

Before Anil Kshetarpal, J.

JAIPAL—Appellant

versus

SMT. VIDHYA DEVI AND OTHERS—Respondents

RSA No.5136 of 2014

January 15, 2019

Code of Civil Procedure, 1908—O.6, Rl.6—The Indian Contract Act, 1872—S.17—Four civil suits filed by respondents challenging relinquishment deeds executed by Surat Singh (plaintiff in one suit) in favour of the appellant (grandson of Surat Singh)—Dalip Singh common ancestor of the parties, divided land owned by him—He and his three sons including Surat Singh became owners of 1/4th land each—After death of Dalip Singh his three sons became owners of 1/3rd land each—Surat Singh also divided land by way of family settlement between him and his three sons—Surat Singh executed 2 relinquishment deeds in favour of the appellant (son of his predeceased son)—Four suits were filed challenging these two release deed/relinquishment deeds executed by Surat Singh—Alleged that the property was ancestral property and Surat Singh had no right to execute the relinquishment deed—In suit filed by Surat Singh, it was pleaded that Jaipal had taken Surat Singh his grandfather to the Tehsil Office under the pretext of becoming an Acting Numberdar (Headman of the village) and a fraud had been played with him—The trial court and the first appellate court set aside the relinquishment deeds by holding that the release deeds were attested by marginal witnesses who were not residents of or Headman of the village where the parties resided; son of one of the marginal witness stated that he did not have any personal knowledge of the property nor he was present when document was executed; and in one release deed it is mentioned that appellant was taking care of Surat Singh but it is not mentioned in the other one—Appeals allowed.

Held that, first reason given by the Courts is to the effect that the Headman of different village has signed the document as marginal witness. It may be noted that the statement of Gyarshi Lal is required to be read carefully. Gyarshi Lal has stated that he was known to Surat Singh and since Gyarshi Lal is available in the Teshil Complex, therefore, he signed the transfer deed as marginal witness. Similar is the position with regard to the other attesting witness and two marginal

witness of release deed dated 14.11.2002. First of all, transfer deed/relinquishment deed is not required to be attested by marginal witnesses. Secondly, the marginal witnesses are made to sign just to add more authenticity and to facilitate the party in proving the document, however, it is not necessary that the marginal witness on a document must be of the same village or he should be Headman of the same village. The witness can be of any village subject to satisfaction of the Court that the marginal witness was present at the time of execution of the document. In such circumstances, merely because the marginal witnesses were of the different village cannot be taken as an only circumstance to doubt the correctness of a registered document.

(Para 13)

Further held that, as regards second reason, it may be noted that Chaap Singh who was son of Durga Ram, Numberdar, marginal witness of release deed dated 14.11.2002 was examined only to prove and identify the signatures of Durga Ram, Numberdar, since Durga Ram, Numberdar had by then died. In these circumstances, Chaap Singh who appeared as DW3 was neither required to know the contents of the documents nor he was required to be present at the time of execution and registration of the document, nor he was required to having any personal knowledge of the property or the documents. A witness who has been examined to prove thumb impressions or signatures of a marginal witness cannot be expected to know details of the contents of the document executed or required to be present at the time of execution of the document before his evidence can be taken into consideration.

(Para 14)

Further held that, next reason assigned by the Courts is also equally erroneous as relinquishment deed is executed between the family members so as to sort out the dispute between the parties. It is not necessary that there must be assertions in the document that the person in whose favour the transfer is being made has been serving the executant or taking care of him. The transfer deeds/relinquishment deeds between the family members are instrument of transfer of the property without consideration in lieu of love and affection and on account of some family settlement. Such transfer deeds cannot be equated with gift.

(Para 15)

Further held that, it is well settled that to prove the fraud, required standard of proof is extremely high and is equivalent to

evidence required to prove criminal case, i.e. proved beyond reasonable doubt. Order 6 Rule 4 of the Code of Civil Procedure provide that fraud has to be pleaded by giving particulars of the fraud. The fraud cannot be assumed by the Court only on the basis of inferences. The fraud cannot be inferred by the Courts merely on the basis of suspicion. A document registered in accordance with the Registration Act, 1908 has presumption of correctness. A higher degree of presumption is available to a registered document. The Courts cannot infer/assume fraud howsoever strong the suspicion may be, in absence of concrete and cogent evidence in support thereof.

(Para 17)

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for the appellant In all the cases

Jaivir Yadav, Advocate
for respondent Nos.8, 9, 12, 19 In RSA No.5136 of 2014
for respondent Nos.1, 2a, 2f, 4 In RSA No.5137 of 2014
for respondent Nos.1, 7, 8 and 12 In RSA No.600 of 2015
for respondent No.1a In RSA No.646 of 2015

Sandeep Kumar Yadav, Advocate
for respondent Nos.6, 9, 10 and 11 In RSA No.5137 of 2014
for respondent Nos.2e, 2h, 2i and 3 In RSA No.600/2015
for respondent Nos.1f, 1g, 1h, 1k In RSA No.646/2015
for respondent Nos.1, 2, 7 and 10 In RSA No.5136 of 2014

ANIL KSHETARPAL, J.

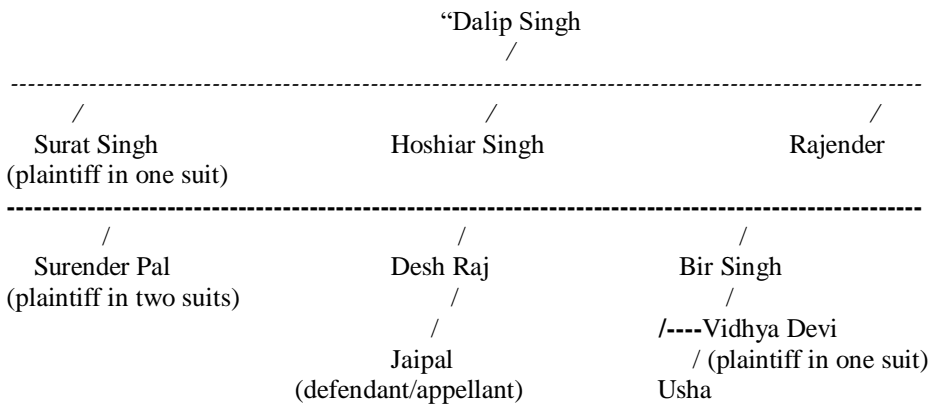
(1) By this judgment, RSA Nos.5136, 5137 of 2014 and RSA Nos.600 and 646 of 2015, shall stand disposed of as four suits filed by the respondents have been disposed by a consolidated judgment passed by the trial Court as well as by the First Appellate Court. Counsel for the parties are also agreed that these appeals can be conveniently disposed of by a common judgment as the issues which require consideration are common.

(2) In the considered opinion of this Court, the following substantial questions of law arise for determination:-

① Whether a registered document (transfer deed between the family members) can be set aside on the basis of fraud without any availability of unimpeachable evidence of extremely high level/standard which leads the Court to a conclusion that document was result of fraud?

(ii) Whether a registered transfer deed, which is not to be attested by marginal witness, can be set aside only on the ground that Headman (Numberdar) of different village has attested as a marginal witness?

(3) Four suits were filed, two by Surender Pal, one by Surat Singh and fourth by Vidhya Devi challenging two relinquishment deeds (transfer deeds between the family members) executed by Surat Singh in favour of his grandson Jaipal dated 14.11.2002 and 21.11.2002. To understand inter se relationship between the parties, it would be more appropriate to draw a pedigree table, which is extracted as under:-



(4) Dalip Singh, the common ancestor of the parties, died in the year 1972. He was owner of land measuring 578 bighas and 11 biswas. There was family settlement between Dalip Singh and his three sons namely Surat Singh, Hoshiar Singh and Rajender, resulting in division of the property to the extent of equal share. Thus, each son as well as Dalip Singh became owner of 1/4th share in the property. Consolidation of holdings took place and in lieu of the land owned by Dalip Singh and his three sons, land measuring 1402 kanals and 2 marlas was allotted to the family to the extent of 1/4th share each. Dalip Singh died in the year 1972 and his 1/4th share also came to be succeeded by his three sons in equal share. Thus, each son became owner of 1/3rd share each in the land measuring 1402 kanals and 2 marlas.

(5) It is admitted case of the plaintiffs-respondents that Surat Singh who was also having three sons and one daughter further also entered into a family settlement 20-30 years before filing of the suit and the property was partitioned amongst three sons and Surat Singh, equally. Thus, each of the son and father Surat Singh became owners of 1/4th share in the property which came in the hands of Surat Singh.

(6) Desh Raj and Bir Singh, two sons of Surat Singh died. Defendant-appellant is Jaipal who is son of Desh Raj. Sh. Surat Singh executed two relinquishment deeds (transfer deeds) in favour of Jaipal, his grandson dated 14.11.2002 with respect to land measuring 3 kanals and 1 marlas and dated 21.11.2002 with respect to land measuring 22 kanals and 9 marlas. Four suits were filed on different dates challenging these two release deed/relinquishment deed executed by Surat Singh. It was alleged that the property is ancestral property and Surat Singh had no right to execute the relinquishment deed. In the suit filed by Surat Singh, it was pleaded that Jaipal had taken Surat Singh his grandfather to the Tehsil Office under the pretext of becoming an Acting Numberdar (Sarpanch Numberdar) (Headman of the village) and a fraud had been played with him.

(7) It may be at the outset noticed that Surat Singh was Numberdar (Headman of the Village Shyampura) for the last more than 4-5 decades.

(8) Suit was contested by Jaipal by filing a written statement pleading that the property was not ancestral and the transfer deeds have been executed with free will and volition as relationship between Desh Raj and Surat Singh was not good and with the intervention of the respectables and the villagers, Surat Singh agreed to transfer certain property in favour of his grandson out of his share as was being done in favour of other family members.

(9) Learned trial Court as well as First Appellate Court have set aside the release deed (transfer deeds) on following grounds:-

- i) Both the release deeds are attested by marginal witnesses who are not residents of or Headman of the Village Shyampura where the parties resides, although the village has two Numberdars.
- ii) Son of one of the marginal witness has stated that he does not have any personal knowledge of the property nor he was present when document was executed.
- iii) In the release deed dated 14.11.2002, it is stated that Jaipal was taking care of him and helping in every respect whereas in the release deed dated 21.11.2002, no such fact has been mentioned.

(10) As regards first reason, it may be noted that Dalip Singh, the executant of both the release deeds (transfer deeds) was himself

Headman/Numberdar of Village Shyampura. Release deed dated 14.11.2002 is attested by Durga Ram, Numberdar and Prabhati Lal, Numberdar, of course of different villages. Similarly, release deed dated 21.11.2002 has been attested by two marginal witnesses namely Gyarshi Lal, Numberdar and Rama Nand. It may be noted here that Surat Singh had executed another release deed in favour of Usha daughter of his predeceased son Bir Singh on 03.12.2001 transferring 6 kanals of land in her favour. Similarly, Surat Singh also executed another transfer deed in favour of his son Surender Pal on 29.11.2002. On both the release deeds i.e. dated 03.12.2001 and 29.11.2002, Gyarshi Lal, Numberdar is the marginal witness. Gyarshi Lal, Numberdar has appeared in evidence as DW1 and has deposed that he knew Surat Singh, Numberdar, the executant and, therefore, he became marginal witness of the various release deeds. Gyarshi Lal, Numberdar has supported the case of defendant-Jaipal. He has proved execution of both the release deeds in favour of Jaipal.

(11) Two other release deeds executed by Surat Singh in favour of his son Surender Pal (plaintiff in two suits) and Usha daughter of predeceased son Bir Singh is not in dispute and has not been challenged by any of the party. Thus, it is safe to conclude that Surat Singh was transferring his property in favour of his heirs through different release deeds got executed and registered by him. Still further, copies of the release deeds are available on the file and all the release deeds bear photograph of the executant as well as recipients (person in whose favour the transfer is being made). The signatures of Surat Singh on these documents are not being disputed. The correctness of the photographs affixed on the documents are also not in dispute. The appearance of Surat Singh before the Sub-Registrar is also not in dispute. Surat Singh has not only signed the release deeds but have also thumb marked it.

(12) Now the stage is set for dealing with the reasons given by the Courts to hold that release deed is result of fraud.

(13) First reason given by the Courts is to the effect that the Headman of different village has signed the document as marginal witness. It may be noted that the statement of Gyarshi Lal is required to be read carefully. Gyarshi Lal has stated that he was known to Surat Singh and since Gyarshi Lal is available in the Teshil Complex, therefore, he signed the transfer deed as marginal witness. Similar is the position with regard to the other attesting witness and two marginal witness of release deed dated 14.11.2002. First of all, transfer

deed/relinquishment deed is not required to be attested by marginal witnesses. Secondly, the marginal witnesses are made to sign just to add more authenticity and to facilitate the party in proving the document, however, it is not necessary that the marginal witness on a document must be of the same village or he should be Headman of the same village. The witness can be of any village subject to satisfaction of the Court that the marginal witness was present at the time of execution of the document. In such circumstances, merely because the marginal witnesses were of the different village cannot be taken as an only circumstance to doubt the correctness of a registered document.

(14) As regards second reason, it may be noted that Chaap Singh who was son of Durga Ram, Numberdar, marginal witness of release deed dated 14.11.2002 was examined only to prove and identify the signatures of Durga Ram, Numberdar, since Durga Ram, Numberdar had by then died. In these circumstances, Chaap Singh who appeared as DW3 was neither required to know the contents of the documents nor he was required to be present at the time of execution and registration of the document, nor he was required to having any personal knowledge of the property or the documents. A witness who has been examined to prove thumb impressions or signatures of a marginal witness cannot be expected to know details of the contents of the document executed or required to be present at the time of execution of the document before his evidence can be taken into consideration.

(15) Next reason assigned by the Courts is also equally erroneous as relinquishment deed is executed between the family members so as to sort out the dispute between the parties. It is not necessary that there must be assertions in the document that the person in whose favour the transfer is being made has been serving the executant or taking care of him. The transfer deeds/relinquishment deeds between the family members are instrument of transfer of the property without consideration in lieu of love and affection and on account of some family settlement. Such transfer deeds cannot be equated with gift.

(16) A word 'fraud' has been defined in Section 17 of the Indian Contract Act, 1872, which is extracted as under:-

“17. “Fraud” defined.—“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.”

(17) It is apparent that fraud has been categorized in five different situations. It is well settled that to prove the fraud, required standard of proof is extremely high and is equivalent to evidence required to prove criminal case, i.e. proved beyond reasonable doubt. Order 6 Rule 4 of the Code of Civil Procedure provide that fraud has to be pleaded by giving particulars of the fraud. The fraud cannot be assumed by the Court only on the basis of inferences. The fraud cannot be inferred by the Courts merely on the basis of suspicion. A document registered in accordance with the Registration Act, 1908 has presumption of correctness. A higher degree of presumption is available to a registered document. The Courts cannot infer/assume fraud howsoever strong the suspicion may be, in absence of concrete and cogent evidence in support thereof. In the present case, Surat Singh, the plaintiff in one of the case was the best witness who could have prove his pleadings that Jaipal had misrepresented him. Surat Singh has appeared in evidence but during cross-examination, he has totally denied whatever suggestions were given to him. However, he admit that he is Headman of the Village and he had executed a release deed in favour of Surender Pal, his son on 29.11.2002. He also admit that he sold land measuring 18 kanals 16 marlas in favour of Nityanand for `3,30,000/- and sold land measuring 30 kanals 2 marlas in favour of Subey Singh etc. on 02.08.1985. Thus, it is apparent that Surat Singh was knowing the procedure for execution of the documents/sale deeds and for getting them registered. Still further, his evidence clearly shows that he is not a trustworthy witness. When he was asked whether he

filed written statements in the other three suits filed by his son and daughter-in-law, he initially denied but when he was confronted with the written statements filed, he admitted that he has filed the written statements. However, he refused to disclose as to when his wife died. He was even given suggestion that his wife died 2 or 3 or 20 years back, but he refused to disclose. From the entire evidence of Surat Singh, it is apparent that he is not a trustworthy witness, therefore, there cannot be any finding that release deeds were result of fraud only on the statement of this witness (plaintiff in one of the suit). Still further, from the evidence available on the file, it is apparent that after the property was divided by Dalip Singh in favour of his three sons and himself, the property became individual property in the hands of each son. After the death of Surat Singh, once again the property came by way of natural succession to each of his son and, therefore, Surat Singh became owner of 1/3rd share. Surat Singh also divided the property in four shares by transferring three shares in favour of his three sons, while keeping the 1/4th share with himself. The property which was subject matter of all the release deeds is part of the property which was retained by Surat Singh for himself. Still further, Surat Singh had been executing release deeds in favour of all the family members. Surat Singh himself was the Numberdar of the village for more than 4 to 5 decades. Therefore, he was having sufficient exposure to the outside World and knew the procedure for execution and registration of the documents. In such circumstances, the Courts erred in recording a finding that the release deeds were result of fraud.

(18) Accordingly, both questions of law are answered in favour of appellant-Jaipal.

(19) It may be noted that on 09.01.2019, contesting parties namely Surender Pal, Smt. Usha and Jaipal appeared before the Court and filed a compromise/settlement dated 06.01.2019 which is also signed by counsel for the parties. However, since, all the parties had not signed the compromise deed, therefore, it was taken on record and the compromise deed/settlement which has been marked as “C” shall be binding between the parties who have signed the compromise deed. Further, Sh. Jaipal has also filed an undertaking which has been marked as “C-1” by the Court. Jaipal has given an undertaking in the presence of both counsels. He shall remain bound by the aforesaid undertaking.

(20) Accordingly, all the four appeals are allowed on merits as well as on the basis of the compromise arrived at between the parties. The compromise deed as well as undertaking given, filed in the Court

shall form part of the decree.

(21) All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

J.S. Mehndiratta