

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

RSA-97-2022(O&M)

Reserved on:-20.4.2023

Date of Pronouncement:-29.4.2023

Brij Lal and others

...Appellants

Versus

Rattan Lal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Alok Mittal, Advocate
for the appellants.

Mr.Rajesh Lamba, Advocate
for caveator/respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Brij Lal son of Sarup Singh, Rajesh son of Mehar Kaur, Sarojmani daughter of Mehar Kaur, Kela Devi daughter of Sarup Singh and Om Kaur daughter of Sarup Singh had brought a suit against defendants i.e. Rattan Lal son of Sarup Singh, Yogender son of Rattan Lal, Tehsil Singh son of Rattan Lal, all residents of village Abbaspur, Tehsil and District Sonapat as well as against Sarup Singh (since deceased) through his legal representative Shiv Kumar son of Brij Lal, resident of village Bankner, Delhi, seeking a declaration that release deed dated 15.6.2012 is illegal, null and void not binding upon rights of the plaintiffs as it had been executed fraudulently and in clear violation of Indian Stamp Act and Registration Act, therefore, the defendants be restrained from alienating the suit land in any manner.

2. As per the case of the plaintiffs defendant No.4 Sarup Singh was having $\frac{1}{2}$ share in the agricultural land in two chunks one having area of 17 kanals 8 marlas and the other of 16 kanals 16 marlas, situated within revenue estate of village Abbaspur, Tehsil and District Sonapat, on behalf of the plaintiffs because that agricultural land had been purchased by the plaintiffs, defendant No.1 Rattan Lal and defendant No.4 Sarup Singh after alienation of the agricultural land at village Bankner, Delhi; though the sale deed was executed in the name of defendant No.4; defendant No.4 was to manage and look after the land on behalf of the plaintiffs and defendant No.1, but defendant No.1 being a greedy and dishonest person in collusion with the witnesses and Deed Writer by taking advantage of infirmity, old age and incapability of defendant No.4 Sarup Singh fraudulently succeeded in getting the release deed executed in favour of his two sons i.e. Yogender and Tej Singh, defendants No.2 and 3, respectively on 15.6.2012 by exercising undue influence upon defendant No.4, therefore the release deed is illegal, null and void not binding upon rights of the plaintiffs and they remain owners in possession of the land in question; the land was not ancestral in nature and the release deed was got executed to avoid payment of stamp duty; the impugned release deed was got executed by showing the land to be ancestral and not paying the stamp duty on the market value. Feeling aggrieved, the plaintiffs had brought the suit in question.

3. On getting notice, all the four defendants appeared and filed a joint written statement contesting the suit raising various legal objections, on merits, contending that defendant No.4 was owner of the land in

question and it was his self-acquired property, which he had purchased with his own funds; defendant No.4 had executed a release deed with his own wish in favour of defendants No.2 and 3, without there being any undue influence exercised upon him; no fraud or cheating was played upon defendant No.4 by defendant No.1; the release deed in question is legal and valid and after its execution, defendants No.2 and 3 have become owners in possession of the suit property, which is reflected in the revenue record; the plaintiffs have no concern with such land. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

4. Since defendant No.4 Sarup Singh had died during the pendency of the suit, he was represented by one Shiv Kumar son of Brij Lal and other LRs already on record as plaintiffs No.1, 4, 5 and defendant No.1. Defendant No.4(1) had filed a separate written statement submitting that sale deed in respect of the agricultural land situated in village Abbaspur was executed in favour of Sarup Singh for sale consideration received after selling out the land in village Bhorgarh. In the written statement the case of the plaintiffs has been supported. In the end, a prayer was made for decreeing the suit of the plaintiffs.

5. The plaintiffs had filed replication to the written statement of defendant No.1 to 4 controverting the allegations in the written statement whereas reiterating the averments in the plaint.

6. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled to a decree for declaration to the effect that the release deed dated 15.06.2012 is illegal, null and void

and not binding on the rights of the plaintiffs? OPP

2. Whether the plaintiffs are entitled to a decree for permanent injunction whereby the defendants are restrained from alienating the suit land in any manner? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiffs have no locus standi to file the present suit? OPD
5. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
6. Whether the requisite court fee stamp has not been affixed? OPD
7. Whether the present suit is bad for non-joinder and misjoinder of necessary parties? OPD
8. Whether the plaintiffs have not come to the court with clean hands and has suppressed the material facts from the court? OPD
9. Relief

7. The parties were afforded adequate opportunities to lead evidence in support their respective claims.

8. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Sonapat by giving issue-wise findings dismissed the suit of the plaintiffs with costs. However, such Court gave a direction to defendants No.2 and 3 to make the payment of the stamp duty on the impugned release deed at the circle rate prevailing on the date of execution of release deed within two months of getting the copy of judgment. This was so done vide judgment and decree dated 21.9.2017.

9. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Sonipat, which was assigned to Additional District Judge, Sonipat, who vide judgment and decree dated 1.2.2021 affirmed the judgment and decree passed by the trial Court and dismissed the appeal.

10. Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by them be decreed.

11. Respondent No.1 had also appeared by way of filing a caveat petition.

12. I have heard learned counsel for the parties besides going through the records and I find that there is no element of merit in this regular second appeal.

13. In this case, the trial Court as well as First Appellate Court of Additional District Judge, Sonipat considering the pleadings of the parties and by thorough and deep analysis of the evidence brought on record by the contestants, in light of the settled judicial legal position, have come to the conclusion that defendant No.4 Sarup Singh was absolute owner of the suit property, which was self-acquired qua him and he had every right to dispose it of by executing the release deed in favour of his grandsons defendants No.2 and 3, who happened to be sons of his son defendant No.1 Rattan Lal. The plea raised by the plaintiffs that defendant No.4 Sarup Singh was not the owner of the property, rather he was just a care

taker and trustee on behalf of the plaintiffs and could not alienate the same and further the release deed executed by him in favour of defendants No.2 and 3 was illegal, result of fraud, misrepresentation or undue influence exerted by defendant No.1 upon defendant No.4 were considered and rejected. It has been noticed that the plaintiffs have been unable to show to prove the ancestral nature of the property because there was nothing on record to show that it was owned by common ancestor and it has descended on the parties concerned in inheritance and in no other manner. The plaintiffs had not produced on file intkhab (excerpt), khatoni ishtemal, khatoni paimaish and naksha-haq-dar-war, therefore the property was taken to be self acquired qua Sarup Singh.

14. With regard to non-payment of stamp duty on the impugned release deed on the market value, the trial Court had rightly issued direction to defendants No.2 and 3 to pay that stamp duty and to remove the objections.

15. Although learned counsel for the appellants by referring to statement of DW4 Tej Singh tried to project that property in the hands of Sarup Singh was ancestral in nature but as has been observed by the Courts below ancestral nature of the land does not get proved in such a manner even if an admission in that regard is there by one of the defendants. Therefore, the property in the name of Sarup Singh cannot be taken to be having ancestral nature qua the plaintiffs and defendants No.1 to 4.

16. The judgments referred to by learned counsel for the appellants i.e. **Shyam Narayan Prasad Versus Krishna Prasad and**

others by Hon'ble Supreme Court passed in Civil Appeal No.5415 of 2011 and Manohar Lal and another Versus Dewan Chand and others, 1985(1) PLR 689 are not applicable to the present case due to different facts and circumstances of the case and the context in which such observations had been made.

17. With the concurrent findings recorded by the Courts below with which I do not see any reason to disagree and with no substantial question of law arises, the present appeal is bound to be dismissed.

It is ordered accordingly.

Since the main regular appeal stands dismissed, miscellaneous application(s), if any, pending in the appeal stand disposed of accordingly.

29.4.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No