

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3719 of 2013 (O&M)

Date of decision : July 14, 2015

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Amar Chand

.....Appellant

Versus

Shree Gopal Gaushala, Bhiwani and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vinod S. Bhardwaj, Advocate for the appellant.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

C.M No. 10017-C of 2013

C.M is allowed as prayed for subject to all just exceptions.

C.M No. 10018-C of 2013

C.M is allowed.

Delay of 57 days in re-filing the appeal is condoned.

RSA No. 3719 of 2013

The appellant-plaintiff (hereinafter referred to as 'the plaintiff') has come up in this regular second appeal against the judgment dated 4.8.2010 passed by the Additional Civil Judge (Senior Division) Loharu, whereby the suit of the plaintiff for declaration and permanent injunction was dismissed and the judgment dated 7.2.2013 passed by the Additional District Judge, Bhiwani, whereby an appeal against the judgment of the trial Court

was dismissed.

The plaintiff who is grandson of Dharma alias Dharma Dutt challenged the gift deed dated 18.8.1956 in favour of respondent no.1-defendant no.1 (hereinafter referred to as 'the defendant no.1') Shree Gopal Gaushala, Bhiwani as illegal null and void based on fraud and misrepresentation. After execution of gift deed 18.8.1956 Ex. P1 (translated version of gift deed Ex. P-2), a mutation was sanctioned in favour of defendant no.1. The gift deed was never challenged by Dharma alias Dharam Dutt during his life time. Dharma had two sons namely Shree Chand and Chet Ram. Even they did not challenge the validity of the said gift deed during their lifetime. The appellant challenged the said gift deed on the ground that the property in dispute was ancestral and joint Hindu family property in the hands of Dharma alias Dharam Dutt and he had no right to transfer the same through gift deed in favour of respondent no.1. The plaintiff led no evidence to show that the property in dispute was inherited by Dharam alias Dharma Dutt by his forefathers and was ancestral in nature. The gift deed was executed in the year 1956 but the suit was filed by the plaintiff in the year 2007. The suit filed after 51 years was dismissed as hopelessly time barred.

Plaintiff filed an appeal against the judgment of the trial Court. Appellate Court took into consideration an important fact that the plaintiff had earlier filed a suit seeking decree of permanent injunction in respect of the property in dispute and as per judgment

dated 22.11.2002, the suit was dismissed and the lower appellate Court on appeal affirmed the findings by the trial Court vide judgment and decree dated 11.11.2006. In paragraph 14 of the judgment of the appellate Court, this fact has been so stated that the present suit was filed by the appellant on 4.6.2007 after dismissal of the earlier suit. This fact has also made it clear that the plaintiff was in the habit of filing of the suit one after another after changing the nature of the suit. The gift deed was duly registered in the office of the Sub-Registrar and Dharma alias Dharam Dutt himself had voluntarily given the property in dispute through gift deed to defendant no.1. Moreover, he did not challenge the same during his lifetime and the same was not challenged by his sons after his death. The suit was dismissed as the plaintiff was not having any locus standi to challenge the gift deed in question as the property was not ancestral in the hands of Dharma alias Dharma Dutt and moreover the gift deed was registered in the office of Sub-Registrar. The suit has been rightly dismissed by both the Courts.

In view of all that has been discussed above, interference of this Court is not warranted in the judgments passed by the Courts below. No substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 14, 2015
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(**RITU BAHRI**)
JUDGE