



RSA-2317-2022 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(114)

RSA-2317-2022 (O&M)

Date of decision:- 21.01.2025

Smt. Lajwanti @ Rajwanti and another

...Appellants

Versus

Dharmender and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. J.P.Sharma, Advocate
for the appellants.

...

SUVIR SEHGAL, J. (Oral)

CM-8011-C-2022

Delay of 50 days, in filing of the appeal, is condoned.

Application is disposed off.

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1. Appellants-plaintiffs are in second appeal before this Court challenging the concurrent finding recorded by two Courts, whereby suit for declaration along with consequential relief of permanent injunction filed by them has been dismissed.

2. Pleaded case of the plaintiffs is that they form a Joint Hindu Family, along with their parents, defendants No.3 and 4. They claim to be owners to the



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extent of 1/8th share in the suit property with their mother, defendant No.4. It has averred that defendant No.1 and 2, did not have any right, title, or interest in the suit property, but by trickery, a release deed was prepared on 03.09.2010, and they managed to alienate suit land in their favour. Mutation bearing No.1042, dated 30.09.2010, has been sanctioned upon the basis of release deed. Plaintiffs claimed that the suit land was given to them in a notional partition and could not be alienated. They filed a suit for declaration to the effect that they are owners in possession to the extent of their share in the suit land, and that the release deed is null and void. Upon notice, defendants No.1 and 2, contested the suit by filing a written statement, wherein preliminary objections were taken. It has been denied that the plaintiffs have any right in the suit land. It has been categorically stated that defendants No.3, was the absolute owner of the suit land, who was residing with the answering defendants and had executed a release deed in their favour in a sound state of mind. Defendant No.3 filed a separate written statement on the same lines as defendants No.1 and 2, whereas defendant No.4, despite being served, did not prefer to file a written statement. Counsel for defendant No.4, made a statement on 09.12.2013, that suit be decreed in favour of the plaintiffs. Plaintiffs did not file any replication and issues were framed on the basis of the pleadings of the parties, who lead evidence in support of their respective case. After contest, by judgment and decree dated 16.11.2016, Trial Court dismissed the suit. Plaintiffs remained unsuccessful before the first appellate court and appeal filed by them was rejected by the learned Additional District Judge, Narnaul, on 16.03.2022, resulting in the institution of the present appeal.



3. Counsel for the appellants has asserted that the appellants and the respondents formed a coparcenary and the release deed had been executed by playing a fraud upon respondent No.3, to defeat the rights of the appellants.

4. I have heard counsel for the appellants and considered his submission.

5. After an analysis of the evidence led by the parties, both Courts have come to the conclusion that the suit property was owned by Bakhtawar, who was succeeded by his son, Har Chand, father of respondent No.3. During his life-time, Har Chand, transferred the property by virtue of judgments and decrees, Ex. P-8 and P-9, in favour of respondent No.3, and a mutation was entered in his name. The documentary evidence led by the appellants does not show that the suit property is ancestral. Appellants have failed to lead any evidence to establish the coparcenary nature of the property or to demonstrate that the property had been inherited upto fourth generations from a common ancestral. As respondent No.3, came in possession of the suit property by virtue of decree, property in his hands becomes a self-acquired property. Ocular evidence to the contrary led by the plaintiffs is of no avail.

6. Jee Ram, DW-2, has stepped into the witness box and tendered his own affidavit, Ex. DW1/A, to depose that he had voluntarily executed the release deed, Ex. DW1/B, and had transferred the property in the name of respondents No.1 and 2, who are looking after him. Fakir Chand, DW-5, is the deed writer, who has stated that the release deed bears his signatures and stamp and was prepared at the instance of respondent No.3, who was in a sound disposing mind. Ram Chander, DW-3, and Mahesh Sharma, DW-4, attesting



witnesses to the release deed, have also testified and established its due execution. The onus to prove fraud and misrepresentation was on the appellants, but they have not been able to lead any cogent evidence in support of their assertion. Once respondent No.3, came in possession of the property by virtue of decree, Ex. P-8, he was competent to transfer it in favour of any person. Respondent No.3 did not have any male descendant and executed the release deed in favour of respondents No.1 and 2, who are taking his care in old age. From the revenue record, it is evident that respondents No.1 and 2, are in cultivating possession of the suit property. There is no error in the findings recorded by the Courts below. Both the judgments and decrees do not suffer from any illegality and are affirmed.

- 7. Appeal being devoid of merit, is dismissed with no order as to cost.
- 8. As the main appeal has been decided, pending application shall stands disposed off.

(SUVIR SEHGAL)
JUDGE

21.01.2025
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes