

**108 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 1068 of 2015 (O&M)

Decided on: 7.7.2015.

Bhag Singh

... Appellant

Versus

Malkiat Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. J.S. Brar, Advocate,
for the appellant.

K.C.PURI.J.

The defendant appellant has directed this appeal against the judgment and decree dated 6.1.2015 passed by Sh. Karnail Singh, Additional District Judge, Faridkot vide which the appeal preferred by the defendant-appellant against the judgment and decree dated 29.11.2012 passed by Sh. Madan Lal, PCS, Additional Civil Judge (Senior Division), Faridkot was dismissed.

Briefly stated, Malkiat Singh etc. plaintiffs filed suit for possession by way of redemption of land measuring 100 kanals 10 marlas as fully described in the head note of the plaint. It was alleged that Kundha Singh and Ishar Singh sons of Bagga Singh along with Pohla Singh were co-sharers in the suit property mentioned in the head note of the plaint. After death of Pohla Singh, his wife Maan Kaur

became co-sharer in the suit property. The suit property was joint

khata. Kundha Singh and Ishar Singh had mortgaged with possession land measuring 124 kanals 3 marlas bearing khasra numbers mentioned in the plaint in favour of Hazara Singh son of Baghel Singh for a consideration of Rs.15,000/-. Kundha Singh and Ishar Singh were co-sharers in the suit property to the extent of $\frac{1}{2}$ share. The mortgage deed was executed on 7.5.1946 for 59 years. Previously, it was in possession of Hazara Singh and now the same was in the possession of defendant. It was agreed that mortgaged land will not be redeemable before expiry of period of 59 years. The mutation of mortgage was sanctioned and land measuring 100 kanals 10 marlas was allotted in lieu of the mortgaged land. Ishar Singh and Kundha Singh were incorporated as mortgagors. Hazara Singh had died 50 years back and his estate/mortgagee rights were inherited by his son Chaghar Singh. Chaghar Singh had also died about 20 years back and his estate/mortgagee rights were inherited by his son Bhag Singh present defendant-appellant. Kundha Singh had died and his estate was inherited by his brother Ishar Singh who became sole owner/mortgagor after death of Kundha Singh being the only legal heir. Mutation of inheritance was sanctioned in favour of Ishar Singh. Ishar Singh had made a gift of his $\frac{1}{2}$ share out of entire land measuring 271 kanals 8 marlas in favour of Jarnail Singh, Harwant Singh and Sampuran Singh sons of Hem Singh vide Gift-deed dated 11.12.1961. The Gift-deed was scribed by Kastur Chand and the same was attested by one Nand Singh and Jarnail Singh and all these above said persons have died.

Thus, Jarnail Singh, Harwant Singh and Sampuran Singh became owners of the suit land. Sampuran Singh had died. Mutation No.2524 was sanctioned on the basis of gift deed dated 11.12.1961. Jarnail Singh son of Hem Singh had effected family settlement of his land in favour of his three sons, namely, Malkiat Singh, Surjit Singh and Gurpreet Singh. Gurpreet Singh has died. Jarnail Singh had suffered a decree in favour of his three sons and mutation was also sanctioned on the basis of decree. Thereafter, Malkiat Singh, Surjit Singh and Gurpreet Singh have been incorporated as co-owners in the suit property. Gurpreet Singh had died and his estate was inherited by his wife Nachhattar Kaur and daughter Kirandeep Kaur and son Jaspreet Singh, who is minor. The plaintiffs have got right to redeem the suit land. Hence, the suit.

The defendant appeared and filed written statement by taking preliminary objection that legal heirs of Ishar Singh are necessary party. On merits, it is admitted that Kundha Singh and Ishar Singh were co-sharers along with Pohla Singh in the suit property. After Pohla Singh, his widow Maan Kaur became co-sharer along with Kundha Singh and Ishar Singh and she is still recorded as co-owner to the extent of $\frac{1}{2}$ share in the suit property. It is admitted that suit property measuring 100 kanals 10 marlas was carved out during consolidation in lieu of 124 kanals 3 marlas of pre-consolidation land mentioned in para No.2 of the plaint. However, the factum of mortgage and that of gift-deed was denied. It is pleaded that Kundha Singh and

Ishar Singh have executed agreement to sell dated 8.4.1946 in favour of Hazara Singh and they have given possession of the same to Hazara Singh and on account of law of pre-emption, the sale deed was not executed. Mutation on the basis of gift-deed was challenged. Other averments of the plaint were denied and prayer for dismissal of suit was made.

The plaintiffs filed replication to the written statement denying all the contents of written statement and the stand taken in the plaint was re-iterated.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are entitled to the redemption of the suit land ?OPP
2. Whether Jarnail Singh is necessary party, if so its effect ?OPD
3. Whether the alleged heirs of Ishar Singh are necessary party, if so its effect ?OPD
4. Whether Kundha Singh and Ishar Singh executed any agreement dated 8.4.1946 in favour of Hazara Singh, if so its effect ?OPD
5. Whether land measuring 124 kanals 3 marlas was in fact sold and not mortgaged ?OPD
6. Whether the mortgage deed was executed with a view to evade the law of presumption ?OPD

7. Whether Ishar Singh did not make gift ?OPD

8. Relief.

In order to prove their case, plaintiffs examined Jasvir Singh, Record Keeper, DC Office as PW-1, Vijay Kumar, Deed Writer as PW-2, Surjit Singh as PW-3, Mangu Bansal, Head Registration Clerk as PW-4, Anil Kumar Gupta, Hand Writing and Finger Print Expert as PW-5, B.D. Kumar, Advocate as PW-6, Mukand Lal Clerk as PW-7, Sukhdev Singh, Sr. Assistant, DC Office as PW-8 and thereafter closed the evidence.

On the other hand, the defendant has stepped into the witness box as DW-3 and also examined Beant Singh as DW-1, Faqir Chand as DW-2 and thereafter closed the evidence.

Learned trial Court has taken up issues No.1, 4 to 7 together and all these issues were decided in favour of the plaintiffs. Issues No.2 & 3 were decided in favour of the plaintiff and against the defendant. In view of findings on issues No.1, 4 to 7, the suit of the plaintiff was decreed vide judgment and decree dated 29.11.2012 passed by Sh. Madan Lal, PCS, Additional Civil Judge (Senior Division), Faridkot.

Feeling dis-satisfied with the said judgment and decree dated 29.11.2012 passed by Sh. Madan Lal, PCS, Additional Civil Judge (Senior Division), Faridkot, the defendant preferred the first appeal. The said appeal was dismissed vide judgment and decree

dated 6.1.2015 passed by Sh. Karnail Singh, Additional District Judge,

Faridkot.

The defendant appellant has impugned both the aforesaid judgments and decrees dated 29.11.2012 and 6.1.2015 in the present regular second appeal.

The appellant in paragraph No.12 of the grounds of appeal has mentioned that following substantial questions of law have arisen:-

(i) Whether the findings recorded by ld. Courts below being based upon misreading and non-reading of important evidence are not vitiated in law ?

(ii) Whether reasons given by ld. Courts below to decree the suit are flimsy and whether these are substantiated by the evidence on record ?

(iii) Whether the ld. Courts below have relied on inadmissible evidence and have not dealt the case with proper perspective and impugned judgments being perverse are liable to be set aside ?

(iv) Whether when respondents have failed to prove alleged mortgage deed, if any, executed by Kundha Singh and Inder Singh, they have right to redeem the land on the basis of alleged gift deed Ex. P-8 dated 11.12.1961 ?

(vii) Whether it was not imperative for the ld. Courts below to decide the objection raised by respondent as

to tendering in evidence mortgage deed Ex.P-15,
before passing the decrees in question ?

Learned counsel for the appellant has submitted that controversy in the present lis revolves around the gift-deed dated 11.12.1961 (Ex.P-8) and mortgage-deed dated 7.5.1946 (Ex.P-15). The execution of both these documents has been denied by the appellant. These documents have not been proved in accordance with law. It is submitted that in view of Section 68 of Indian Evidence Act, a document which is specifically denied is required to be proved by calling the witness. The plaintiffs have failed to prove these documents. To support this contention, learned counsel for the appellant has relied upon the authorities **(i) K. Laxmanan vs. Thekkayil Padmini and others 2009 (1) Recent Apex Judgments (RAJ) 78; (ii) Om Parkash vs. Ramesh Chand Aggarwal and others 2011(2) PLR 181; (iii) Pritam Kaur and others vs. Ram Chander and others 2011 (3) PLR 373; (iv) Thakkar Vrajlal Bhimjee vs. Thakkar Jamnadas Valjee and another 1994(4) SCC 723; (v) Sebastiao Luis Fernandes (dead) through LRs and others vs. K.V.P. Shastri (dead) through LRs and others 2013(15) SCC 161.**

Learned counsel for the appellant has further submitted that judgments of both the Courts below are the result of misreading and mis-interpreting the evidence on the file. Both the Courts below have relied upon inadmissible evidence and have not

dealt with the case from right perspective and as such, the judgments of

both the Courts below are perverse. The objection regarding tendering of mortgage-deed Ex.P-15 was not decided.

Learned counsel for the appellant has further submitted that legal heirs of Ishar Singh and Kundha Singh have not been made party and as such rights of the parties cannot be agitated in their absence. Learned counsel for the appellant has further submitted that lower appellate Court has not applied its mind properly and has mentioned about the passing of decree in favour of the plaintiffs by Ishar Singh. No decree has been passed in favour of some of the plaintiffs by Ishar Singh or Kundha Singh.

I have considered the said submissions made by learned counsel for the appellant and have gone through the record of the case.

The appellant before the trial Court as well as appellate Court has taken the objection that mortgage-deed dated 7.5.1946 and gift deed dated 11.12.1961 are not proved in accordance with law but there is a finding of fact recorded by both the Courts below that these documents have been duly proved. The original gift deed has been placed on the file. Section 90 of Indian Evidence Act envisages that in case 30 years old document is coming from the proper custody, the Court may presume that signature and every other part of such document, which purported to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested

by the persons by whom it purports to be executed and attested. The gift deed has come from proper custody. The same is more than 30 years old document. So, the presumption in favour of that document has to be drawn. There is no other circumstance which militates against the drawing of presumption under Section 90 of Indian Evidence Act. The mortgage deed and gift deed have been duly executed. So far as the fact that appellate Court has mentioned about the decree by Ishar Singh in favour of some of the plaintiffs is concerned, from perusal of the decree, it is revealed that beneficiary of the gift deed have executed the decree in favour of their sons. So, there is nothing palpable wrong committed by the appellate Court or trial Court. The land was mortgaged on 7.5.1946 for a period of 59 years and since then the appellant and his predecessor in interest have been utilizing the suit land. So, in these circumstances, there is nothing on the file that the judgments of both the Courts below are the result of misreading or misinterpreting the evidence on the file.

Learned counsel for the appellant could not point out that which inadmissible evidence has been allowed by both the Courts below.

So far as the afore-mentioned authorities are concerned, none of the authorities is applicable to the facts of the present case. In none of the authorities, the document proved was more than 30 years old and there was no adjudication regarding applicability

of Section 90 of Indian Evidence Act in all these rulings. The plaintiff

has also produced Expert Anil Kumar Gupta who has stated that he has compared the thumb impression of Harbans Singh on the sale deed and on the gift deed and thumb impression of Kesar Singh with his admitted thumb impression and those are identical. The stand taken by the defendant that predecessor in interest of defendant is in possession of the property on account of agreement to sell was not accepted by both the Courts below and that concurrent finding could not be challenged and on that account, learned counsel for the appellant has not addressed argument on that point.

So, in view of above discussion, the substantial question of law mentioned above stands determined against the appellant and consequently, the appeal is without any merit and the same stands dismissed.

7.7.2015.
SN

(K.C.PURI)
JUDGE