



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

CM-7145-C-2012 in/and
RSA No.2581 of 2012 (O&M)
DATE OF DECISION: 30th AUGUST, 2024

Ram Naresh

.... Appellant

Versus

Gurbaksh and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Dinesh Arora, Advocate,
for the appellant.

Mr. Raman Chawla, Advocate,
for the respondents.

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RAJBIR SEHRAWAT, J. (Oral)

CM-7145-C-2012

This is an application for condonation of 89 days delay in
refilling the main appeal.

For the reasons mentioned in the application, the same is
allowed. The delay in refilling the appeal is condoned.

Main Case

1. The present appeal has been filed challenging the concurrent
judgment, decrees and the findings recorded by both the Courts below,
whereby the suit for declaration and consequential relief of permanent
injunction filed by the appellant has been dismissed by the trial Court and
the appeal filed by him has been dismissed by the lower Appellate Court.



2. The facts, in brief, are that the appellant-plaintiff filed a suit for declaration to the effect that he is owner in possession of land measuring 5 kanals 6 marlas i.e. 1/36 share comprised in khewat No.132/132, khatoni No.199, khasra and killa numbers 74//5(8-0), 6(8-0), 7(8-0), 8(8-0), 9(6-8), 12(9-12), 13(8-0), 14(8-0), 17(8-0), 19(8-0), 20/1(4-16), 21(7-12), 22(8-0) 75/25/2(0-9), 37/20/1(1-12), 21(7-8), 38/20/2(6-9), 16(8-0), 18/2(7-2), 19/2(7-2), 21(7-8), 22(7-18), 23(8-0), 24(8-0), 25(8-0) and 271(1-1), 333(0-10), Kita 29 total land measuring 190 kanals 7 marlas as per jamabandi for the year 1998-99 situated in revenue estate of village Rajgarh, Tehsil and District Bhiwani and that the alleged release deed No.5940 dated 21.09.2004 executed by the plaintiff in favour of defendant Nos.1 and 2, was based on fraud and misrepresentation and not binding on his rights; and further praying for permanent injunction restraining the defendants from getting mutation sanction in their favour on the basis of said release deed or to encroach over the suit land or to alienate the same in any manner.

3. The parties led their respective evidence. The assertions of the plaintiff had not found favour before the trial Court, resulting into dismissal of the suit. Even, the appeal filed by the appellate before the lower Appellate Court has been dismissed. Hence, the present appeal has been preferred by the appellant-plaintiff.

4. Arguing the case, learned counsel for the appellant has submitted that it has been the positive assertion of the appellant that a fraud had been played upon him in obtaining the release deed. To prove that assertion, he himself has appeared before the trial Court as PW-1 and has categorically deposed qua the modalities of fraud committed upon him. Since, the appellant had come to know about the fraud committed upon him, therefore, immediately; and in the near vicinity of the date of



execution of release deed itself, the present suit was filed by him. Hence, it is submitted that both the Courts below have wrongly gone against the appellant.

5. On the other hand, learned counsel for the respondents has submitted that the release deed in question had validly been executed by the appellant because the appellant was issueless and it was only the respondents, who were taking care of the plaintiff. Not only that, while appearing as a witness before the trial Court, the plaintiff himself has admitted that the suit was filed by him at the instance of his nephew Amir Singh and his wife Maya Devi. This clarifies the fact that the transaction of release deed was very much validly and voluntarily executed by the appellant; and it is only under the influence or in collusion with his nephew Amir Singh and his wife Maya Devi, that the present suit had been filed, which has rightly been dismissed by the trial Court. He has further submitted that both the Courts below have rightly rejected the assertion of the plaintiff.

6. Having heard learned counsel for the parties and having perused the case file, this Court finds that execution of release deed is not even disputed by the executant-appellant/plaintiff. It is only the element of fraud, which has been sought to be introduced by him in the execution of the release deed. However, no evidence worth the name has been led on file to prove that there was any fraud played upon him. So much so, while appearing as a witness before the trial Court, the appellant himself has admitted in his cross-examination that the suit was filed by him under the influence of his nephew Amir Singh and his wife Maya Devi. This



totally belies the assertion of the appellant. Hence, the same has rightly been dismissed by both the Courts below.

7. Otherwise also, the present appeal is directed against the concurrent judgments, decrees and the findings of fact recorded by both the Courts below. However, the concurrent findings of fact recorded by the Courts below are not even to be interfered with only for possibility of arriving at a different conclusion on re-appreciation of the evidence; unless there is an abject perversity shown to the Court or some substantial question of law is involved in the matter. However, learned counsel for the appellant has not been able to highlight any substantial question of law involved in the matter and this Court does not find any perversity in the findings recorded by both the Courts below.

8. In view of the above, finding no merit in the present appeal, the same is dismissed.

9. The pending miscellaneous application, if any, is also disposed of as such.

(RAJBIR SEHRAWAT)
JUDGE

30th AUGUST, 2024
'Sandeep'

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>