Neutral Citation No.2023:PHHC:100134

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

433

RSA No.4665 of 2009 (O&M)
Date of Decision: 2.8.2023
Reserved on: 27.07.2023

Smt. Indrawati (since deceased)
through her legal heirs ... Appellants

Versus

Virender Singh ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. Amit Jain, Senior Advocate,
with Mr. Anupam Mathur, Advocate,
for the appellants.

Mr. S.K. Garg Narwana, Senior Advocate,
with Mr. Vishal Garg Narwana, Advocate and
Mr. Japjit Singh Johal, Advocate,
for the respondent.

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MANISHA BATRA, J.

1. Aggrieved by the concurrent findings as recorded by the Courts below thereby dismissing the claim of the appellant-plaintiff seeking declaration of relinquishment deed dated 25.05.2000 (Ex.P1/D2) as illegal, null and void, the appellant who is now dead and represented by legal representatives, had preferred the instant appeal.

2. Shorn of unnecessary details, the facts of the case are that the plaintiff was owner in possession of the agricultural land mentioned in detail in para No.1 of the plaint (hereinafter to be mentioned as

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"disputed land"). Since she being a married person, was residing in her matrimonial house at Village Kakroi, District Sonepat and the disputed land was existing at her native place, therefore, she had given the same to the defendant who was her first cousin for cultivation on payment of batai tihai (1/3rd proceeds of the crop). Subsequently, the defendant asked her to execute some document thereby authorizing him to continue cultivating the disputed land on batai tihai and acceeding to his request, she had gone with him to Tehsil Office, Bahadurgarh on 25.05.2000 to execute a document in this regard where by playing fraud upon her, the defendant instead got executed and registered a deed qua relinquishment of the disputed land in his favour. He also got a mutation No.3026 sanctioned on 05.07.2000 on the basis of the said relinquishment deed in his favour. He had taken over possession of the disputed land and was threatening to alienate the same further. The plaintiff challenged the validity of the impugned release deed on the ground that she was an illiterate, rustic and pardanashin female who had never visited any Tehsil/Government office earlier and was not conversant with the working of the same. She prayed for declaring the impugned release deed and mutation sanctioned on the basis thereof as illegal, null and void and not binding upon her rights and also for consequential relief of permanent injunction thereby restraining the defendant from alienating the disputed land.

3. The defendant in his written statement raised preliminary objections as to maintainability, locus standi, estoppel, cause of action and on the ground that the suit had not been properly valued for the purposes of Court fees. On merits, relationship between the parties was admitted. It was asserted that the plaintiff had executed different sale deeds in respect of

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some of the land owned by her in the past in favour of his brother and himself. She also agreed to sell the disputed land to him for a sale consideration of Rs.5,30,000/-. The defendant had paid the same to her and she had to execute sale deed in his favour on 25.05.2000. He pleaded that as he was serving Border Security Forces and had to leave to join his duty at Jammu & Kashmir on 28.05.2000 and as stamp papers for execution of sale deed were not available, therefore, on the instructions of the plaintiff herself, instead of sale deed, the impugned release deed in respect of the disputed land was got executed and registered on that date and possession of the disputed property was handed over to him. The pleas taken by the plaintiff were controverted and dismissal of the suit had been prayed for.

4. The plaintiff filed replication resisting the pleas as taken in the written statement and re-asserting those of the plaint. The learned trial Court had framed the following issues:-

1. Whether the plaintiff is owner in possession of the agricultural land comprised in rect. And killa no.38/7-2 (5-2), 7/1 (2-4), 40/14-2 (4-0), 17 (8-0) total kitta 4 Rakba (measuring) 19 Kanals 6 Marlas situated within the revenue estate of village Nuna Majra, Tehsil Bahadurgarh as alleged in para no.1 of the plaint? OPP.
2. Whether the release deed dated 25.5.2000 document no.829 is illegal, null and void and not binding upon the plaintiff, on the grounds as detailed in para no.5 of the plaint? OPD
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD

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6. Relief

5. Vide order dated 17.01.2003, the following additional issue was framed:-

> 2-A. Whether the plaintiff is entitled to a decree for possession regarding the suit land on the ground as mentioned in the plaint? OPP

6. The parties adduced evidence in support of their respective assertions. Besides relying on documentary evidence, the plaintiff examined herself as PW-1 whereas defendant examined six witnesses namely, DW-1 Kamal Kishore, DW-2 Raj Kumar, DW-3 Mange Ram Mehra, Advocate, DW-4 Ganpat Ram, DW-6 Bhim Singh and himself appeared as DW-5.

7. The learned trial Court dismissed the suit filed by the plaintiff by holding that she had failed to prove that the impugned release deed was a result of fraud. The appeal preferred by the plaintiff before learned First Appellate Court had also been dismissed vide judgment and decree dated 14.09.2009 leading to filing of this appeal.

8. Learned counsel for the appellant strenuously argued that the findings as given by learned Courts below were not sustainable in the eyes of law. The respondent being near relative of the appellant was in a fiduciary relationship with her. He being in a dominating position had practised fraud upon her and by way of misrepresentation had got the impugned release deed executed in his favour. The learned Courts below had ignored the fact that the respondent had failed to bring any evidence with regard to payment of amount of Rs.5,30,000/- which was alleged to be sale consideration amount by him. The fact that the impugned release deed was also insufficiently stamped as ad valorem fee payable on the same had

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not been paid and hence it was inadmissible in evidence, was not taken into consideration. The Courts below had not applied their judicious mind. With these broad submissions, it was argued that the impugned judgments passed by the Courts below were liable to be set aside and the appeal deserved to be accepted. In support of his contentions, he relied upon **Harender Singh v. State of Haryana and others**, 2008 (3) R.C.R. (Civil) 720 & **Chalti Devi and others v. Rajinder Kumar and another**, 2003 (4) R.C.R. (Civil) 527.

9. Per contra, learned counsel for the respondent-defendant argued that the concurrent findings of fact as recorded by learned trial Court and affirmed by learned First Appellate Court were well reasoned and did not warrant any interference. The burden of proof of fraud allegedly practised upon her at the time of execution and registration of the impugned release deed, could not be discharged by the appellant by producing any cogent and convincing evidence whereas the respondent has produced overwhelming evidence on record to prove that he had paid an amount of Rs.5,30,000/- to the appellant and she had voluntarily executed and registered release deed in his favour. She had challenged the impugned release deed out of greed to extract more money and due to mala fide. Hence, it was urged that the appeal was liable to be dismissed. In support of his argument, learned counsel for the respondent placed reliance upon authorities cited as **Union of India v. M/s. Chaturbhai M. Patel and Co.**, AIR 1976 SC 712; **Abdulla Umar Haji Ismail Merchant v. Subai Mura Rabari and others**, 1998 (3) CivCC 386; **S.P. Changalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs.**, AIR 1994 SC 853; **M/s Omprakash Har Narain and Sons v. Vijaya Bank Ltd.**, 2003 (1) R.C.R. (Civil) 648 &

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Parveen Kumar v. Shiv Ram alias Sheo Ram, 2000 (1) R.C.R. (Civil) 122.

10. Learned counsel for the parties were heard at considerable length by this Court and the material placed on record has also been minutely scrutinized.

11. It was not in dispute that the appellant and respondent were closely related to each other being cousins. The appellant also did not dispute the fact that the impugned release deed Ex.P-1 was bearing her thumb impressions. It was also not her claim that this document was not got registered before the Sub Registrar, Bahadurgarh. She, however, challenged the validity of this release deed on the ground that the respondent being in fiduciary relationship with her and by exercising fraud had got executed and registered the same on the pretext of getting executed a document authorising cultivation of the disputed land by him. The allegations of fraud were required to be proved by the appellant herself by producing reliable and convincing evidence on record. The case of the appellant rested upon her own bare oral testimony which has not been corroborated by any evidence. The plea which had been mainly taken by her was that she was an illiterate, rustic and pardanashin female and did not understand the implication and nature of the proceedings which were conducted at the time of execution and registration of the impugned release deed and that she was not conversant with the working of any Government office or office of Sub Registrar. The learned trial Court as well as learned First Appellate Court had observed that the appellant was not proved to be an illiterate and pardanashin female. On careful assessment of testimony of the appellant and the documents produced on record, this Court is of the opinion that the

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findings given by the Courts below on this point deserve to be affirmed. The respondent-defendant produced Ex.D-1 a certificate shown to be issued by the Principal of Government Girls Senior Secondary School, Village Noona Majra which is the native village of the appellant, showing that she had passed Matriculation examination from that School in the year 1971. DW-1 who was Lecturer of this School had proved this certificate and his statement on that point remained unrebutted and unchallenged which goes to falsify that the appellant was an illiterate person. Then, her claim as to being a pardanashin female also stands belied in view of the fact that she herself admitted that she had contested for election to the post of Sarpanch of her village in the year 1998. The respondent produced on record Ex.D-10 copy of an order dated 22.10.2001 passed in Civil Writ Petition No.3952 of 2000 which shows that she had filed petition challenging that election. It would not have been possible for the appellant to contest the elections if she was a pardanashin female.

12. So far as the plea that she could not understand the nature of the proceedings conducted at the time of execution and registration of the release deed Ex.P-1 is concerned, her claim to this effect also stood falsified from the fact that she was proved to have executed four sale deeds Exs.D-3 and D-5 to D-7 during the years 1992, 1995 and 1999 respectively in favour of the brother of the respondent or himself. All these sale deeds are duly registered documents and there is a reasonable presumption that the contents of the same were read over to her by the concerned Sub Registrar and thereafter she had thumb marked/signed the same after understanding the same. The appellant also did not categorically deny the fact that she had sold some of her properties previously to the respondent and his brother.

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Meaning thereby that she had the experience of executing and getting registered at least four registered deeds in the office of Sub Registrar. In such circumstances, her statement that she had no experience of working of the office of Sub Registrar or any Government office has no legs to stand. Therefore, the appellant was proved to have rested her case upon false pleas and having pleaded false facts and given contrary statement, she had no right to approach the Court and her statement could certainly not be acted and relied upon. In this regard, reliance can be placed upon the authorities reported as **S.P. Changalvaraya Naidu (dead) by L.Rs.'s** case (Supra) and **M/s Omprakash Har Narain and Sons's** case (Supra) wherein also it was held so.

13. Besides the above, it is also important to mention that the due execution of the release deed Ex.P-1 by the appellant stood proved from the testimonies of DW-3 Mange Ram Mehra, Advocate who had drafted and got typed this document and attesting witness DW-4 Ganpat Ram. Learned counsel for the appellant had laid much stress on the point that DW-4 Ganpat Ram was none else than a tea vendor having his vend in the office of Sub Registrar, Bahadurgarh itself and, therefore, it was argued by him that he was only a stock witness procured by the respondent for the purpose of execution of the release deed and his statement was not worthy of any reliance. With regard to DW-3, he argued that this witness was not a regular scribe and had not maintained any record regarding prepartation of the impugned release deed and, therefore, his statement also could not be relied upon. These arguments cannot be accepted at all in view of the fact that the testimony of DW-4 Ganpat Ram reveals that he was hailing from the village of the appellant and respondent themselves and knew both the parties. He

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had given details about the manner in which the release deed in question was executed and got registered by the appellant. Nothing could be extracted from his cross-examination on the basis of which it could be stated that he was a stock witness for the purpose of attesting forged documents or that he did not know the parties or that the document was not thumb marked and got registered by the appellant in his presence. Therefore, there can be no reason to disbelieve his statement. Similarly, the testimony of DW-3 Mange Ram Mehra an Advocate practising in Civil Court, Bahadurgarh cannot be faulted with. Being an advocate, he was competent to draft and get typed the impugned release deed and was not required to maintain any record/register regarding preparation of the same. He also could not be shattered on the point that this deed was got prepared by the appellant and she had thumb marked the same after the contents of the same were read over and accepted by her. Therefore, the due execution of the impugned release deed by the appellant stands proved from the statements of both these witnesses.

14. Learned counsel for the appellant had also raised one more argument to the effect that since no documentary evidence whatsoever had been produced by the respondent in proof of payment of a sum of Rs.5,30,000/- to the appellant at the time of execution of the release deed Ex.P-1, therefore, his claim could not be believed. Undoubtedly, the respondent-defendant failed to produce any documentary evidence regarding payment of amount of Rs.5,30,000/- to the appellant before or at the time of execution of the release deed Ex.P-1 but the statement of DW-6 Bhim Singh a co-villager to the effect that on 22.05.2000, an oral agreement had been arrived at between the parties with regard to sale of the disputed

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land by the appellant to the respondent for a sum of Rs.5,30,000/- and it was also agreed that the sale deed will be executed on 25.05.2000, has remained unrebutted and the same proves that the appellant had agreed to sell the disputed land to the respondent for a sum of Rs.5,30,000/- and had executed release deed in his favour. The respondent was in fiduciary relationship with her but there is nothing on record to show that he was in dominating position or had made any manipulation or committed fraud with her while getting the release deed executed in his favour. The Courts below had appreciated the evidence produced on record and had come to a concurrent finding of fact to the effect that the appellant had failed to prove that any fraud or undue influence was exercised upon her or there any misrepresentation at the time of execution of the impugned release deed by the respondent.

15. It is also important as well as noteworthy that the release deed Ex.P-1/D-2 was a document duly registered in the office of Sub Registrar, Bahadurgarh on 25.05.2000. Section 34 of the Registration Act, 1908 (for short “Act, 1908”) speaks about the enquiry to be made before registration of a document by registering officer. Section 35 casts a duty on the registering authority to enquire about the identity of the executant and the factum of execution and registration of a document is to be treated as presumption of execution by the person indicated as executant of the document. Section 58 speaks about particulars to be endorsed on documents admitted for registration namely, the signature of person admitting the execution of the document as well as of every person examined in reference to such document and any payment of money or delivery of goods if made in the presence of the registering officer in reference to execution of such

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document. The registering officer is required to endorse the signature of every person admitting the execution of document and such document is prima facie evidence against the executant. The presumption of correctness is attached to endorsement made by the Sub Registrar and such presumption can be rebutted only by strong evidence to the contrary. The well settled proposition of law is that registration of a document is a solemn act of parties and the recitals of a registered document are presumed to be valid unless such a presumption is rebutted by strong evidence to the contrary. Reliance in this regard can be placed upon **Chhotey Lal v. Collector of Moradabad**, AIR 1992 Privy Council 279, wherein the Privy Council was considering the question as to presumption of validity of a power of attorney which formed the basis of a registered mortgage deed which was later challenged. It was noted that since the Sub Registrar had accepted the document for registration, it was prima facie evidence that the conditions had been satisfied and after registration of the document, the burden of proving any infirmity rested on the person who challenged the registration. Further relied upon is **Jugraj Singh and another v. Jaswant Singh and others**, 1970 (2) SCC 386, wherein the Hon'ble Supreme Court had reiterated the legal position as to presumption of regularity of official acts and held that it would be presumed that a Sub Registrar registering a document would have proceeded with the registration only on satisfying himself as to the fact that the person who was executing the document was a proper person. Reference can also be made to **Prem Singh and others v. Birbal and others**, (2006) 5 SCC 353, wherein it was held by Hon'ble Supreme Court that there was a presumption that a registered document is validly executed and prima facie such document would be valid in law. The

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onus of proof, thus, would be on a person who leads evidence to rebut the presumption. On a perusal of Ex.D-2 which is the original release deed produced on record by the respondent, it is revealed that on the back of first page of this document, a specific endorsement had been made by the concerned Sub Registrar in compliance of provisions of Section 58 of the Act, 1908 to the effect that the executant of the release deed was present in the office, that the contents of the same were read to her and that she had thumb marked the same after accepting the same to be correct. This endorsement as discussed above carries a presumption of truth and validity of this document, in view of ratio of law as laid down in above cited authorities, and therefore, there can be no hesitation to hold that the appellant had thumb marked the impugned release deed in the presence of the Sub Registrar who was a public servant after the contents of the same were read over to her and were accepted by her to be correct and, therefore also her claim that any fraud was committed upon her stands falsified.

16. The last limb of argument as raised by learned counsel for the appellant was that the learned Courts below committed a grave error by ignoring the fact that the respondent was not having any pre-existing right in the estate of the appellant and, therefore, no release deed could be executed in his favour and further that the release deed in question was an insufficiently stamped document. While referring to Article 55 of The Indian Stamp (Haryana Amendment) Act, 2000, it was submitted that since the release was not in favour of brother, sister, son, daughter, parents, spouse, grandchildren, nephew, niece or co-parcener of the appellant, therefore, stamp duty leviable was same which was to be affixed on a deed of conveyance of sale of immoveable property. No doubt, as per Article 55

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of the Indian Stamp Act, 1899 (for short "Act, 1899") as amended by virtue of the The Indian Stamp (Haryana Amendment) Act, 2000, the instrument of the release of ancestral property in favour of the persons having above mentioned relations with the renouncer is fifteen rupees and in any other case, it is ad valorem of the immoveable property and the respondent in this case does not fall in the category of the persons as mentioned above. As such, the release deed in question was required to be stamped with same stamp duty as is required to be affixed on a deed of conveyance. However, at the same time, it cannot be ignored that the appellant-plaintiff herself had produced the impugned release deed in evidence on 06.11.2004 and at that time, no objection had been taken by her to the effect that this release deed was not sufficiently stamped and could not be exhibited. Further, when the original release deed Ex.D2 was proved by DW-2 Raj Kumar, Clerk, Office of Sub Registrar, Bahadurgarh, even at that time, no such objection was taken. It is well settled proposition of law that when an insufficiently stamped document is tendered in evidence and marked either by the act of the parties or by order of the Court, the opponent has the right to raise objection regarding insufficiency of stamp duty at that time but if such objection is not raised at the time when the document is marked and received as evidence, the opponent will be forfeiting his right to challenge the sufficiency or otherwise of the duty. At this stage, it will also be relevant to refer to certain provisions of the Act, 1899. Section 33 provides for examination and impounding of instrument which is not duly stamped. Once on examination, it is found that the instrument is not duly stamped, Section 34 comes into operation and places a complete embargo on the admissibility of such document in evidence. However, Section 35 of the

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Act, 1899 provides that admission of an instrument not duly stamped or insufficiently stamped, in evidence, rightly or wrongly, shall not be called in question at any stage of the same suit or proceeding on the ground of insufficiency of the stamp duty or that no stamp duty is paid on such instrument. The provisions of Sections 33 to 35 of the Act, 1899 cannot be read in isolation and are to be read together. (See: **Smt. Huchamma and others v. Sri Chandrashekar alias Hanumantharaju**, (2014) 3 KCCR 2088) wherein High Court of Karnataka had observed so. Reference can also be made to **Javer Chand and others v. Pukhraj Surana**, AIR 1961 SC 1655 wherein the Hon'ble Supreme Court had held that when the document tendered is insufficiently stamped, on the other side raising objection to the marking of the document, the question has to be decided then and there, when the document is tendered in evidence. Once the Court decides to admit the document in evidence, the matter is closed so far as the parties are concerned. The Court has to determine the matter judiciously since the document is tendered in evidence and before it is marked as an evidence in the case. Similarly, in **Bipin Shantilal Panchal v. State of Gujarat and others**, AIR 2001 SC 1158, the Supreme Court held that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further. Similar proposition was laid down in **Ram Rattan v. Bajrang Lal and others**, AIR 1978 SC 1393 and **Kanhailan Chandak v. R.Mohan**, (1980) 2 MLJ 234 (Madras High Court). On applying the proposition of law as laid down in the above cited authorities to this case, since the appellant is not proved to have taken any objection as to the release deed being insufficiently stamped at the time when the same was tendered into evidence, therefore, the matter regarding

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insufficiency of stamp would be deemed to be closed then and there and the objection so raised cannot be stated to be sustainable.

17. In view of the discussion as made above, I see no reason to interfere with the concurrent findings of facts recorded by learned Courts below. Neither any substantial question of law raised by appellant deserves to be decided in her favour. Accordingly, affirming the judgments and decrees passed by the Courts below, this appeal is dismissed with no order as to costs.

18. Miscellaneous application(s), if any, also stand disposed of.

(MANISHA BATRA)
JUDGE

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

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