

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

RSA No.248 of 2015(O&M)
Date of decision: 21.01.2015

Kamaljeet

...Appellant

Versus

Kuldip Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. YP Singla, Advocate for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 27.02.2012. Appeal preferred against the said decree failed and was dismissed on 17.12.2014. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff-Kamaljeet, he prayed for a declaration that he and defendant No.1 were joint owners in possession of house No.169, B-III, near Forest Colony, Main (Upper) Bazar, Pinjore, comprised in khasra No.608/207 (0-9) and 208 (0-12). And the registered gift deed dated 15.04.1991, alleged to have been executed by his father Des Raj, in favour of defendant No.1, was null and void.

Consequently, mutation that was sanctioned on the basis of the said deed, in favour of defendant No.1, was also liable to be cancelled. By way of consequential relief, a decree for injunction was also claimed, restraining defendants from causing dispossession of the plaintiff and his family from the suit property i.e. joint dwelling house unless the same was partitioned by metes and bounds. It was averred that father of the plaintiff and defendant No.1 i.e. late Des Raj, was a co-owner in possession qua his share of a land comprised in khasra Nos.608/27(0-9) and 208(0-2). He constructed a residential house on part of the suit land and rest was kept vacant. As Des Raj died on 08.03.1998, post his death all his properties were inherited by plaintiff and defendant No.1 in equal shares. For the last few months, relations between plaintiff and defendant No.1 were not good and defendant No.1 even threatened to alienate the house in question, purporting himself to be the exclusive owner, pursuant to a registered gift deed dated 15.04.1991. It was maintained that gift deed was null and void, as defendant No.1, being minor at the time of execution of the gift deed, could not accept the gift. And defendant No.1 could not alienate the suit property without there being any partition and since, plaintiff apprehended forcible dispossession, thus, the suit.

In defence, it was pleaded, inter alia, that defendant No.1 was indeed the owner in possession of the house in

question, pursuant to a gift deed dated 15.04.1991, executed by his father, who happened to be the exclusive owner thereof. It was averred that date of birth of defendant No.1 was 28.10.1972. And thus, on the date of execution of the gift deed, he was major and competent to accept the gift. However, at the time of death of Des Raj, plaintiff was minor, but five months thereafter plaintiff became major and it was well within his knowledge that the suit property has been bequeathed in favour of defendant No.1. In fact, pursuant to a family decision, plaintiff got a job on the demise of his father, since defendant No.1 had already been bequeathed the suit property vide a gift deed dated 15.04.1991. Though, plaintiff continued to reside in the house of defendant No.1, but his possession was always permissive. On the death of their mother, in the year 2007, defendant No.1 executed a sale deed dated 30.04.2007, in favour of defendant No.2. Accordingly, possession of half share of the house was delivered to defendant No.2 and in the rest half share plaintiff continued to be in permissive possession. Defendant No.1, therefore, had every right to get the same vacated from the plaintiff.

In a separate written statement, filed by defendant No.2, it was averred that he had purchased the suit property from defendant No.1, who happened to be its absolute owner, pursuant to a sale deed No.341 dated 30.04.2007.

On a consideration of the matter in issue and the evidence on record, both the courts below found that the suit property could not be claimed as ancestral by the plaintiff in the absence of any plea. Thus, no evidence in this regard could be looked into. Even otherwise, to prove that the suit property was ancestral and coparcenary, plaintiff was required to prove a pedigree table but he failed to adduce any such evidence. And testimony of Jawala Ram Patwari (PW1) revealed that the suit land upon which the house in question was constructed, was earlier owned by Bahadur Singh, great grandfather of the father of the plaintiff. And as per mutation No.1659 (Ex.P2), Amar Singh, grandfather of the plaintiff, inherited the same pursuant to an unregistered will dated 07.05.1982, qua the share owned by Bahadur Singh. Further, records showed that Bahadur Singh had two sons and two daughters, and if at all his property had devolved upon by natural succession, the same would have been inherited by his legal heirs, but as the same was transferred in favour of Amar Singh alone, pursuant to a will, the same ceased to be ancestral in the hands of Amar Singh i.e. grandfather of the plaintiff. Accordingly, if after Amar Singh the property was inherited by father of the plaintiff, vide mutation No.1660, it could not be said to be an ancestral in the hands of Des Raj. Thus, Des Raj was fully competent to alienate the same in any manner. As regards the plea, that defendant No.1 being minor

at the time of execution of the gift deed, was incompetent to accept the gift, it was observed that the essential characteristic of a valid gift are: (i) donor and donee; (ii) subject matter should be certain existing property; (iii) its voluntary character; (iv) it transfer on the part of the donor; (v) its acceptance by the donee during the life time of the donor; (vi) in case of immoveable property, a registered instrument is necessary. Accordingly, it was concluded that since all the essential ingredients of a valid gift exist, the gift deed dated 15.04.1991, executed by late Des Raj, was valid.

Plea, that gift deed was got executed by defendant by way of fraud, remained unsubstantiated. Further, as per plaintiff himself defendant No.1 was minor at the time of execution of the gift deed. Defendant No.2 had purchased the suit property for a consideration. And this was not the case of plaintiff, that in the record of rights, defendant No.1 alone was not shown to be the exclusive owner of the suit property. By just being in possession of part of the joint property, plaintiff could not claim himself to be the owner and defeat the rights of defendant No.2. Particularly, when plaintiff never assailed the sale deed in favour of defendant No.2.

As regards the plea, that defendant No.1 being minor at the time of execution of the gift deed, was incompetent to accept the gift, on a comprehensive reference to the provisions of Sections 122, 123, 126 & 127 of the

Transfer of Property Act, 1882, it was observed by the first appellate court that in so far as the rights of a minor to enter into a contract, he suffered from certain specific disabilities as envisaged under Section 11 of the Contract Act, but he is not incapable of acquiring any property under the Transfer of Property Act. Thus, a minor could take a property by way of gift even from his father. And as required under Section 127, such acceptance of a gift could be made by minor himself or by someone on his behalf.

In reference to the decision of Hon'ble the Supreme Court in **K. Balakrishnan v. K. Kamalam and others, AIR 2004 Supreme Court 1257**, it was observed that the Hon'ble Supreme Court, on a consideration of the necessary provisions regarding validity of gift in favour of minor, that was accepted by the minor by signing the gift deed, without delivery of possession at the time of its execution, held that where a gift is made in favour of a child of the donor, who happened to be his guardian, acceptance of gift could be presumed to have been made by him or on his behalf without any overt act signifying acceptance by the minor and where the donee was an educated lad of 16 years of age, capable of understanding and living jointly with the donor, such acceptance would be derived in normal circumstances and even if the donee has not got actual possession as donor continued to live in the property and even if the mutation is not sanctioned ever after attaining

majority or otherwise, are not material circumstances going to show that the gift is not valid or acceptance by the minor was not valid providing gift could be repudiated and revoked.

Accordingly, it was concluded that in the matter in hand, gift deed was signed by defendant No.1 on 15.04.1991, and even if it was assumed that defendant No.1 was minor being born in the year 1974, he was more than 17 years of age at the time of execution of gift deed by his father, and if it is signed by him in token of its acceptance, it would not make the gift invalid. Further, plaintiff admitted in his statement that he came to know of the gift deed immediately after its execution and also when his father died in 1998. Thus, it was concluded that cause of action to assail the gift deed, arose in favour of the plaintiff first in the year 1991. And thereafter in 1998, when his father died. However, he filed the present suit after 17 years. Therefore, the suit was even barred by time. Resultantly, suit and thereafter even the appeal filed by the plaintiff were dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiff to succeed, he was required to prove that the property in the hands of his father, namely, Des Raj, was ancestral and coparcenary. And, therefore, he had no authority to execute a gift deed dated 15.04.1991, in favour of defendant No.1. Plaintiff failed to set out a specific plea in this regard and nothing was brought on record to prove that the suit property was ancestral in the hands of Des Raj. Even otherwise, the suit property was inherited by Amar Singh, grandfather of the plaintiff, pursuant to an unregistered will dated 07.05.1982, and was inherited by father of the plaintiff i.e. Des Raj from Amar Singh. Thus, it will not be coparcenary and ancestral property in the hands of Des Raj being not inherited through fourth generation in continuous inheritance. Thus, Des Raj could always gift it being his personal property. Nothing was brought on record to show that gift deed dated 15.04.1991 (Ex.P12), was a forged document or obtained by defendant No.1 by playing fraud upon his father Des Raj. Suffice it to say, the essential characteristics that constitute a valid gift are: (i) the absence of consideration; (ii) the donor; (iii) the donee; (iv) the subject matter; (v) the transfer; and (vi) the acceptance, were found to have been proved. Concededly,

gift deed was signed by defendant No.1 at the time of its execution on 15.04.1991. Even if it is assumed that he was a minor at that time, he being more than 17 years of age, signed the deed in token of its acceptance. Donar happened to be the father of the defendant No.1. Thus, acceptance of the gift could be presumed to have been made by defendant himself or on his behalf by Des Raj. Concededly, execution of the gift deed dated 15.04.1991, was in the knowledge of the plaintiff, the day it was executed. In the record of rights, defendant No.1 alone was shown to be the owner of the suit property. Plaintiff never questioned the gift deed for a period of 17 years, as the suit was filed on 23.04.2008. So much so, father of the plaintiff and defendant No.1 i.e. Des Raj died on 08.03.1998, yet plaintiff never questioned the title of defendant No.1. Plaintiff could file a suit within three years, at least from the date of death of his father i.e. till 2001. But he did not. Therefore, the suit was rightly held to be barred by time.

Learned counsel for the appellant could not point out as to how the conclusions that have concurrently been recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law,

arises for consideration. Appeal being devoid of merit is,
accordingly, dismissed.

January 21, 2015
Rajan

(Arun Palli)
Judge