

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Regular Second Appeal No. 297 of 2013 (O&M)  
Date of decision: 12.5.2015

**Sheelu Ram and another**

**.. Appellants**

**v.**

**Minakshi @ Manishi**

**.. Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Ashwani Talwar, Advocate for the appellants.

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Rajesh Bindal J.

The defendants are before this court against the judgment and decree of the lower appellate court, whereby that of the trial court was reversed while decreeing the suit for declaration filed by the respondent-plaintiff claiming ownership of the suit property.

Alfa, grand father of the respondent-plaintiff, had five sons, namely, Ishwar, Sheelu Ram, Nabab, Purshotam and Subhash (father of the respondent-plaintiff). Subhash died on 16.3.1989. After that, mother of the respondent-plaintiff re-married. The respondent-plaintiff was brought up by her grand mother. Share of the land coming to her father was got cultivated by her. The dispute in the present case arose when Sheelu Ram, one of the paternal uncle of the respondent-plaintiff, got a power of attorney executed from the respondent-plaintiff on 24.8.2007 and on the basis thereof executed a gift deed on 31.8.2007 in favour of his son. The same was challenged by the respondent-plaintiff by filing civil suit on 12.9.2007. The case set up by her was that on 23.8.2007, Sheelu Ram asked her to be present in Tehsil at Samalkha for getting the share in joint land partitioned. Even though the respondent-plaintiff objected to while saying that their land

falls in Tehsil Bapoli and the partition proceedings will take place only there, but the same was over-ruled by appellant No. 1. None of other co-sharers of the land was present in Tehsil at Samalkha. Appellant No. 1 got thumb impression of the respondent-plaintiff on certain blank papers. On 2.9.2007, the respondent-plaintiff enquired from her grand mother and other uncles regarding partition of the land, who expressed their ignorance. On enquiry from appellant No. 1, he disclosed that he got a general power of attorney executed in his favour and on the basis thereof, a gift deed had been executed by him in favour of his son. Immediately thereafter, the suit was filed.

The contention raised by learned counsel for the appellants was that the respondent was born on 3.12.1988. Less than three months thereafter, her father Subhash died on 16.3.1989. Her mother left the home and got re-married. The respondent-plaintiff was brought up by appellant No. 1 and married on 22.4.2007. All the expenses were borne by them. Thereafter, she executed a power of attorney, a registered document, authorising appellant No. 1 to deal with the property owned by her, hence, there was nothing wrong in execution of the gift deed by appellant No. 1 in favour of his son. The transaction cannot be said to be fraudulent.

After hearing learned counsel for the appellants, I do not find any merit in the submissions made. The sequence of events, i.e., execution of power of attorney, place of its execution and execution of a gift deed by appellant No. 1 in favour of his son shows that effort was to usurp the property owned by the respondent-plaintiff. The specific pleaded case of the respondent-plaintiff was that she was brought up by her grand mother, who had been taking care of the share of her land. In case, the respondent-plaintiff could execute a general power of attorney in favour of appellant No. 1 on 24.8.2007, if her intention had been to gift share of her property to the son of appellant No. 1, she could very well execute the gift deed on that very day, but the effort of the appellant No. 1 was to defraud the respondent-plaintiff and usurp the property by using unfair means. He got a power of attorney executed from her in the garb of partition proceedings and immediately thereafter within a week, executed a gift deed in favour of his

son. A gift is always voluntary by a donor. This is something special. Even in the power of attorney executed by the respondent-plaintiff in favour of appellant No. 1, there is no mention of the fact that he shall be at liberty to part with the property by way of a gift and that too in favour of his son. It has also been noticed by the court below that even the gift deed also does not mention the fact that appellant No. 1 was authorised by the respondent-plaintiff to gift the property to his son. The respondent-plaintiff had filed a complaint for cheating against appellant No. 1 which, as per the judgment of the lower appellate court, was pending.

For the reasons mentioned above, I do not find any error in the judgment and decree of the learned lower appellate court. No substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)  
Judge

12.5.2015  
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