



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 4224 of 2018 (O&M)
Date of Decision: 04.07.2024

Rohtash

..... Appellant

Versus

Sadhu (since deceased) through his
legal representatives and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kartik Gupta, Advocate
for the appellant-plaintiff.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgment and decree dated 07.09.2016 passed by the Court of Additional District Judge, Jind (**hereinafter to be referred as “First Appellate Court”**), whereby an appeal filed against the judgment and decree dated 04.04.2013 passed by the Court of Additional Civil Judge (Senior Division), Safidon (**hereinafter to be referred as “trial Court”**), dismissing the suit for declaration and permanent injunction, filed at the instance of appellant-plaintiff, challenging Release Deed No. 1842 dated 08.02.2008 executed by defendant No. 1-Sadhu (since deceased) in favour of defendant No. 2-Smt. Raji wife of Pala son of Sadhu as well as the sons of *pro forma* defendant-Pala, was dismissed.

[2] Briefly stating, the dispute relates to land owned by the predecessor-in-interest of the parties, namely, Sadhu, which was alienated by

him in terms of registered Release Deed No. 1842 dated 08.02.2008 in favour of Sandeep S/o plaintiff-appellant, respondent No. 2-defendant No. 2 (Smt. Raji wife of Pala son of Sadhu) and sons of defendant No. 3-respondent No. 3 (Pala) to the extent of 360/971, 291/971 & 320/971 shares respectively. The said Release Deed was challenged by way of suit for declaration and injunction, filed at the instance of appellant-plaintiff (Rohtash), while submitting that the same was result of fraud and thus, was illegal, null and void. It was also pleaded that in earlier Civil Suit No. 242 dated 27.07.2004, titled "*Rohtas Versus Sadhu etc.*", a settlement came to be arrived at between the parties, vide which, defendant No. 1 (Sadhu) agreed to alienate two acres of land in the name of appellant-plaintiff's son—Sandeep and two acres was to be given to sons of respondent No. 3—Pala and as a consequence thereof, the same was withdrawn on 30.09.2007. In such circumstances, it was then pleaded that defendant No. 1 could not transfer the suit land in favour of defendant No. 2-respondent No. 2.

[3] Upon notice, respondent Nos. 1 & 2 appeared and filed joint written statement, while raising preliminary objections as regards the maintainability of suit on account of mis-joinder and non-joinder of the parties, besides submitting that defendant No. 1 (Sadhu) relinquished his rights in the suit land in favour of his grand-sons and defendant No.2/respondent No. 2 vide Release Deed dated 08.02.2008 and there was no fraud played upon him by defendant No. 2-respondent No. 2. It was further pleaded that the Release Deed was a voluntary act on his part.

[4] The trial Court vide its judgment and decree dated 04.04.2013 dismissed the suit filed at the instance of appellant-plaintiff, while referring

to the deposition made by him, besides the written statement filed on behalf of respondent No. 1—defendant No. 1.

[5] Aggrieved thereof, the plaintiff-appellant filed first appeal, which came to be dismissed vide judgment and decree dated 07.09.2016 passed by the First Appellate Court.

[6] Impugning the judgments and decrees (supra) passed by the Courts below, learned counsel for the appellant vehemently submits that in view of the settlement arrived at between the appellant-plaintiff and defendant No. 1 in the previous suit, defendant No. 1—respondent No. 1 herein agreed to transfer two acres of land in favour appellant-plaintiff and as such, he was left with no right, title or interest in the suit property so as to relinquish the same by virtue of Release Deed dated 08.02.2008. He further points out that in this regard, defendant No. 1 even executed an affidavit dated 03.08.2009, which was produced and proved on record as Ex.P-1, yet the same was never considered and dealt with by the Courts.

No other argument has been raised on behalf of the appellant-plaintiff.

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

[8] In the present case, the short point involved is the validity about the execution of Release Deed dated 08.02.2008 by defendant No. 1, which has been questioned on the point of fraud alleged by the appellant-plaintiff against respondent No. 2—defendant No. 2. Both the Courts below, while relying upon the deposition made by plaintiff-appellant, while appearing as

PW-4, non-suited him, he having failed to prove/establish the plea of fraud pleaded by him. A perusal of the statement made by appellant-plaintiff shows that the factum of execution of Release Deed in question by defendant No. 1 was well within his knowledge, understanding and consent. In his deposition, PW-2 / appellant even went on to admit that on the day of execution of Release Deed, his own son, namely, Sandeep, accompanied his grand-father, i.e. defendant No. 1 alongwith defendant No. 2 and her husband/defendant No. 3 to Village Pillu Khera, Tehsil Safidon, District Jind. He even went on to admit that around 18 kanals of land was transferred through the Release Deed in question, in favour of his son, namely, Sandeep, whereas 16 kanals were transferred in the name of sons of Pala i.e. his brother (defendant No.3). He also admitted in his statement that his father Sadhu (defendant No.1) executed the Release Deed of his own volition, in the name of his grand-sons.

[9] Equally important, he went on to admit that the land was never transferred either in the name of appellant-plaintiff and his brother-Pala on account of they being alcoholics. The true translated extract from the deposition of PW-4 (appellant-plaintiff) is re-produced hereunder:-

“ My father got the release deed executed while he was living with me. On the day when the release deed was done, my son Sandeep, Pala and Rajji had gone to Pillukhera. 18 kanal land was registered in the name of my son and 16 kanal land was registered in the name of Palla’s sons. My father had got this release deed done in the name of his grandchildren as per his wish. It is correct that due to Palle’s drinking habit, the land was not registered in his name. It is true that due to my drinking habit the land was not even registered in my name. It is correct that my father

was reputed Panchayati person of the village. My father used to take the decision of the peoples. My father had also got some land registered in Rajji's name as per his wish. It is correct that out of this land 2 killa belongs to my son Sandeep, 2 killa belongs to Palle's sons and 2 killa belongs to my father Sadhu. "

[10] A perusal of the aforesaid deposition made by appellant-plaintiff defeats his own case of respondent No. 1–defendant No. 1 not having transferred two acres of land in his name in terms of settlement arrived at in the previous litigation, as admittedly more than two acres of land was transferred by defendant No. 1 in favour of the son of plaintiff-appellant, obviously in order to safeguard the interest and better future of the grandson, namely, Sandeep son of appellant-plaintiff he being an alcoholic.

[11] Moreover, the Release Deed in question is a registered document. Its valid execution has been proved on record through DW-1 / Munshi Ram, Lambardar (marginal witness), DW-3 / Naresh Kumar (Registry Clerk) and DW-4 / Satish Sharma (Deed Writer). Further respondent No. 1–defendant No. 1 never challenged the validity of release deed dated 08.02.2008, during his life-time. Rather, in the written statement filed on his behalf, he specifically denied about any fraud been played upon him in relation to the execution of the release deed. Contrarily, in his written statement, respondent No. 1–defendant No. 1 went on to plead that the release deed dated 08.02.2008 was executed by him out of his will and volition. Parallely, the appellant-plaintiff failed to prove any fraud played upon by defendant No. 2–respondent No. 2 with respondent No. 1–defendant No. 1 in relation to the execution of Release Deed.

[12] In view of the aforementioned facts and circumstances, finding no illegality or perversity with the concurrent findings of the fact recorded by both the Courts below, the present appeal being devoid of merits, the same is hereby **dismissed**.

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

July 04, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

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