

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.93 of 2012 (O&M)

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Date of decision:10.3.2015

Ranjit Kaur

.....Appellant

v.

Jasvir Kaur and others

.....Respondents

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Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sherry K. Singla, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by the appellant-plaintiff aggrieved against the impugned judgment and decree dated 14.6.2011 passed by the learned Additional District Judge, Sangrur, affirming the impugned judgment and decree dated 5.2.2008 passed by the learned Civil Judge (Junior Division), Malerkotla, whereby the civil suit filed by the plaintiff-appellant has been dismissed.

It is stated in the grounds of appeal that the impugned judgment and decree dated 5.2.2008 passed by learned Civil Judge (Junior Division), Malerkotla, and the impugned judgment and decree dated 14.6.2011 passed by the learned Additional District Judge, Sangrur are against law and facts of the case and have been passed by the Courts below without appreciating the evidence brought by the parties and are thus liable to be set aside.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that Ranjit Kaur-plaintiff/appellant has filed the suit for joint possession and permanent prohibitory injunction against Surjeet Singh-defendant to the extent of 1/6th share out of the suit land measuring 114 Bighas 6 Biswas as fully detailed in the heading of the plaint as per Jamabandi for the year 1998-99 situated at Village Bahadurgarh and for permanent prohibitory injunction restraining the defendant from alienating 1/6th share out of the suit land by way of sale, gift, mortgage, exchange or in any manner whatsoever.

As per the case of the plaintiff as set out in the plaint, Shiamo was mother of Ranjit Kaur-plaintiff, who died leaving behind the plaintiff as her only legal heir. Shiamo resided in Village Butahri, Tehsil and District Ludhiana. The plaintiff served her mother Shiamo during her life time and she also performed her last rites. The defendant has got fabricated a forged and fictitious gift deed of Shiamo and he got the mutation of the land of Shiamo sanctioned in his favour on the basis of alleged forged gift deed dated 28.2.1966 in collusion and conspiracy with the Halqa Patwari. The defendant also fabricated Will dated 25.2.1972 of Bachni real sister of Shiamo, but the said Will was set aside vide judgment and decree dated 11.8.1987. The defendant had got no concern with the suit land owned and possessed by Shiamo and the plaintiff is entitled to inherit the land left by Shiamo.

The case of the defendant in the written statement is that

Shiamo had strained relations with her husband. After some time of the marriage, Shiamo started residing in her parental house in Village Bahadurgarh (Faridpur), Tehsil Malerkotla along with her daughter Ranjit Kaur-plaintiff. After the death of Isher Singh (father of Shiamo), mutation of inheritance of Isher Singh was sanctioned in favour of Mohinder Singh being son and Bachni, Shiamo and Bhajno being daughters. Mohinder Singh son of Isher Singh was unmarried. He, during his life time, adopted defendant as his son. Ranjit Kaur-plaintiff and her mother Shiamo were residing with Mohinder Singh and defendant. The plaintiff was brought up by the defendant. Mohinder Singh and Shiamo executed a registered gift deed dated 28.2.1966 in favour of the defendant and the mutation on the basis of gift deed was sanctioned in favour of the defendant on 10.1.1967. The defendant is owner in possession of the suit land. The plea that the defendant has also become owner by adverse possession was also taken.

The plaintiff and the defendant examined the witnesses.

The learned Civil Judge (Junior Division), Malerkotla, vide impugned judgment and decree dated 5.2.2008 upheld the gift deed dated 28.2.1966 (Ex.D.2). Both the parties examined the Hand-writing Experts. The plaintiff got compared thumb impression of Shiamo on the counter-file of the gift deed with the thumb impression Mark S-1 on writing dated 22.1.1970 in one account book alleged to have been executed by her and the expert gave the opinion that thumb impression Q-3 is not comparable whereas Q-1 and Q-2 are different from S-1. The defendant has also examined Hand-writing Expert, namely, Navdeep Gupta, who has submitted

his report, wherein he has compared the thumb impressions Q-1 to Q-3 of Shiamo with the thumb impressions A-1 to A-4 on registered will of Shiamo, which has been proved on record as Ex.D.3. The Expert of the defendant opined that the thumb impressions Q-1, Q-2 and A-1 to A-4 are identical though thumb impression Q-3 is not fit for comparison. The Court also considered the fact that this registered gift deed Ex.D.2 executed in the year 1966 has not been challenged by Shiamo during her life time. The defendant is in admitted possession of the suit property since 1967. The Court also considered that this gift deed Ex.D.2 is not only executed by Shiamo but is also by Mohinder Singh. The joint gift deed of property of Mohinder Singh and Shiamo further supports the contention of the defendant that he was adopted by Mohinder Singh and was residing with Mohinder Singh and Shiamo. The defendant has also placed on record the Will Ex.D.3 which shows that Shiamo had bequeathed her estate in favour of the defendant.

The findings of fact have been given by the learned Civil Judge (Junior Division) and the first appellate Court (Additional District Judge) in favour of the defendant and against the plaintiff. Both the Courts below have given concurrent findings of fact regarding the validity of registered gift deed executed in the year 1966. Nothing has been pointed out at the time of arguments which substantial question of law arises in the present regular second appeal. As no substantial question of law has arisen in this regular second appeal and the findings of fact given by the Courts below are concurrent and as per evidence and law, I do not find any merit in the

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present regular second appeal and the same is dismissed.

March 10, 2015.

(Inderjit Singh)
Judge

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