

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3181 of 2012
Date of decision : February 18, 2015

**Shri Guru Granth Sahib Gurudwara Nanak Sir Kaleram Jagraon
and others**

Versus

..... Appellants

Sukhdev Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Jain, Advocate
for the appellants.

Mr. Arvind Singh, Advocate
for respondent Nso. 1 to 9.

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?

Amit Rawal, J (oral).

This Regular Second Appeal at the instance of the appellants-defendants is directed against the judgment and decree of the court below whereby the suit of the respondents-plaintiffs for declaration to the effect that defendant No.1 had not become owner of abadi deh land measuring 36 Kanals situated in Rajpura District Patti despite execution of gift deed dated 10.1.1996 in favour of defendant No.1 by defendant Nos. 2 to 5 have been decreed and it has been further held that inhabitants of Rajpura have full right to use the land in question in the same manner as was being used prior to execution of the gift deed.

The trial court decreed the suit for permanent injunction restraining the appellants-defendants from raising any construction over the suit land or changing the nature and condition of the same and have been restrained from raising any construction by way of mandatory injunction.

The appeal filed against the judgment and decree of the trial court by the appellant-defendant was also dismissed.

Mr. Amit Jain, learned counsel appearing on behalf of the appellants submitted that the respondents-plaintiffs did not have any locus standi to file the suit as they had failed to prove any title over the suit property and that the gift deed was wrong, illegal, null and void. He further submitted that the suit of the respondent-plaintiff under the provisions of Order 1 Rule 8 was not maintainable and the transfer of land was not only for the welfare of the proprietors but for general use. He further submitted that the courts below have erred in assuming that defendant Nos. 2 to 5 were not competent to execute the gift deed and the both the courts committed illegality and perversity in misreading the evidence which lead to conclusion that the gift deed dated 10.1.1996 had not only been proved but to be legal and just and thus urged this Court that the appeal involves substantial question of law to be adjudicated by this court.

Mr. Arvind Singh, learned counsel appearing on behalf of the respondent-plaintiff submitted that defendant Nos. 2 to 5 had not lawfully been authorized to make a gift deed of the suit land in favour of defendant No.1 and hence had no valid title.

He further submitted that the plaintiffs have proved

through the testimony of the witnesses and documentary evidence that the gift deed executed by defendant Nos. 2 and 5 was illegal, null and void as jamabandi placed on record proved that the land in dispute was and is being used for common purposes.

The fact that appointment of 7 persons by a community of 31 persons including defendants Nos. 2 to 5 for maintenance and welfare of the disputed land was admitted by the defendants and on the basis of power of attorney 7 persons belonging to the community could not have taken decision with respect to the suit property for the welfare of common people.

I have learned counsel for the parties and perused the impugned judgment and decree and I am of the view that the appeal is liable to be dismissed. It has come on record in evidence that 31 persons were not proprietors of the village. The aforementioned persons have failed to prove that they are original khewatdars of the Village. In fact the property is abadi deh and is meant for common use of the residents of the area and therefore the proprietors of Village have given them the power of attorney to 7 persons out of them 5 persons had executed a gift deed in favour of defendant No.1 was thus, an act of fraud being played upon the residents of the village in the absence of proof qua proprietorship. In fact the plaintiffs have proved on record the evidence to show that the land was gair mumkin Marhian (Cremation ground) and part of the land was being used for toilets and in the cultivating column No.5 of the jamabandi Ex.P-3 for the year 1996-97 and Ex.P-4 for the year 1991-92 there is an entry "Makhbuj Bashindagan". Even the list of

property has not been proved whereas on the contrary it has been proved that the suit property has been recorded as abadi deh. The courts below have rightly decreed the suit which was filed in a representative capacity under Order 1 Rule 8 CPC.

No fault can be found with the finding rendered by the courts below as the findings are based on appreciation of oral and documentary evidence.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 18, 2015
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