

(2016) 01 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 3080 of 2014 (O&M)

Savitri Devi and others

APPELLANT

Vs

Raghuvir and others

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Citation : (2016) 162 AIC 621 : (2016) 2 CivCC 652 : (2016) 2 ICC 625 :
(2016) 1 LawHerald 751 : (2016) 2 PLR 344

Hon'ble Judges : Augustine George Masih, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J. (Oral) - CM No. 7313-C of 2014

Prayer in this application is for condonation of delay of 10 days in filing the appeal.

For the reason mentioned in the application which is duly supported by the affidavit of Raj Rani-appellant No. 2, the same is allowed. Delay of 10 days in filing the appeal, stands condoned.

RSA No. 3080 of 2014

2. Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Gurgaon, dated 16.03.2013, whereby, the suit for declaration cancelling the instrument of release deed dated 29.11.2005 being void and nonest in the eyes of law as the same is as a result of fraud, misrepresentation and misreading at the behest of the respondent-defendants, stands dismissed, appeal against which preferred by the appellant-plaintiffs also stands dismissed by the Additional District Judge, Gurgaon, on 16.11.2013.

3. It is the contention of the learned counsel for the appellants that the release deed dated 29.11.2005 was got executed by the respondent-defendants in their favour from the appellant-plaintiffs as also defendant No. 6, was not sustainable.

He contends that since the property admittedly was a coparcenary property, the same would devolve upon the appellant-plaintiffs, which fact is also not disputed. His submission is that the release deed would not confer any right upon the respondents as the said documents would not be a valid one as it was required to be in the form of a relinquishment deed. That apart, he contends that the document conferred the title upon the respondents and the requisite stamp fee has also not been paid. Prayer has, thus, been made for setting aside the impugned judgments and reliance has been placed on the judgment of the Madras High Court in *Sarathambal v. Seeralan and others*, AIR 1981 (Madras) 59.

4. I have considered the submissions made by the learned counsel for the appellants and with his able assistance have gone through the impugned judgments.

5. The execution of the document i.e. release deed dated 29.11.2005 is not disputed. A plea has been taken that the said document has been got executed by the respondent-defendants No. 1 to 5 from the plaintiffs and defendant No. 6 in their favour by misrepresentation, fraud and undue influence. The onus to prove the same was upon the appellant-plaintiffs who have failed to do so as no evidence has been led by them in this regard. Although, no written statement has been filed by the respondent-defendants as their defence was struck off because of their failure to do so in accordance with law, but there is no evidence on record to support the assertion of the plaintiffs.

6. Satbir Singh (PW-1) who is plaintiff No. 4, in his cross-examination, has admitted that plaintiffs had visited the Tehsil Office and further that the release deed had computerized photographs pasted on it. He has also admitted that the Tehsildar put questions to them as to their purpose to visit the Tehsil, the same was also disclosed. This clearly establishes that the purpose for which they had gone to the Tehsil Office, was known to them and their assertion that they were not aware of the contents of the document, cannot be accepted nor can the plea that they have been made victims of fraud, misrepresentation or misstatement, can be accepted when the same have been established, rather rightly rejected.

7. There is no denial of the fact that had there been any doubt in the mind of the appellant-plaintiffs about the release deed, they could have approached the police authorities but neither any FIR nor any criminal complaint has been filed by them in this regard. The findings, thus, recorded by the Courts below on this aspect cannot be faulted with.

8. As regards the contention of the learned counsel for the appellants that the release deed would not confer any title upon the respondent-defendants as relinquishment deed should have been got executed by the appellant-plaintiffs in favour of the defendants and this assertion is being made by placing reliance on the judgment of the Madras High Court in *Sarathambal's* case (*supra*) but on going through the said judgment, the principles which have been laid down are in paras 4 to 6, which are reproduced as under:-

"4. The learned counsel for the appellant contended that the release deed having been executed by the fourth defendant at the time when he was not even married, it completely effaced whatever rights the fourth, defendant had in the property of the joint family and the plaintiffs who are the after-born sons cannot claim any right in the suit property.

5. It is now well settled that a renunciation by a coparcener of his entire undivided interest in favour of the other coparcener or coparcener's as a body will be valid and such renunciation can be effected by an expression of an intention to that effect no formality is necessary. It is not material whether the renouncing coparcener describes the transaction as a gift or surrender or release. In such a case, the renunciation ensures for the benefit of all the coparcener's in the case of such a renunciation, the other members of the coparcener would continue as joint as before and the effect of renunciation is to reduce the number of persons to whom the shares will be allotted, if and when a division of the estate takes place.

6. A Full Bench of this court in Subbanna v. Balasubba Reddi, 1945-1 Mad LJ 140: (AIR 1945 Mad 142) held that a member of a joint Hindu family governed by the Mitakshara Law cannot give his interest in the family estate to one of several coparcener's if they remain joint in estate; and in such circumstances, he can relinquish his interest but the relinquishment operates for the benefit of all the other member."

9. These principles go against the claim of the appellants in the facts and circumstances of the present case. In para 10 of this judgment, the Court has referred where relinquishment of rights in a joint family property is to be made i.e., if some specific properties out of the joint Hindu properties has to be relinquished but he continues as the member of the joint Hindu family. However, in release deed, the share itself in to to is released for the benefit of all other members of joint Hindu family and will have no claim or any other right in the properties of the joint Hindu family, only then the principle as reproduced above, would be applicable.

10. The contention which has been raised by the learned counsel for the appellants is with regard to the inadmissibility of a document which does not contain the requisite stamp fee. In this case, the release deed, according to the counsel, confers a title and therefore, in the absence of requisite stamp fee, no title is conferred on the respondents, suffice it to say that is only with regard to the principle of admissibility of the document as per the Evidence Act, it could merely be an irregularity which can be cured by deposit of the stamp duty. The findings, thus, recorded by the Courts below, cannot be faulted with.

11. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the

material on record nor is there any perversity or illegality in the same.

12. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.