

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****118****RSA-3871-2019 (O&M)****Date of decision: 19.11.2025****Balwant Singh and others****...Appellant(s)****Vs.****Gurdev Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Raghav Sharma, Advocate for the appellants.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiffs against the concurrent judgments and decrees of the Id. Courts below, whereby suit filed by the appellants for declaration with consequential relief of permanent injunction, has been dismissed by both the Courts below.

2. It may firstly be pointed out that the present Second Appeal is of the year 2019 and notice has not yet been issued as the matter has been repeatedly adjourned at request of learned counsel for the appellants.

3. Brief facts of the case are that plaintiffs, and defendants No. 1 and 2, are the sons and daughter of Kartar Singh; defendants No. 3 to 8 are the maternal grandsons (dhote) and granddaughters (dhoti) of Kartar Singh; and Defendants No. 9 and 10 are the paternal grandsons (pote) of Kartar Singh. It was pleaded case of the appellants that the suit land in the hands of Kartar Singh, father of the plaintiffs was ancestral in nature. It



was pleaded that part of suit land mentioned in para 3 of the plaint has been wrongly incorporated in revenue record in favour of defendant No.2 Jasmer Kaur and Gurmej Kaur (mother of defendant No.3 to 8) by virtue of Mutation No. 786 of inheritance. Release Deed No. 9725 dated 29.01.2007 executed by defendant No.2 and Gurmej Kaur in favour of defendant No.1 is also illegal, null and void; and subsequent Mutation No. 1574 and other revenue records based on that Release Deed are also illegal, null and void and not binding on the rights of the plaintiffs. It was contended that defendant No.1 fraudulently got registered Release Deed dated 9725 dated 29.01.2007 in his favour. No consideration had passed hands. So, title in favour of defendant No.1 was illegal. Plaintiffs are owners in joint possession of the suit land alongwith defendants No. 9 and 10. Defendant No.1 has refused to admit the claim of the plaintiffs. Hence, the present suit was filed on 19.05.2012.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Kurukshetra had dismissed the suit of the plaintiffs vide judgment and decree dated 29.05.2015. The Civil Appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 23.08.2018. Hence, the present second appeal by the plaintiffs.

5. It is *inter alia* submitted by learned counsel for the appellants that learned Courts below were in error in non-suiting the plaintiffs as they failed to appreciate that fraud had been committed upon



defendant/respondent No.2 and Gurmej Kaur/mother of defendants No. 3 to 8. It is submitted that the same is proved from Affidavit Ex.DW5/B duly proved on record by DW5 and DW6.

6. Furthermore, the record shows that PW1 Balwant Singh/plaintiff No.1 had been cross-examined at length regarding impugned Mutation No. 786. However, nothing could be brought on record in this respect. Hence, relief could not be denied to the plaintiffs on ground of belated entries of being 35 years old in the revenue record. Moreover, appellants could not have been non-suited merely on ground of non-joinder/misjoinder of parties. Learned Courts below also failed to appreciate that DW1 Gurdev Singh/defendant No.1 had admitted in his cross-examination that after marriage, sisters were living in their respective matrimonial homes and they had never been in possession of land in question. Plaintiffs had also proved ancestral nature of the land by leading cogent evidence. As such, Release Deed could not have been held to be valid. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

7. No other argument is raised on behalf of the appellants. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellants.

8. It has firstly been pleaded by learned counsel for the appellants that the suit land was ancestral in nature; and, therefore, the same could not have been released by Kartar Singh/predecessor-in-



interest of the parties in favour of defendants No.1, 2 and Gurmej Kaur/predecessor of defendants No.3 to 8. However, admittedly appellants have failed to lead even a smidgen of evidence to establish that suit land was ancestral. On a Court query, learned counsel for the appellant has admitted that no excerpt was produced by the plaintiffs to prove that suit land was ancestral in nature. Thus, plaintiffs failed to prove their case. Therefore, Kartar Singh was competent to transfer suit land in favour of defendants no.1, 2, and Gurmej Kaur.

9. It has been secondly contended on behalf of the appellants that fraud was played upon defendant No.2 Jasmer Kaur and Gurmej Kaur/predecessor of defendants No. 3 to 8. Admittedly, no suit has been filed by the said persons; and has been filed only by the present plaintiffs who are not even the LRs of Jasmer Kaur and Gurmej Kaur. It is also to be noted that Release Deed is dated 29.01.2007. Admittedly Jasmer Kaur had expired in the year 2014. If she was, in any manner, aggrieved of the said Deed, she would have taken recourse to appropriate proceedings under law. Thus, learned Trial Court has correctly held that these circumstances raise *“serious doubt about the locus standi of plaintiffs to maintain present suit and challenge Release Deed dated 29.01.2007 on the ground of fraud.”* Further, the Release Deed executed by Jasmer Kaur and Gurmej Kaur in favour of defendant No.1 Gurdev Singh cannot be questioned as DW6 Bhagat Singh/defendant No.2(i), husband of Jasmer Kaur, has admitted in his testimony that Jasmer Kaur was having soft corner for her brother defendant No.1/Gurdev Singh.



10. It can also not be ignored that the Mutation No. 786 dated 26.07.1975 and the release Deed of 2007 have been challenged by the plaintiffs only in the year 2012. The Mutation entries were therefore not challenged for approximately for 35 years. As such, suit was barred by limitation as well. Even no explanation has been given as to why long standing entries of almost 35 years were not challenged by the plaintiffs within reasonable time and suit was filed after almost 35 years.

11. The record further reveals that besides the present parties, Kartar Singh was also having other 2 daughters namely, Mahindero Kaur and Harbhajan Kaur, who have not been joined as party in the present case although they were necessary parties for the effective disposal of the dispute at hand.

12. The relevant findings of the learned first Appellate Court as contained in judgment and decree dated 23.08.2018 are as under:-

“Even otherwise, plaintiff No.1 Balwant Singh when appeared in the witness-box as PW1 has no where stated in his affidavit Ex.PW1/A as to when the cause of action has accrued to him what to say of explaining as to how and in what manner, they came to know about the entering of mutation No.786 sanctioned on 5.12.1975 Ex.P3/Ex.P3/T in favour of defendant No.2 and Gurmej Kaur, impugned release deed dated 29.1.2007 Ex.P1/Ex.D1/Ex.D2 and the mutation No.1574 sanctioned on 15.6.2007 Ex.P4. It is the settled law that the pleadings cannot be treated as evidence. So, the plaintiffs have failed to produce any evidence on record as to when, they came to know about the entering of mutation No.786 sanctioned on 5.12.1975 Ex.P3/Ex.P3/T in favour of



*defendant No.2 and Gurmej Kaur, impugned release deed dated 29.1.2007 Ex.P1/Ex.D1/Ex.D2 and the mutation No.1574 sanctioned on 15.6.2007 Ex.P4. So in these circumstances, when the above mutation No.786 was sanctioned on 5.12.1975 in favour of defendant No.2 and Gurmej Kaur, impugned release deed Ex.P1/Ex.D1/Ex.D2 is dated 29.1.2007 and mutation No.1574 was sanctioned on 15.6.2007, whereas, the present suit was filed on 19.12.2012, so, the present suit is barred by limitation. In case titled **"Shyam Lal @ Kuldeep Vs. Sanjeev Kumar & others", 2009 (3) Civil Court Cases 535 (SC)**, the Hon'ble Apex Court while discussing the fact that the mutation was sanctioned on 20.2.1988 and Will is dated 4.12.1978 and the suit was filed on 21.5.1991, has held that the suit is not filed within time as there were neither any pleadings nor evidence as to the date on which the plaintiff had derived the knowledge about the mutation and/or the Will....."*

13. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

14. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

15. Pending applications, if any, stand disposed of.

19.11.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No