



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 1779 of 2024 (O&M)
Date of Decision: 29.07.2024

Smt. Meena and others

..... Appellants

Versus

Smt. Kavita and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Pankaj Gautam, Advocate
for the appellants-plaintiffs.

HARKESH MANUJA, J. (ORAL)

CM-7019-C-2024

Prayer in the present application moved on behalf of the appellants-plaintiffs, is for condonation of delay of 29 days in filing the present appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of appellant No. 2 (Sunita), sufficient cause has been made out to condone the delay in filing the appeal; thus, the same is **allowed** and delay of 29 days in filing the appeal is condoned.

MAIN APPEAL

By way of present appeal, challenge has been laid to the judgment and decree dated 05.03.2024 passed by the Court of Additional District Judge, Jind (**hereinafter to be referred as “First Appellate Court”**), whereby an appeal against the judgment and decree dated

05.03.2019 passed by the Court of Civil Judge (Junior Division), Safidon **(hereinafter to be referred as “trial Court”)**, dismissing the suit for declaration assailing the registered release deed No. 1280 dated 11.12.2009 as well as sale deed dated 21.12.2015 and also claiming permanent injunction *qua* possession and alienation of suit land, filed at the instance of appellants-plaintiffs, was dismissed, thereby affirming the judgment and decree passed by the trial Court.

[2] Briefly stating, the dispute relates to the land measuring 8 kanals falling in Khewat No. 462 Khatoni No. 568, R.No. 26 Killa No. 2 (8-0), situated in the revenue estate of Village Pillu Khera, Tehsil Safidon, District Jind, originally owned by respondent No. 4-defendant No. 4, which was later transferred by him in favour of respondent Nos. 1 & 2-defendant Nos. 1 & 2 in terms of registered release deed bearing No. 1280 dated 11.12.2009 followed by Mutation No. 2589. Besides seeking declaration *qua the* release deed dated 11.12.2009 being result of fraud, the appellants-plaintiffs being the daughters of respondent No. 4-defendant No. 4 also assailed the subsequent alienation made by respondent No. 1-defendant No.1 *qua* her half share in favour of respondent No. 3-defendant No. 3 in terms of sale deed No. 1853 dated 21.12.2015. The challenge to the aforementioned transactions was primarily alleging fraud played by respondent No. 1-defendant No. 1 upon respondent No. 4-defendant No. 4 in collusion with one Hardeep, besides alleging the property in question to be ancestral in the hands of respondent No. 4-defendant No. 4 and thus, he being not competent to alienate the same. The appellants-plaintiffs also prayed for grant of permanent injunction, restraining the respondents-defendants from

interfering into their possession over the suit property, and also restraining respondent Nos. 1 to 3-defendant Nos. 1 to 3 from alienating the same.

[3] Upon notice, respondent Nos. 1 to 3 contested the suit having filed their joint written statement; however, no one appeared on behalf of *pro forma* respondent No. 4-*pro forma* defendant No. 4. The stand taken by respondent Nos. 1 to 3 in their written statement was that the suit land in the hands of respondent No. 4-defendant No. 4 was his self-acquired property having been inherited by him through Civil Court's decree dated 02.08.1986 from his father-Lalji and thus, he was fully competent to alienate the same. Averments regarding fraud were specifically denied. It was also pleaded that previous respondent No. 4 also challenged the release deed in question, but the said suit was dismissed on 24.08.2015, and thus, the present suit was not maintainable.

[4] On the basis of pleadings of the parties, the trial Court, vide order dated 22.05.2017, framed the following issues:-

- “1. *Whether the plaintiffs are entitled to relief for declaration, as prayed for in the plaint? OPP*
2. *Whether the plaintiffs are entitled to relief of permanent injunction, as prayed for in the plaint? OPP*
3. *Whether the suit of the plaintiffs is not maintainable? OPD*
4. *Whether the suit of the plaintiffs is false and frivolous? OPD*
5. *Whether the plaintiffs have no locus standi to file the present suit? OPD*
6. *Whether the plaintiffs are stopped from filing the present suit by way of their own act and conduct? OPD*
7. *Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties? OPD*

8. *Whether the suit of the plaintiffs is bad for want of advalorem court fees and jurisdiction? OPD*
9. *Whether the suit of the plaintiffs is time barred? OPD*
10. *Whether the plaintiffs have not come in the court with clean hands? OPD*
11. *Whether the plaintiffs have no cause of action to file the present suit? OPD*
12. *Relief. ”*

[5] The trial Court, vide its judgment and decree dated 05.03.2019, dismissed the suit, filed at the instance of appellants-plaintiffs, while recording that the suit land in hands of respondent No. 4-defendant No. 4 was never proved to be ancestral in nature, besides there being no evidence of fraud being led by the appellants-plaintiffs. Even the finding regarding possession of the suit land was also recorded in favour of respondent Nos. 1 to 3-defendant Nos. 1 to 3.

[6] Aggrieved thereof, the appellants-plaintiffs filed first appeal, which came to be dismissed vide judgment and decree dated 05.03.2024 passed by the First Appellate Court. Hence, the present appeal.

[7] Impugning the judgments and decrees (supra) passed by the Courts below, learned counsel for the appellants submits that in the absence of respondent Nos. 1 to 3 having chosen to appear as witness, adverse inference was required to be drawn against them in relation to the release deed dated 11.12.2009 (Ex. P-23) as well as the sale deed dated 21.12.2015 (Ex. P-22). He **also submits** that having not produced any of the marginal witnesses to the aforementioned two transactions besides the scribes thereof, the said transactions being surrounded by suspicious circumstances were liable to declared illegal, null and void and the Courts, thus, committed

illegality, while dismissing the suit of the appellants-plaintiffs.

No other argument has been raised on behalf of the appellants-plaintiffs.

[8] After hearing learned counsel for the appellants and having gone through the paper-book / records, I am unable to find substance in the submissions made on behalf of the appellants-plaintiffs.

[9] In the present case, both the transactions relating to the release deed dated 11.12.2009 (Ex. P-23) and the sale deed dated 21.12.2015 (Ex. P-22), happen to be registered documents and thus, carry presumption about valid execution. The release deed dated 11.12.2009 executed by respondent No. 4-defendant No. 4 in favour of respondent Nos. 1 & 2-defendant Nos. 1 & 2 was assailed at the instance of appellants-plaintiffs on the ground of fraud, besides challenging the competence of transferor while alleging that the suit property in his hand was ancestral in nature. In such circumstances, the burden to prove the nature of property being ancestral besides, the fraud having been played upon the transferor / defendant No. 4, always was upon the appellants-plaintiffs. Both the Courts concurrently found that neither any evidence in the shape of revenue excerpts was led from the side of appellants-plaintiffs to establish the nature of the suit property being ancestral in hands of respondent No. 4-defendant No.4, nor did they ever establish any fraud played upon him by respondent Nos. 1 & 2-defendant Nos. 1 & 2 in collusion with Hardeep Singh, as alleged in their pleadings. On the other hand, it was established on record that the suit property devolved upon respondent No. 4 through his father-Lalji on the basis of consent decree

dated 02.08.1986 followed by Mutation No. 694 (Ex. P-16) and thus, became self-acquired in his hand. In such circumstances, unless the burden to prove the plea of fraud or even the nature of property to be ancestral in the hands of respondent No. 4-defendant No. 4 was ever discharged by the appellants-plaintiffs, the onus never shifted upon respondent Nos. 1 to 3-defendant Nos. 1 to 3 to rebut the same and as such, in such circumstances, mere fact that respondent Nos. 1 to 3 did not appear in the witness box or even chose not to produce any of the marginal witness to the transactions in question besides producing their scribes, could not have been termed to be fatal to their cause. Furthermore, it is more than settled now that the plaintiff has to stand on his own legs and cannot rely upon the weaknesses of the defendants.

[10] Moreover, the release deed dated 11.12.2009 (Ex. P-23) was executed by respondent No. 4-defendant No. 4 in favour of respondent Nos. 1 & 2-defendant Nos. 1 & 2, who never appeared in the witness box so as to support the cause of appellants-plaintiffs alleging fraud being played upon him. Further, the Courts below did not commit any illegality, while recording finding of possession in favour of respondent Nos. 1 to 3-defendant Nos. 1 to 3 while drawing presumption attached to the *Jamabandi* entries (Ex. P-1, *Jamabandi* for the year 2012-13) in their favour, in view of Section 44 of the Punjab Land Revenue Act, 1887, especially in the absence of any evidence been led by the appellants to rebut the same.

[11] In view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of the fact recorded by

the Courts below, the present appeal being devoid of merits, the same is hereby **dismissed**.

[12] Pending miscellaneous application(s), if any, shall also stand disposed off.

July 29, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>