

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Regular Second Appeal No.1850 of 2008 (O&M)

Date of decision: 20.3.2015

Gurmukh Singh and another

... Appellants

Versus

Hardev Chand and others

... Respondents

II.

Regular Second Appeal No.1941 of 2008 (O&M)

Gurmukh Singh and another

... Appellants

Versus

Madan Mohan (since deceased) through LR's.

... Respondents

III.

Regular Second Appeal No.1942 of 2008 (O&M)

Gurmukh Singh and another

... Appellants

Versus

Chaman Lal (since deceased) through LR's.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sandeep Goyal, Advocate,
for the appellants.

Mr.Randeep Singh, Advocate,
for respondents No.1 to 3.

Mr.Jagdish Manchanda, Advocate,
for respondent No.6.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This order will dispose of three Regular Second Appeals bearing No.1850, 1941 and 1942 of 2008 relating to different gift deeds made by the same donor to three different persons of three parcels of suit land and, therefore, can be decided by one order as common principles of law and broad facts arise in the three suits against three different allottees of suit property. For convenience, reference to facts is from RSA No.1850 of 2008.

2. This is plaintiffs' appeal from the judgment and decree of the learned District Judge, Kaithal reversing the judgment and decree of the learned Additional Civil Judge (Senior Division), Guhla dated 3rd January, 2006. The first appeal was allowed on 26th February, 2008. This appeal was entertained on 3rd July, 2008 when notice was issued to the respondents and in the meantime, operation of the impugned judgment and decree was stayed which position exists till today.

3. The disputed land was *gair mumkin khadan* and is stated to have be lying vacant till the allotments were made to a special class of persons. The plaintiffs allege that defendant No.4 is the owner of the land. Defendant No.1 claims himself to be owner in possession of the suit land under an allotment deed dated 21st March, 1986 executed by defendant No.2

in favour of Chaman Lal predecessor-in-interest of defendant No.1. The dispute with respect to the land arose which led the plaintiffs to institute a suit for declaration and permanent injunction with consequential reliefs against the defendants. The plaintiffs claimed that the land is vested in defendant No.3 which was divested by extension of the municipal limits over the corpus land with effect from 2nd January, 1996.

4. The plaintiffs placed on record a copy of the *Jamabandi* for the year 1985-86 Ex.P2 and P3 which reflected the names of Hardev Chand, Chaman Lal and Mohan Lal as owners in possession over the house constructed on the land measuring 1K-19M in Murba No.130/27/2. The plaintiffs pleaded that the defendant/respondent No.1 could not have been allotted land from the allotment scheme by municipal committee which was earmarked for persons belonging to the scheduled caste and backward classes who did not own a residential house or piece of land, with second preference in the scheme for allotment to the economically backward classes who also did not own any residential house or plot of land and were in the income of less than Rs.3600/- per annum category when the allotment was made. Plaintiffs pleaded that since defendant No.1 owned another house, the allotment in his favour was legally impermissible. Defendant No.1 did not dispute that the *Jamabandi* for the year 1985-86 related to their land elsewhere and this disentitled allotment. The allotment was questioned in the suit filed in representative capacity in public interest. It is not disputed that the land owned and possessed by Gram Panchayat, Cheeka had vested in the Municipal Committee, Cheeka. A court declaration was sought that the allotment deed is illegal, null and void and, therefore, bad

since the allottee-defendant No.1 did not fulfil the requirements of instructions dated 27th August, 1982 issued by Government of Haryana on the subject of allotment. It was alleged by the plaintiffs that the land in dispute was public property and defendant No.1 in collusion with respondent No.2 the earlier Sarpanch of Gram Panchayat, Cheeka and both in conspiracy played fraud on public property and thus all the technical rules of procedure have to be ignored. In seeking to undo the allotment, the plaintiffs relied on the decision of the Supreme Court in **S.P.Chengalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs and others**; [1994] 1 SCC 1 and **United India Insurance Company's** case reported in 2000 (3) SCC 581 to urge that a judgment and decree obtained by fraud can be challenged even in collateral proceedings and limitation against fraud would start only from discovery of fraud or from the date written statement is filed revealing facts constituting fraud for period of limitation to run in bringing challenge.

5. Parties went to trial on 7 issues, the 8th being relief which can broadly be reduced to two basic issues involved in the case i.e. Whether the 4th defendant Municipal Committee, Cheeka is owner in possession of the suit land and whether the allotment dated 21st March, 1986 made in favour of defendant No.1 by defendant No.2 Gram Panchayat before limits were extended to cover the corpus property was null and void and therefore could the challenge in the suit brought after 12 years of the date of allotment i.e. on 7th December, 1998 (present Civil Suit No.369 of 1998). The three plots involved in the three connected appeals involve plots measuring 3 M (100 square yards) which had earlier vested in Gram Panchayat Dera Jaat,

Cheeka (Exb.D3). On extension of limits of Municipal Committee, it came within the area of the Municipal Committee, Cheeka (Ex.D4). Thus, the Gram Panchayat was arrayed as defendant No.3 while Municipal Committee was defendant No.4. The allotment to the defendant was made on the basis of a resolution No.2 dated 23rd September, 1985 passed by the then Gram Panchayat. The plaintiff alleged that Gurdev Singh, Sarpanch had got passed a collusive decree dated 6th August, 1993 regarding the suit land in favour of his brother-in-law and from this, the plaintiffs pleaded that it was mere a paper transaction. Decree dated 6th August, 1993 was, subsequently, set aside vide judgment and decree dated 13th September, 1993.

6. Defendants No.2 and 3 did not contest the suit and remained *ex parte*.

7. Defendant No.4-Municipal Committee filed a separate written statement contesting the suit by pleading that the suit was not maintainable and the plaintiffs had no locus standi to file the suit. Defendant No.1-main private contesting party beneficiary of allotment filed written statement pleading that the corpus was allotted to him under Government scheme and a gift deed was duly executed and registered in his favour by the Gram Panchayat and he was put in possession of the suit property. The legality and validity of the impugned gift deed had been challenged by the Gram Panchayat as well as the Municipal Committee, Cheeka by filing separate civil suits which both were dismissed. The validity of the gift deed was upheld up to the High Court. The suit was therefore barred by principles of *res judicata* besides being barred by limitation.

8. The learned trial Court decreed the suit by returning findings on issues No.1 and 2. The plaintiffs were able to prove that defendant No.1 Hardev Chand was owner of 13M of land at the time of the alleged allotment and, therefore, he was disentitled to allotment of any plot under the Government Scheme.

9. In the first appeal, it was argued by Hardev Chand that the suit was barred by principles of *res judicata* since the subject matter of the subsequent suit was directly and substantially in issue in the earlier civil suits filed by the Municipal Committee which had been dismissed up to this Court and the allotment in question had been upheld. Therefore, the matter could not be re-agitated before the civil court in the present suit even in representative capacity in public interest litigation, the plaintiffs claiming no personal rights in the suit land. It was next urged that the suit having been filed after 12 years of the accrual of the cause of action was plainly time barred. On merits, it was argued that there is no reliable evidence on the file to prove contravention of the provisions of the Government Scheme of allotment of land to the scheduled caste and backward classes etc.

10. Learned District Judge, Kaithal on the question of limitation for filing a suit for declaration after 3 years, the suit having been brought after expiry of 12 years, found no reasonable explanation in the plaint or sufficient cause as to why the suit had been filed beyond limitation. The lower appellate Court noticed that it is simply mentioned in para. 9 of the plaint that the cause of action in the suit had arisen in favour of the plaintiff on 20th October, 1998, the date of an “illegal attempt” made. It was nowhere elaborated or explained as to what was that “illegal attempt”. It was not

pleaded by the plaintiffs that they were not aware of the gift deed in question and thus were unable to file the suit within the period of limitation. The Court noticed that even otherwise, the gift deed is a registered document and registration of a document is by itself a notice to the general public. The Court found that as many as 107 gift deeds were executed and registered by the Gram Panchayat on the same day. When the land was brought within the municipal limits, these gift deeds were challenged by the Municipal Committee, Cheeka in the year 1989. The civil suits were dismissed and the first appeal and the second appeal also failed.

11. The lower appellate court has, to my mind, exercised its judicial discretion properly and applied his mind soundly by inferential reasoning disbelieving the plaintiffs of the plaintiffs pleading ignorance of the allotment or registered gift deed when they were inhabitants of the same locality that they would be unaware of limitation running and extinguishing remedy, if any. The lower appellate Court rejected the argument based on the gift deed being a fraudulent document or that was no period of limitation prescribed for challenging the alleged fraudulent document. The Court reasoned that even assuming that the gift deed was obtained by fraud, still the plaintiffs will have to challenge the same within 3 years of the date of knowledge of the document. In any case the gift deed executed by Gram Panchayat can no longer to be said to be a fraudulent document since it has suffered findings of the competent civil court while dismissing the suit instituted by the Municipal Committee, Cheeka challenging the gift deeds made by Gram Panchayat in favour of the private defendant and, therefore, the judgment in *S.P.Chengalvaraya Naidu (dead)'s* (supra) can be of no help

to the plaintiffs as it is distinguishable on facts.

12. On the plea of *res judicata*, the learned lower appellate court found that the Municipal Committee had sought a declaration that the gift deed dated 21st March, 1986 in favour of defendant Hardev Chand was an illegal document which is null and void and conferred no right in favour of Hardev Chand and thereby the suit property vested in the Municipal Committee, Cheeka, but which plea was not accepted by the Court. When Gram Panchayat's resolution and the gift deed have been examined in the previous suit and found to be legal and valid, then the learned appellate court has committed no error of fact or law in reaching the conclusion that the subject matter of the present suit was directly and substantially in issue in the former suit filed by the Municipal Committee with Hardev Singh a contesting party defending his title over the corpus. If the issue was *res judicata* qua Hardev Chand and the Municipal Committee, then the plaintiffs were interlopers with insufficient standing to maintain the suit. If they had a remedy, that remedy is barred by limitation.

13. It was in order to bypass and to skirt the bar of limitation that the plaintiffs filed the present suit under Section 91 of the Code of Civil Procedure, 1908 (the 'Code') claiming that the property in question was a public property for them to possess a sufficient actionable right to seek declaratory decree qua the disputed property. On this point, the Court *a quo* noticed that it was for the Municipal Committee to challenge the gift deed in question on all the available grounds. If they had omitted to do so, then also the judgments remain *res judicata* in view of explanation IV of Section 11 of the Code which reads as follows : -

“Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

14. It was then argued that the plaintiffs were not party in the earlier suits and so the principle of *res judicata* would not apply in the subsequent suit. The learned lower appellate Court rejected the argument citing explanation VI of Section 11 of the Code which reads as follows : -

“Where persons litigate bonafide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

15. Learned lower appellate court held that in the previous litigation, the Municipal Committee claimed right in property for itself and for the inhabitants of the municipal area. The present plaintiffs did not claim any private rights in the suit property since they pleaded that it was public property and brought the suit *actio popularis*. Therefore, explanation VI gets attracted and the judgment becomes in *rem* or erga omnes, for all and everything and parties as at present cannot be seen or heard to traverse facts once again and to reagitate the matter through a fresh suit. Learned District Judge was right when he said that in case such a course is adopted, then it would lead to endless litigation to which I would add, litigation fuelled by busybodies lacking sufficient locus standi to maintain the suit on behalf of the community at large.

16. For the foregoing reasons, there is no life found in these three appeals which are ordered to be dismissed since no questions arise, much less substantial, within the jurisdiction in second appeal, the courts *a quo*

RSAs No.1850, 1941 and 1942 of 2008

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being the final courts of law and fact and having performed their judicial
function well within the law.

(RAJIV NARAIN RAINA)
JUDGE

March 20, 2015
Paritosh Kumar