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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.893 of 2013 (O&M)
Date of Decision: 02.12.2015

Ramphal and others

.....Appellants

Vs

Om Parkash and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. C.B. Kaushik, Advocate
for the appellants.

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?*

RAJ MOHAN SINGH, J.

[1]. Defendants are in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and mandatory injunction as consequential relief.

[2]. Plaintiffs filed suit seeking decree for declaration to the effect that defendants have no right, title or interest in the land measuring 1 *Kanal* 7 *Marlas* be passed besides declaring gift deeds in favour of defendants No.1 to 9 not binding upon the plaintiffs and other inhabitants and the same be declared as null and void. Mandatory injunction has also been sought for

removal of encroachment by the defendants.

[3]. Plaintiffs alleged that in the year 1993, defendant No.10 was the Sarpanch. In a scheme promulgated by State of Hayana to provide plot to homeless and landless persons, plots were given to those persons who were not eligible. The plots were given to defendants No.1 to 9, who are near relatives of defendant No.10 by misusing the policy of the Government. Gift deeds were made in favour of the defendants No.1 to 9 and others. The land meant for *Kohlu* was given by way of gift deed and the defendants raised construction over the site of *Kohlu* which was meant for inhabitants for common purposes in the village.

[4]. On 30.03.2008, the land was demarcated by the Kanungo and the factum of land of *Kohlu* came to the notice. Nature of the land was changed. The allotments were found to be made in favour of brothers and near relatives of defendant No.10.

[5]. Plaintiffs alleged that gift deed No.1100 showed many beneficiaries. The details of defendants No.1 to 9 with reference to gift deed No.1100 has been tabulated in para No.2 of the trial Court judgment.

[6]. After the demarcation, the defendants No.1 to 9 tried to raise construction over the site in question illegally and forcibly,

but the same was averted due to timely intervention of the plaintiffs and other co-sharers of the land. Plaintiffs claimed that they were also *biswedars* of the village and they had also contributed to the land for common purpose of the village at the time of consolidation. Therefore, they have every right, title or interest in the present suit land and the undue benefit has been given to the defendants No.1 to 9 on account of political influence.

[7]. Defendants have contested the suit by claiming that the defendants are owners in possession of the suit land which was lawfully gifted to them under the Scheme of Haryana Government for construction of residential houses. The defendants contested the suit on other grounds too.

[8]. From the pleadings of the parties following issues were framed by the trial Court:-

- “1. Whether the plaintiffs are entitled to the relief of declaration to the effect that defendants had no right, title or interest in the suit land as described in para no.1 of the plaint? OPP*
- 2. Whether the plaintiffs are entitled to the relief of declaration to the effect that the gift deeds No.1100 in favour of defendants No.1 to 9 in respect of the suit property were not binding upon the rights of the plaintiffs and other inhabitants of the village concerned and do*

not confer any right, title or interest in the defendants No.1 to 9?OPP

3. *Whether the plaintiffs are entitled to the relief of mandatory injunction for removing the encroachment over the suit land either by way of further raising construction over the same or otherwise? OPP*
4. *Whether the suit is not maintainable? OPD*
5. *Whether the plaintiffs have no locus standi to file the present suit? OPD*
6. *Whether the plaintiffs have estopped to file the present suit by their own and conduct? OPD*
7. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
8. *Relief.”*

[9]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[10]. Trial Court decreed the suit and the same affirmed by the lower Appellate Court as well.

[11]. Appellants have framed following questions of law in para No.2 of the grounds of appeal:-

- “i. Whether the jurisdiction of Civil Court is barred to decide title under the Punjab Village Common Land (Regulation) Act, 1961?*
- ii. Whether the suit is not maintainable?*

- iii. Whether the suit is barred by limitation?*
- iv. Whether the judgments and decrees of the Ld. Courts below is contrary to material evidence.*
- v. Whether the Ld. Courts below have failed to take into consideration the oral as well as documentary evidence to decide the suit?*

[12]. I have heard learned counsel for the appellants.

[13]. Provisions of Punjab Village Common Land (Regulation) Act, 1961 (for short 'the 1961 Act') and Punjab Village Common Land (Regulation) Rule 1964 (for short 'the 1964 Rule') have direct application on the land so gifted to the defendants No.1 to 9. Rule 13-A of the 1964 Rule is in respect of landless worker in the State of Punjab. Sections 5-A and 5-B of the 1961 Act and Rule 13-A of the 1964 Rules are applicable in State of Haryana. Section 5-A and 5-B of the 1961 Act was that the gift can only be made in respect of *shamlat* land in favour of members of the Scheduled Castes and Backward Classes of the village.

[14]. Admittedly defendants No.1 to 9 do not fall in the said category. Moreover the gift deeds has to be made with previous approval of State Government under the Rules. Defendants have not pleaded and proved the aforesaid facts and no evidence has been led in the said context.

[15]. Admittedly defendants No.1 to 9 are the beneficiaries of

the gift of the Pachayat land under Section 5(1-A) of the 1961 Act and the gift under Section 5(1-A) of the 1961 Act requires prior sanction of the State Government which was never taken by the defendant No.10 before executing the gift in favour of defendants No.1 to 9. No such prior sanction has been proved on record. Therefore, gift deed No.1100 made in the year 1993 by defendant No.10 in favour of defendants No.1 to 9 is found to be without prior sanction of the State Government and the same being not executed in favour of Scheduled Castes and Backward Classes, therefore, the gift deed No.1100 is found to be in utter disregard to the mandatory provisions of law and is declared to be illegal, null and void.

[16]. Both the Courts below have concurrently held under issues No.1 and 2 that the plaintiffs are entitled to declaration to the effect that defendants had no right, title or interest in the suit land and the gift deed is not binding upon the rights of the plaintiff. Mandatory injunction has also been granted in favour of the plaintiffs under issue No.3, directing the defendants to remove encroachments over the suit land. Gram Panchayat is found to be true owner of the suit land and defendants No.1 to 9 have no right, title or interest in the same.

[17]. The suit has been rightly held maintainable as the *lis* is primarily between the individuals and is not related to any

concept of vesting of land in Panchayat as *shamlat deh*. The ultimate presumption is that the land is *shamlat deh* land and there is no dispute with regard to its vesting. It is thereafter the violation with which the land was allotted in favour of defendants No.1 to 9, became the subject matter of challenge and has been answered by both the Courts below.

[18]. Other issues were also decided correctly by the trial Court and has been rightly upheld by the lower Appellate Court.

[19]. In view of findings recorded by the Courts below, the question of law as framed by the appellants do not arise inasmuch as that the jurisdiction of the civil Court is not barred in view of the fact that the *lis* is between the private parties and vesting of land in Panchayat as *shamlat deh* is not involved. Therefore, in view of Division Bench judgment of this Court in **Bhagu & Ors. vs. Ram Sarup & Anr., 1985 PLJ 366** jurisdiction of civil Court is not barred. Suit is maintainable and is not barred by limitation in any manner.

[20]. Question No.(iv) and (v) do not arise at all as the findings recorded by the Courts below are based on evidence. There is mandatory non-compliance of the provision of the 1961 Act and Rules framed thereunder in the year 1964. The gift was executed in favour of members of general category in utter violation of the mandatory rules. The gift was not preceded by

any prior sanction of the State Government.

[21]. Since the gift was held to be without jurisdiction, illegal, null and void, therefore, suit has been rightly decreed and no question worth consideration is involved in the present appeal, consequently the appeal is dismissed.

December 02, 2015

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**(RAJ MOHAN SINGH)
JUDGE**