

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

2025.PHHC.111439



**CR-5440-2025 (O&M)
DATE OF DECISION : 22.08.2025**

VIDYA @ VIDYA DEVI **... PETITIONER**
DESHRAJ AND OTHERS **... RESPONDENTS**
V/S

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ajay Jain, Advocate for the petitioner.

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PARMOD GOYAL, J. (ORAL)

Petitioner is aggrieved by the impugned order dated 10.07.2025 passed by the learned Civil Judge (Junior Division), Rewari whereby the application under order 14 Rule 5 read with Section 151 CPC filed on behalf of defendant no.1 seeking modification and reframing of issue no.6 was allowed.

2. Admittedly vide order dated 11.10.2022, following issues were framed:-

“1) Whether the plaintiff is entitled for a decree of declaration, permanent injunction and mandatory injunction, with costs, in favour of the plaintiff, against the defendant, as prayed for?OPP.

2) Whether the suit of the plaintiff is not maintainable in the present form?OPD.

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

4) Whether the plaintiff did not affix proper Court fees on the plaint and is liable to be dismiss?OPD

5) Whether the suit of the plaintiff is bad on account of non-joinder and mis-joinder of necessary parties? OPD

6) Whether the defendant No. 1 has not committed any forgery and cheating with the plaintiffs and the plaintiffs along with their sister had entered the transfer deed bearing No.2216 dated 27.02.2018 out of their free will?OPD

7) Relief.”

3. Issue no.6 was modified vide impugned order as is noted as under:

“6) Whether defendant No. 1 has committed any forgery, fraud or cheating etc. with the plaintiffs and the plaintiffs along with their sister had entered into transfer deed bearing No.2216 dated 27.02.2018 without their free will as contended through the grounds mentioned in the plaint ?OPD

4. Petitioner is claiming that earlier the onus of issue no.6 was upon defendant no.1. Now it has been shifted wrongly on plaintiffs-petitioners. In order to appreciate contentions raised by learned counsel for the petitioner, it is necessary to note down case set up by plaintiff against defendant no.1.

5. Plaintiffs have challenged transfer deed bearing no. 2216 dated 27.02.2018 on the ground of fraud, misrepresentation, cheating and forgery etc. It was asserted that taking benefit of fiduciary relationship between the parties, by inviting plaintiffs for festival of Holi, defendant no.1 had breached their trust and got release deed in his favour fraudulently and same was challenged within 9 days of its execution.

6. The assertions made by plaintiffs have been denied by defendant no.1 claiming that release deed was executed by plaintiffs in his

favour of their own free will and now they are trying to reiterate from release deed.

7. On consideration of pleadings by the parties, it is clear that release deed no. 2216 dated 27.02.2018 is being challenged by plaintiffs being result of fraud, misrepresentation, cheating & forgery. A party who alleges fraud, misrepresentation, cheating, forgery etc. is bound to prove the assertions made by him or her. The initial onus of proving fraud, misrepresentation, cheating, forgery etc. is always upon a person who alleges such fraud. It is only after discharge of initial onus, the burden of proof shifts on defendant. In the present case also, the initial onus has rightly been held to be upon plaintiffs to prove fraud by correcting issue no.6 vide impugned order. No fault with impugned order can be found.

8. It is however, clarified that once initial onus is discharged by plaintiff showing fiduciary relationship and other circumstances proving fraud, then the burden of prove shall shift upon defendant accordingly in accordance with provisions of Evidence Act.

9. Accordingly, there is no merit in the present petition. The same is dismissed.

22.08.2025

Janki

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No