

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

**RSA-2480-2019(O&M)
Decided on:-23.08.2023**

Yogesh Kumar

....Appellant...

VS.

Kalawati @ Kamla (since deceased) thr. her LRs.

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Abhinav Sood, Advocate and
Mr. Vikram Singh, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)

CM-6718-C-2019

Prayer in this application is for condonation of delay of 15 days
in refiling the appeal.

Having heard learned counsel for the applicant-appellant and
gone through the contents of the application, duly supported by an affidavit,
sufficient cause has been made out for the purpose of condoning the delay of
15 days in refiling the appeal. Accordingly, the application is allowed. Delay
of 15 days in refiling the appeal is condoned.

Main case

1. By way of present appeal, challenge has been laid to the
judgments and decrees dated 30.10.2014 and 23.08.2018, passed by the
Courts below, whereby, suit for declaration as well as prohibitory injunction
filed at the instance of respondents-plaintiffs, was decreed.

2. Briefly stating, the respondent-plaintiff filed a suit for declaration and prohibitory injunction, challenging the release deed dated 26.07.2010, executed by her in favour of the appellant-defendant being a result of fraud and misrepresentation. It was pleaded that the respondent-plaintiff was called upon by her brother i.e. appellant-defendant for the purpose of getting a release deed executed in favour of the sons of her other pre-deceased brother, namely, Mohan Lal, however, by playing fraud the release deed was got executed by appellant-defendant in his own name. She further submits that the release deed was to be executed by the respondent-plaintiff in favour of two sons of other brother, namely, Mohan Lal, in terms of settlement arrived at between the legal heirs of deceased-Jagan, as the other two sisters, namely, Sarbati and Geeta got transferred their shares, inherited from Jagan, in the name of wife of appellant-defendant.

3. Upon notice, appellant-defendant appeared and filed his written statement stating therein that the release deed dated 26.07.2010 was validly executed in his favour by the respondent-plaintiff against the monetary help extended to her, at the time when her son was lost in the year 2002.

4. The trial Court vide its judgment and decree dated 30.10.2014 decreed the suit filed by the respondent-plaintiff. Aggrieved thereof, appellant-defendant filed first appeal, however, the same was also dismissed by the learned District Judge, Narnaul vide its judgment and decree dated 23.08.2018.

5. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant-defendant submits that in the present case, release deed dated 26.07.2010 was not proved to be

bad on account of fraud and misrepresentation, as the necessary ingredients of fraud were neither pleaded nor proved in the plaint by the respondent-plaintiff. He further submits that once, respondent-plaintiff admitted her signatures as well as photograph(s) on the document in question, heavy burden lies upon her to establish fraud. He also submits that the respondent-plaintiff was not able to establish her stand as regards she having been called for the purpose of execution of release deed in favour of two sons of other brother, Mohan Lal, as the presence of none of them was ever proved or established at the relevant point in time on the date of execution of the release deed in question.

6. I have heard learned counsel for the appellant and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellant.

7. In the present case, there is no dispute regarding the relationship between the parties, who happened to be brother and sister being siblings of deceased-Jagan. As per the case pleaded by respondent-plaintiff, they were three sisters and two brothers, out of whom, Mohan Lal was no more and in terms of an oral settlement, two sisters, namely, Sarbati and Geeta were to transfer their shares inherited from the estate of Jagan, in the name of appellant-defendant, whereas, respondent-plaintiff was to transfer her share from the estate of Jagan, in favour of two sons of other brother, namely, Mohan Lal. Undisputedly, two sisters namely, Sarbati and Geeta got their shares transferred in the name of wife of appellant-defendant, although pleaded to have been transferred against sale consideration, yet was never proved on record by the appellant-defendant. The factum of such oral

settlement as pleaded by the respondent-plaintiff was proved on record even by the other sister, namely Sarbati, who appeared as PW2 and despite there being a lengthy cross-examination effected upon her, the appellant-defendant was not able to impeach her deposition.

8. Even further, the Courts below have rightly relied upon the material contradictions in the statements made by the defendant's witnesses as regards the execution and registration of the release deed dated 26.07.2010. Moreover, the submissions made on behalf of the appellant-defendant as regards the non-pleading of basic necessary ingredients of fraud in the plaint is wholly misplaced as sufficient averments were pleaded in the plaint, so as to set-up the plea of fraud. Besides, it is well established that in all cases of fraud, direct evidence is available to prove it as the same is always an act of discrete and concerted efforts of the parties involved therein, which thus can also be proved & inferred from the surrounding circumstances. My aforesaid view is derived from decision made by Hon'ble Apex Court ***"Indian Bank vs. M/s Satyam Fibers (India) Pvt. Ltd., 1996(5) SCC 550*** and relevant portion from para 30 thereof is reproduced hereunder:-

"Forgery and fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts."

9. Equally important, a concurrent finding of fact regarding fraud as well as misrepresentation has been recorded in the facts and circumstances of the present case against the appellant-defendant, which this Court is unable to interfere with in the absence of any material to the contrary, pointed out on behalf of the appellant.

10. Accordingly, in view of the discussion made hereinabove, finding no illegality and perversity in the judgments and decrees passed by the Courts below, the present appeal is hereby dismissed.

11. Pending application(s), if any, shall stand(s), disposed of.

23.08.2023

(HARKESH MANUJA)
JUDGE

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