jiwani had inherited it pertaining to her parental home and as such Smt. Jiwani had every right to execute and get registered the release deed dated 27.07.2009. It was averred that Smt. Jiwani had handed over the physical possession of the suit property to the defendant-respondent nos.1 and 2 on the day of execution of the release deed. Defendant-respondent no.3 was proceeded against *ex-parte*. Defendant-respondent nos.4 and 5 filed a separate written statement contesting the suit contending *inter-alia* that the plaintiff-appellant and the defendant-respondent nos.4 and 5 had given their consent to the execution and registration of the release deed dated 27.07.2009.

The Trial Court framed the following issues :

1. Whether the plaintiff is entitled to the decree of declaration with consequential relief of permanent injunction as prayed for ? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no cause of action to file the present suit ? OPD
4. Whether the plaintiff has no locus standi to file the present suit ? OPD
5. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts ? OPD
6. Whether the suit of the plaintiff is false and frivolous and liable to be dismissed ? OPD
7. Relief.

The Trial Court, vide judgment and decree dated 10.08.2016, dismissed the suit of the plaintiff-appellant holding that Smt. Jiwani being absolute owner of the suit property inherited by her from her mother, she was well within her rights to execute the release deed dated 27.07.2009. The Trial Court found that the plea of fraud and misrepresentation raised by the plaintiff-appellant was not supported by any evidence. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellant which was, however, dismissed vide judgement and decree dated 10.11.2017. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the Courts below have erred in non-suiting her and not granting the relief of declaration and permanent injunction. According to counsel, the Courts below did not appreciate the pleadings and evidence on the record which proved that the suit property was ancestral and that Smt. Jiwani had no right

to execute the release deed dated 27.07.2009. It was further contended that the release deed was a result of fraud and misrepresentation and the photo and thumb impression of Smt. Jiwani was obtained by computer tactics in collusion with the computer operator. According to counsel, on the date of the alleged execution of the release deed Smt. Jiwani was feeble, of unsound mind and with less of vision.

I have heard counsel for the plaintiff-appellant and perused the paper-book.

The Courts below have found that Smt. Jiwani had inherited 1/3rd share in the suit property from her mother Mam Kaur widow of Harphool and as a result Smt. Jiwani was full owner thereof. It was also found that Smt. Jiwani being the absolute owner of the inherited suit property, she was fully competent to execute the release deed in respect of the suit property. The revenue record produced by the plaintiff-appellant did not support her contention that the suit property was ancestral. Regarding the allegations of fraud and misrepresentation, the release deed was a registered document and had been duly proved by the defendant-respondent nos.1 and 2 by examining one of the attesting witness Hawa Singh and deed writer Sita Ram. Further, fraud has not only to be specifically pleaded but also proved. In the present case the plaintiff-appellant failed to establish and prove that any fraud had been committed upon her by the defendant-respondents. No doubt that fraud vitiates everything inasmuch as it affects the very solemnity of the proceedings, however, by now it is the settled law that fraud has to be pleaded and established by leading cogent evidence. An ambiguous statement cannot per se make a document fraudulent. Learned counsel for the plaintiff-appellant has not been able to point out any illegality in the

judgements and decrees passed by the Courts below and has reiterated the submissions that were advanced before the Courts below and which submissions were rejected after due and comprehensive consideration.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

21.07.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO