

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.224 of 2019 (O&M)
Date of Decision: 30.11.2023

Fagan @ Bhagan @ Bhagwan

...Appellant

Versus

Balbir Singh

...Respondent

CORAM: ***HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

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

MEENAKSHI I. MEHTA, J.
CM No.502-C of 2019

By way of the present application, the applicant-appellant has sought the condonation of delay of 14 days in re-filing the appeal.

Heard.

Keeping in view the reasons as mentioned in this application, the same is allowed as prayed for.

RSA No.224 of 2019 (O&M)

Feeling aggrieved by the judgment and decree passed by learned Civil Judge (Junior Division), Assandh (Karnal) {for short 'the trial Court'} on 01.09.2015, whereby the Civil Suit filed by the appellant-plaintiff (here-in-after to be referred as 'the plaintiff') against the respondent-defendant (here-in-after to be referred as 'the defendant') for seeking a decree for declaration to the effect that gift-deeds No.182/1 dated 25.05.2006 and No.241/1 dated 01.06.2006, release-deed No.1162/1 dated 28.01.2010 as well as the mutations

bearing Nos.2573, 2583 and 9379 sanctioned on the basis thereof, are illegal, null and void, with the further prayer for grant of the consequential relief of permanent injunction to restrain the defendant from alienating the suit land in any manner, has been dismissed and also by the judgment and decree handed down by learned Additional District Judge, Karnal (for short 'the Lower Appellate Court') on 11.07.2018, dismissing the appeal moved by the plaintiff against the above-said judgment and decree dated 01.09.2015, she (plaintiff) has preferred the instant Regular Second Appeal to lay challenge to the same.

2. I have heard learned counsel appearing for the appellant-plaintiff in the present appeal, at the preliminary stage and have also perused the file carefully.

3. Undisputedly, the plaintiff was the owner of the suit land and the defendant is stated to be her nephew (brother's son). She has assailed the legality of the afore-referred gift-deeds, the release-deed and the mutations as well, while alleging that the defendant had, fraudulently, obtained her thumb-impressions on several documents and Registers on the pretext of execution of the lease-deed in respect of the suit land. It is well-settled that the plea of fraud, even in the civil cases, has to be specifically pleaded and proved. The plaintiff, besides herself stepping into the witness-box as PW-1, has examined her son named Chander Bhan as PW-2 to prove her above-said allegation/plea but it is pertinent to point it out here that the trial Court has categorically mentioned in Para No.5 in its judgment that the afore-named PW-2 was, admittedly, not present at the time of the execution of the disputed gift-deeds and release-deed. To add to it, the Lower Appellate Court has also specifically observed in Para No.20 of its judgment that the plaintiff has not examined any of the attesting witnesses to the above-mentioned documents, including Sultan Singh, who is

none other than her own son and is one of the attesting witnesses to gift-deeds Exhibits PW3/A and PW3/B, in her evidence. It being so, it is explicit that the plaintiff has withheld the best possible evidence from being produced on the record so as to establish her afore-said allegation, despite the fact that these witnesses could have thrown some light on the circumstances under which the documents in dispute had been executed by her. Moreover, the above-referred gift deeds and release-deed are the duly registered documents and this fact impliedly lends support to their authenticity and genuineness. In view of the afore-discussed facts and circumstances, it becomes quite clear that the plaintiff has not been able to substantiate her allegation regarding the defendant having got the above-said documents, fraudulently, executed in his favour.

4. As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees passed by both the Courts below, do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the Regular Second Appeal in hand, being *sans* any merit, stands dismissed.

30.11.2023

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(MEENAKSHI I. MEHTA)
JUDGE*Whether speaking/reasoned:* Yes*Whether Reportable:* Yes