



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-982-2021 (O&M)
Decided on : 02.07.2025**

Phoi alias Fatehi (since deceased) through her LR Appellant

Versus

Sarupa (since deceased) through her LR's and others Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Naresh Kumar Chhokar, Advocate and
Mr. Sachin Chhokar, Advocate
for the appellant.

VIKRAM AGGARWAL, J

This is plaintiff's second appeal against the judgment and decree dated 18.03.2021, passed by the Court of Additional District Judge, Panipat dismissing the appeal filed by the plaintiff against the judgment and decree dated 25.03.2016, passed by the Court of Additional Civil Judge (Senior Division), Samalkha vide which the suit for declaration filed by the plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3(i). One Balwant Singh was the owner in possession of two parcels of land (fully described in the plaint), situated in Village Dadola and Village Dadoli, Sub Tehsil Bapoli, District Panipat. He had solemnized two marriages, one with Smt. Phoi alias Fatehi and the other with Smt. Malkhani. He expired on 14.03.1986 after which his property devolved in equal shares upon Smt. Phoi and Smt. Malkhani. Mutations No.793 and 1532 with regard to the land situated in



Village Dadola and Village Dadoli respectively were sanctioned in favour of Smt. Phoi and Smt. Malkhani.

3(ii). Smt. Malkhani executed release deeds dated 27.09.2001 as regards her share, in favour of the defendants.

3(iii). Smt. Phoi alias Fatehi, therefore, instituted a suit for declaration that she was the owner in possession of the said land after the death of Smt. Malkhani and that the release deeds were illegal, void and result of fraud. Consequential relief of permanent injunction was also sought.

3(iv). It was averred that the release deeds dated 27.09.2001 had been executed on account of a fraud having been played by the defendants as Smt. Malkhani was not in disposing mind in the month of September, 2001. It was also averred that the suit land was ancestral property of Balwant Singh and even otherwise Smt. Malkhani was not legally entitled to execute any release deed in favour of the defendants. It was also averred that the sale consideration of Rs.2,15,000/- shown to have been paid to Smt. Malkhani by the defendants was false and that no payment had been made.

3(v). Details as regards a previous suit filed by Smt. Malkhani against Smt. Phoi were also given which had eventually been dismissed.

4. The suit was opposed by the defendants who filed a joint written statement raising preliminary objections as regards maintainability, *locus standi*, cause of action, limitation, non-joinder of necessary parties, suppression of true and material facts etc. It was averred that the release deeds had been executed by Smt. Malkhani qua her share which were legally valid since Smt. Malkhani had



executed the same qua her share of the property situated at Village Dadola and Village Dadoli. The factum of Balwant Singh having solemnized marriage with Smt. Phoi and Smt. Malkhani was admitted. Reference was also made to the previous Will and suit.

5. In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is owner in possession of agriculture land, as detailed in the head note of the plaint ? OPP.

2. In case issue no.1 is proved in affirmative, then whether the plaintiff is entitled to the relief of permanent injunction, as alleged in the plaint ? OPP.

3. Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD

4. Whether the suit is not maintainable in the present form ? OPD

5. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction ? OPD

6. Whether the suit is bad for non-joinder of necessary parties ? OPD

7. Whether the plaintiff has suppressed the material facts from the court ? OPD

8. Relief.

7. Parties led their respective evidence.

8. The trial Court dismissed the suit filed by the plaintiff and the appeal



filed against the said decision was also dismissed, leading to the filing of the present regular second appeal.

9. I have heard learned counsel for the appellant.

10. Learned counsel for the appellant has submitted that both Courts erred in dismissing the suit filed by the plaintiff. Learned counsel has referred to the judgments under challenge and has submitted that the release deeds could not have been executed. Learned counsel has submitted that the suit filed by Smt. Malkhani had been dismissed on 25.01.2006 (Ex.P-8) and that under the circumstances, after the death of Smt. Malkhani on 07.05.2002, the plaintiff had become entitled to the property owned by Smt. Malkhani. Learned counsel has also submitted that Smt. Malkhani was not in a sound disposing mind at the time of execution of the release deeds. He further submits that the trial Court wrongly observed that fraud had not been pleaded whereas the same had duly been pleaded in the plaint. He submits that under the circumstances, the judgments are not sustainable.

11(i). I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit. Concededly, after the death of Balwant Singh on 14.03.1986, his property was transferred in equal shares in the name of Smt. Phoi and Smt. Malkhani. Smt. Malkhani executed release deeds on 25.09.2001 (registered on 27.09.2001) as regards her share in favour of the defendants. Both Courts rightly found that since Smt. Malkhani had become the absolute owner of the property which had devolved upon her on the death of Balwant Singh, she had every right to alienate it and, therefore, no fault could be found with the release deeds.



11(ii). The plea of fraud was duly raised by the plaintiff but no evidence to prove the same was led. It has to be borne in mind that a plea of fraud is to be pleaded and proved by leading cogent evidence which was not done. The said plea was, therefore, rightly not accepted by the Courts.

11(iii). As regards the stand that the suit property was ancestral, no evidence worth its name was led as a result of which both Courts rightly held that the plaintiff had failed to prove that the suit land was ancestral.

11(iv). No evidence worth its name was produced to even prima facie prove that Smt. Malkhani was not in a sound disposing state of mind at the time of execution of the release deeds. Both Courts rightly held that since the release deeds were registered documents, they could not be held to be invalid or illegal just on the asking of the plaintiff.

11(v). Learned counsel for the appellant has not been able to point out any illegality whatsoever in the impugned judgments, warranting interference.

11(vi) Under the circumstances, no question of law arises for the consideration of this Court.

In view of the above, the present appeal is found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, shall stand disposed of accordingly.

02.07.2025
mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No