

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

RSA-1209-2010 (O&M)

Date of Decision: 21.12.2015

MOHINDER SINGH

.....Appellant

Vs.

BANT KAUR AND ANR.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Aakash Singla, Advocate and
Mr. Jatinder Singla, Advocate
for the appellant.

Mr. Abhishek Goyal, Advocate
for Mr. Pardeep Goyal, Advocate
for respondent No.1.

Mr. Harsh Aggarwal, Advocate
for respondent No.2.

- 1. Whether Reporters of local papers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest?**

RAJ MOHAN SINGH, J.

1) Plaintiff is in second appeal in a suit for declaration, injunction in which both the Courts below have concurrently dismissed the suit.

2) Plaintiff-Mohinder Singh filed a suit for declaration, injunction on the ground that the defendant no.1 is the legally-wedded wife of the plaintiff. Out of the wedlock two children took

birth. Defendant deserted the plaintiff for continuous period of more than 8 years immediately before the decision of divorce petition. But in the month of February 1997, a compromise was effected between the parties and their children Avtar Singh and Pritpal Kaur, whereby defendant along with her children agreed to live in a separate portion of the house situated in village Cheema and continue to desert the plaintiff as before. Plaintiff alleged that the defendant along with Pritpal Kaur and Avtar Singh filed execution application against the plaintiff for recovery of maintainance and during the said litigation, again a compromise was effected between the parties on 15.12.1999 at the intervention of respectables and common relatives and the parties agreed to withdraw their suits, applications and complaints against each other. As per compromise, it was settled between them that Mohinder Singh will give 2 acres of land bearing khasra no.221//10/6-18, 11/6-18 and 220//6/1/2-4 situated in village Cheema to Bant Kaur as maintainance in lumpsum for the life. It was further agreed that Bant Kaur will continue to reside in the said portion of the house of the plaintiff and again a compromise was affected on the grounds that plaintiff would give another three acres of land in khasra no.214//1/8-0, 9/8-0, 10/1/1-2, 215//5/6-18 for the maintainance of Pritpal Kaur and Avtar Singh and also for the marriage of Pritpal Kaur. And after that, defendant and her children would

have no concern with the remaining land of the plaintiff. According to compromise it was settled between them that in future both the parties would not have any relationship of husband and wife and they would seek mutual divorce from the Court by filing separate petition. In default of either of the parties, the other party would be entitled to get the compromise effected against the defaulting party. The decree of maintenance dated 29.1.1990 against the plaintiff in favour of defendant and her children would be treated as cancelled.

3) It was further alleged by the plaintiff that he executed a gift deed no.4176 dated 15.12.99 in respect of 16 kanals of land in favour of defendant and also executed another gift no.4172 dated 15.12.1999 in respect of 24 kanals of land in favour of Avtar Singh with a written consent of Pritpal Kaur. As per terms of the compromise, both the parties also filed a petition under Section 13-B of Hindu Marriage Act in the Court at Sunam on 16.12.1999.

4) On 9.8.2000, defendant gave statement in the Court that she does not want to proceed with the petition because her husband had refused to bear the expenses of marriage of her daughter Pritpal Kaur. Later on, said petition was dismissed. Plaintiff also alleged that the statement of the defendant was legally wrong as the gift deed no.4172 was already executed by the plaintiff in favour of defendant with a written consent of

Pritpal Kaur and it was only Pritpal Kaur who could have objected for her marriage expenses. Plaintiff claimed that he is owner of the property and defendant has no concern with the same as the gift deed has become inoperative due to non-compliance of terms and conditions of the compromise and the mutation sanctioned on that basis is also liable to be set aside.

5) The suit was contested by the defendants on all counts, including the maintainability of suit for possession for want of Court fee. Defendant No.2 claimed that he is bona fide purchaser for valuable consideration and also denied the averments of the plaint.

6) After filing of replication, trial Court framed the following issues:-

- 1. Whether defendant no.1 and plaintiff effected a compromise dated 15.12.1999, if so what were its terms and conditions and its effect thereof, if any? OPP*
- 2. Whether defendant no.1 resiled from terms and conditions of the compromise dated 15.12.1999, if so its effect? OPP*
- 3. Whether the gift deed dated 12.12.1999 no.4176 has become redundant, due to non compliance of terms dated 15.12.1999? OPP*
- 4. Whether plaintiff is entitled for declaration, as prayed for? OPP*
- 5. Whether plaintiff is entitled for injunction, as prayed for or in the alternative is entitled to possession of the suit land? OPP.*
- 6. Whether plaintiff has no cause of action to file the present suit? OPD*

7. *Whether suit of plaintiff is not maintainable in the present form? OPD*
8. *Whether plaintiff is stopped by his act and conduct from filing the suit? OPD.*
9. *Whether defendant no.2 is bonafide purchaser for valuable consideration? OPD*
10. *Whether the suit has been properly valued for the purpose of court fee and jurisdiction? OPP*
11. *Whether defendant no.1 has become absolute owner in possession of suit land on the basis of registered gift deed by way of maintenance as alleged in the written statement? OPD(2)*
12. *Whether plaintiff is entitled to mandatory injunction, as prayed for? OPP*
13. *Relief."*

7) Both the parties led evidence. Trial Court dealt issues no.1, 2, 3, 4, 5, 11 and 12 jointly and held the same against the plaintiff and in favour of defendants. Issues no.6 to 8 were not pressed by the defendants. Under issue no.9, trial Court held that since Bant Kaur had the perfect title, therefore, transfer of land in favour of defendant no.2 is a lawful transaction and therefore, issue no.9 was held in favour of the defendants. Issue no.10 in respect of Court fee was also held against the plaintiff and the suit was ultimately dismissed by the trial Court vide judgment and decree dated 1.8.2007.

8) Feeling aggrieved against the aforesaid judgment and decree of the trial Court, the plaintiff-appellant filed appeal before the Lower Appellate Court which has also been dismissed by the

Lower Appellate Court vide judgment and decree dated 4.8.2009. Hence, the present appeal came to be filed in this Court.

9) In the present appeal, the appellant has not formulated any substantial question of law in grounds of appeal. However, this Court proceed to decide the controversy on the following questions:-

i) Whether a complete transaction of gift can be rescinded on a subsequent conduct of a donee?

ii) Whether the gift made in lieu of maintainance can be revoked on account of failure of any of the condition of compromise in view of attending circumstances involved in the present case?

10) I have heard lerned counsel for both sides and have gone through the record with their able assistance.

11) Admittedly, marriage was solemnized between plaintiff and the defendant no.1 in the year 1975. Relation between husband and wife became strained and children remained in the company of mother. In 1986, defendant no.1 and children filed suit for maintainance under the provisions of Hindu Adoption and Maintenance Act. Vide order dated 2.3.1989, claim of the wife was dismissed, however, children were granted

Rs.100/- per month. The Lower Appellate Court awarded Rs.300/- per month to the defendant no.1 and Rs.150/- per month each to the children till majority vide order dated 29.1.1990. The said judgment became final between the parties. Thereafter in execution, compromise was effected in the form of providing accommodation and some amount was also given.

12) In 1998, suit was filed by the husband to set aside the decree dated 29.1.1990. The suit was decreed on 8.5.1998 on the basis of consenting statement made by defendant no.1. Statement of children were not recorded. On 17.7.1999, children filed execution for recovery of Rs.13,750/-. During pendency of those proceedings, compromise was effected between the parties. It was agreed that the husband would execute gift deed of 3 acres of land in favour of children and 2 acres of land in favour of wife. Statements were recorded and in terms of compromise, petition under Section 13-B was also filed.

13) On 15.12.1999, husband executed two gift deeds i.e. for 3 acres in favour of children and 2 acres in favour of wife. On 16.12.1999 petition under Section 13-B of Hindu Marriage Act was filed in which first motion was held on 17.12.1999. Statement of wife was recorded as Ex.P6. On 17.12.1999, children withdrew the execution petition on being satisfied. On second motion, wife resiled on the ground that expenses of marriage of daughter have not been provided by the husband.

As a result of that on 24.8.2000, petition under Section 13-B was dismissed for non-prosecution at the instance of the wife. On 24.5.2001, the suit has been filed by the husband for declaration only qua 2 acres of land in favour of wife being aggrieved against the fraudulent act of the wife. Respondents have admitted the factum of gift in favour of children for total expenses qua education and marriages. On 28.5.2001, wife has sold 2 acres of land which she got from her husband in gift to defendant no.2.

14) In terms and conditions of compromise dated 15.12.1999, it has not been provided that in case of failure on the part of either of the parties in getting the decree of divorce by way of mutual consent, there shall be cancellation of gift deed and possession of the land be taken from defendant no.1. Therefore, the compromise remained as an agreement which could have been specifically enforced by way of filing suit for specific performance in accordance with law.

15) Suit for declaration, in considered opinion of this Court is not maintainable because there is no clause incorporated in the compromise that in absence of the parties failing to get decree of divorce by way of mutual consent, the plaintiff shall be entitled to revoke the gift deed and to recover possession of the land. Petition for divorce on mutual consent was got dismissed for want of prosecution by the petitioner, Bant Kaur. In a suit for declaration, plaintiff could not ask for any relief

for mandatory injunction so as to direct the defendant no.1 to get the compromise implemented by way of suffering any statement in the context of mutual consent for a decree of divorce. Plaintiff has not brought any suit for specific performance of the compromise/agreement and the declaration cannot be granted because plaintiff is not entitled to such a declaration. The gift is always without consideration. The property was given to wife in lieu of life long maintainance. There is no clause of revocation in the gift. Even the gift deed is not on the record nor has been proved. The sale deed Ex.D1 in favour of subsequent vendee is on record. No attesting witness of gift deed has been examined nor any effort has been made by the plaintiff to prove due execution of the gift. Gift is independent in nature. The gift is in the form of one time maintenance and was not to be affected with the condition of compromise for mutual divorce.

16) In the light of observations made in **Tokha Vs. Smt. Beeru and others 2003 AIR (HP) 107 and Ashokan Vs.Laxmi Kutti and Others 2008 (3) CCC 113,** it can be held that questions as formulated are to be answered that the gift is voluntary in nature and the same being a complete transaction, cannot be rescinded on subsequent conduct of the donee.

17) In the light of aforesaid reasoning, it can be safely concluded that there is no ambiguity in the judgments and decrees passed by the Courts below, therefore, this Court does

not find any substance in the appeal and the same is accordingly
dismissed.

21.12.2015
SwarnjitS

[RAJ MOHAN SINGH]
JUDGE