

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.3675 of 2010 (O&M)
Date of Decision: 01.04.2015

Rakesh Goel

..... APPELLANT

VERSUS

Manish Goel and others

..... RESPONDENTS

PRESENT: - Mr. C.B. Goel, Advocate
for the appellant.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

This present Regular Second Appeal is filed
by the plaintiff-appellant directed against judgment and
decree dated 23.11.2009 passed by the Court of Additional
District Judge, Sonapat whereby appeal against the
judgment and decree dated 06.11.2006 passed by Civil

Judge (Sr. Divn.), Sonapat was dismissed.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff-appellant had originally filed the suit for declaration and permanent injunction on the ground that Smt.Kamla Devi (since deceased) was mother of plaintiff and defendants No.2 to 6. She was absolute owner of total land measuring 42 kanals 07 marlas situated in village Sikander Pur, Tehsil Panipat as per jamabandi for the year 1981-82 and a residential house No.726 situated in Hari Bagh Colony, Panipat. She had executed Will dated 06.06.1984 and on the basis of that, plaintiff is owner in possession of agricultural land measuring 22 kanals 14 marlas and a residential house No.726. Defendant No.6 (Ms. Poonam Goel) is owner of agriculture land measuring 19 kanals 13 marlas.

Defendant No.1 is son of defendant No.2 and defendant No.2 had taken Smt. Kamla Devi to Delhi and

while playing fraud and mis-representation got executed gift deed dated 08.02.1984 in favour of defendant No.1, who was minor at that time. As such, the said gift deed is null and void. Mutation No.348 was got sanctioned on the basis of gift deed and same is also null and void. There was no occasion for defendant No.1 to serve Smt. Kamla Devi as he was student and had no source of income to serve Smt. Kamla Devi.

The defendants contested the suit thereby inter alia taking the plea that gift deed dated 08.02.1984 was genuine and valid document. However, the alleged Will dated 06.06.1984 was forged document as Smt. Kamla Devi was left with no right, title and interest in the land measuring 31 kanals 06 marlas. The said gift deed was within the knowledge of Smt. Kamla Devi till her death i.e. 25.04.1985. Mutation No.348 was sanctioned in accordance with law. Defendant No.2 filed separate written statement and also took the plea that Will dated 06.06.1984 in favour of the plaintiff was bogus document.

On these facts, learned trial Court settled the following issues and the parties were put to trial:

1. Whether gift deed dated 8.2.1984 in favour of defendant No.1 is illegal and void, abinitio as per the grounds mentioned in para No.3

of the plaint? OPP

2. Whether deceased Kamla Devi executed a valid Will dated 6.6.1984 is valid, if so to what effect? OPP
3. Whether the plaintiff has no locus-standi to file the present suit? OPD
4. Whether the Court has got no jurisdiction? OPD
5. Whether the suit of the plaintiff is liable to be stayed under Section 10 of CPC? OPD
6. Whether the suit is barred under Order 2 Rule 2 CPC? OPD
7. Whether the suit is not maintainable in view of preliminary objection No.5? OPD
8. Whether the plaintiff is estopped by his own acts and conduct to file the present suit? OPD
9. Whether the plaintiff has got no cause of action? OPD
10. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD
11. Whether the suit is bad for mis-joinder of parties? OPD
12. Relief.

Learned Court of first instance after considering the material and documentary evidence available on file recorded the findings of facts that gift deed dated 08.02.1984 was duly executed and on the basis of said gift

deed, jamabandies for the years 1986-87 and 1996-97 were duly prepared and the same proved the possession of defendant No.1 Manish and, as such, the plaintiff has not been able to prove his possession over the suit land as presumption of truth is attached with the jamabandies as per provisions of Section 44 of Punjab Land Revenue Act, unless and until the same rebutted as per law.

The Court of first instance dismissed the suit of the plaintiff. First appeal was preferred by the plaintiff and remained un-successful. Hence, the present Regular Second Appeal.

Mr. C.B. Goel, learned counsel for the appellant took the plea that both the Courts below have not considered the real controversy in dispute. The execution of the gift deed was denied by the plaintiff on various grounds. The same gift deed was required to be proved by defendant No.2 in accordance with instructions as per Section 68 of the Evidence Act but that has not been done. To the contrary, the plaintiff-appellant has been able to prove the Will dated 06.06.1984 Ex.P2 on the file. Satnam Dass Deed Writer has appeared as PW-1 and deposed that Will Ex.P-2 was written by him on the asking of Smt. Kamla Devi but still the Courts below dis-honoured the Will and placed

reliance upon gift deed, which has not been otherwise proved on file.

Learned counsel for the appellant further took the plea that even by way of natural succession, the suit filed by the plaintiff could not be dismissed and, as such, the findings recorded by both the Courts below are liable to be reversed.

I have given my considerable thoughts to the arguments advanced by learned counsel for the appellant and also perused the record.

There are concurrent findings of both the Courts below on facts involved in the case. Both the Courts below have recorded findings that Will dated 06.06.1984 has not been proved whereas gift deed dated 08.02.1984 has been proved. Thereafter, the revenue entries i.e. jamabandis are being recorded on the basis of gift deed. The said jamabandis being record of rights have got presumption of truth and correctness attached to it unless repeated otherwise. But that has not been done in this case. Both the Courts below have already appreciated the evidence available on file and recorded the findings and the said findings of fact are not required to be interfered by this Court while entertaining the present Regular Second Appeal.

There is no substantial question of law involved in this case calling for acceptance of the present appeal. Such a law was laid down in **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs.**, 2001(2) JT 407.

In view of the above, the present Regular Second Appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 01, 2015
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