



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

103

RSA-14992-2018 (O&M)

Date of decision: 11.03.2025

Sunita

...Appellant(s)

Vs.

Sanjay and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Akhil Kamra, Advocate for
Dr. Anand K. Bishnoi, Advocate for the appellant.

NIDHI GUPTA, J.

CM-19395-C-2018

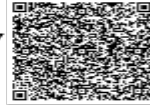
Prayer in this application filed under Section 151 CPC is for
condonation of delay of 22 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is
supported by an affidavit of the applicant/petitioner, the same is allowed
and delay of 22 days in filing the accompanying appeal is condoned.

RSA-14992-2018 (O&M)

The present appeal has been filed by plaintiff No.2 against
the concurrent judgments and decrees of the Courts below, whereby the
suit for declaration with consequential relief of permanent injunction filed
by the appellant/plaintiff No.2, has been dismissed by both the Courts
below.



At the very outset, it may be pointed out that the present appeal is of the year 2018. However, notice has not yet been issued in the same as since 2018, the matter has been adjourned multiple times either due to non-appearance of, or at request of Id. counsel for the appellant.

The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff No.2'; and the respondents are the 'defendants'.

It may also be pointed out that the present suit, was dismissed as withdrawn qua plaintiff No.1 vide order dated 14.08.2010 passed by the learned trial Court.

Briefly stated, the case of the plaintiff No.2 is that land in question is ancestral and joint Hindu family property of defendant No.2 (who is father of the plaintiffs, and grandfather of defendant No.1) and is recorded as Karta of Hindu Undivided Family. However, the defendant No.1 (who is son of brother of plaintiff No.2) managed to get a fraudulent Release Deed dated 29.04.2004 executed in his favour by defendant No.2, whereby defendant No.2 released 1/3rd of his land in favour of his grandson/defendant No.1; and further fraudulently got Mutation No. 1103 sanctioned in his favour on the basis of the said Release Deed; whereafter defendant No.1 sold 1K 8M out of 6K 13M to defendants No. 3 to 5 vide Sale Deed dated 20.01.2006 in respect of which Mutation No. 1139 was also sanctioned.

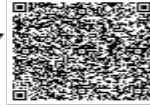
It is submitted by learned counsel for the appellant/plaintiff No.2 that as the suit land was ancestral in nature in the hands of defendant



No.2, he was not competent for executing the Release Deed in favour of defendant No.1 or alienating the suit land without legal necessity. Learned counsel submits that the appellant had duly proved on record the ancestral nature of the suit property by way of Jamabandi for the year 2004-05 (Ex.P1), in which it is recorded that defendant No.2 had received the suit property in 'Virasat'. It is further submitted that defendant No.2 was mentally unfit to execute the impugned Release Deed due to illness since 1985 and was under medical treatment. Learned counsel further contends that defendant No.1 has been living separately for over 15 years from defendant No.2 and never provided any care to defendant No.2. Therefore, the ostensible reason cited by defendant No.2 for making defendant no.1 beneficiary vide the impugned Release Deed, and excluding the plaintiff, is also not viable. Furthermore, possession of the suit land was only handed over to defendant No.1.

It is further contended that defendants No.3 to 5 purchased a part of the suit property based on illegal Sale Deed executed by defendant No.1; and, therefore, Mutation No. 1139 sanctioned on basis of illegal Sale Deed is not sustainable. It is accordingly prayed that the suit of the plaintiff be decreed and a declaration be made that the Release Deed dated 29.04.2004 and Mutation No. 1103 are null and void; and further declaration is prayed for that the Sale Deed dated 20.01.2006 and subsequent Mutation No. 1139 are illegal and void.

No other argument is raised on behalf of the appellant.



I have heard learned counsel for the appellant/plaintiff No.2 and perused the case file in great detail.

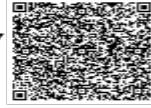
On the basis of the pleadings of the parties, following issues were framed by the learned trial court vide order dated 10.12.2014: -

- 1. Whether the plaintiffs are entitled to a decree for declaration with consequential relief of permanent injunction, as prayed for? OPP*
- 2. Whether the present suit is not maintainable in the present form? OPD*
- 3. Whether the present suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 4. Whether the present suit is barred by limitation? OPD*
- 5. Whether the plaintiffs have no locus standi to file present suit? OPD*
- 6. Whether the plaintiffs are estopped from filing present suit by their own act, conduct, commission, admission, omission, acquiescence and latches? OPD*
- 7. Whether the plaintiffs have concealed the true and material facts from the Hon'ble Court and not come with clean hands before the Hon'ble Court? OPD*
- 8. Whether the plaintiffs have miserably failed to comply with the provisions of Order 7. Rule 11 of CPC as such the plaint is liable to be rejected? OPD*
- 9. Whether the present suit is not properly valued for the purposes of Court fee and jurisdiction? OPD*
- 10. Whether the answering defendants along with defendants No.4 & 5 are bonafide purchaser for a valuable sale consideration qua the land purchased by them vide registered sale deed bearing vasika No. 3019? OPD.*
- 11. Relief."*



Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1, 2 and 10 against the plaintiff and in favour of defendants; issue No. 4 in favour of plaintiff and against the defendants; issues No. 3, 5 to 9 against the defendants and in favour of the plaintiff; and accordingly, vide judgment and decree dated 22.01.2016, the learned trial Court dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff against the judgment and decree dated 22.01.2016 was dismissed by the learned Additional District Judge, Gurugram, vide judgment and decree dated 28.03.2018. Hence, the present second appeal.

It is the first contention of learned counsel for plaintiff No.2 that the ancestral nature of the suit land is proven from the fact that in the Jamabandi for the year 2004-05 (Ex.P1), suit land is shown to have been received by defendant no.2 in Virasat. However, I find no merit in the said contention of learned counsel for the appellant as, merely the said assertion in the Jamabandi in no manner proves that suit property was received in the hands of defendant No.2 through 3 descendants. Admittedly, no other evidence was led by the appellant in this regard. It has been admitted by learned counsel for the appellant that onus to prove the ancestral nature of the property was upon the appellant and admittedly no other evidence except for Ex.P1 has been produced by the appellant; which is insufficient. Appellant had failed to examine any revenue officials such as Special Kanungo or Patwari Muharrir, who are duty bound to prepare a Revenue Excerpt. As such, suit land is presumed to be non-ancestral in the hands of defendant No.2. Thus, defendant no.2 was competent to execute



the impugned Release Deed. It would therefore also follow that the Sale Deed executed by defendant No.1 in favour of defendants No. 3 to 5 and subsequent Mutations also are legal and valid.

It is next contended by learned counsel for the appellant that defendant No.2 was not competent to execute the Release Deed in favour of defendant No.1 as defendant No.2 was not in a fit mental condition to execute the same. However, the record again bears out that no cogent evidence was led by the appellant to prove that defendant No.2 was of unsound mind. In support of this contention, only a prescription slip from 1985 (Ex.P4) was produced by the plaintiff which is not sufficient. Admittedly, no medical examination of defendant No.2 was conducted to prove the said assertion of the appellant; and even there was no corroboration by witnesses to this effect that defendant No.2 was mentally unsound.

From the above it is clear that the Release Deed, and Sale deed, as well as both Mutations are legal and valid.

Furthermore, it is pertinent to note that Release Deed was not challenged by the appellant during the lifetime of defendant No.2, as the Release Deed is of the year 2004; whereas the present suit has been filed on 14.12.2008. Moreover, the suit of the plaintiff was not maintainable without seeking possession. Section 34 of the Specific Relief Act is very clear that a mere declaratory suit without claim of possession, is not maintainable. The appellant has admitted in her cross-examination that she was not in possession of the suit property.



Learned lower appellate Court has also relied upon a judgment passed by a Coordinate Bench of this Court in '*Hawa Singh vs. Daya Nand*' Law Finder Doc Id # 353646; wherein it is held that there is presumption of in favour of the land being non-ancestral unless and until it is proved to be ancestral. No judgment to the contrary has been cited by the learned counsel for the appellant.

Learned counsel for the appellant/plaintiff No.2 is unable to dispute or controvert the above said facts and findings.

Hence, no ground is made out to interfere in the impugned judgments and decrees. The present regular second appeal is hereby **dismissed.**

Pending applications, if any, stand disposed of.

11.03.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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