

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

Regular Second Appeal No.1687 of 2014 (O&M)

Date of decision: **11** .09.2015

Paramjit Kaur

... Appellant

versus

Smt. Tej Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ravi Kheewa, Advocate,
for Mr.Yowan Sharma, Advocate,
for the appellant.

K.Kannan, J.

CM No.4143-C of 2014

1. For the reasons stated in the applications, delay in filing and filing the appeal is condoned.

Applications stand disposed of.

Regular Second Appeal No.1687 of 2014

1. The appeal is at the instance of the 3rd defendant. The plaintiff is the mother of the defendants 1 to 3. The plaintiff filed a suit to contend that the gift deed executed by her in favour of the defendants 1 and 2 on 01.10.2001 was obtained by practice of misrepresentation and not binding on her. The contention of the plaintiff was that defendants 1 and 2 and their husbands duped her saying that she was being taken for medical treatment when she had low vision and suffering from loss of memory. However, the defendants 1 and 2 took her thumb-impressions to secure a

document of gift. She came to know about the fraud practised only just before the institution of suit about 2 years after the execution of the gift deed. The defendants 1 and 2 contended that the document was executed voluntarily by the mother and no fraud had been practised. The 3rd defendant appeared in person at the trial but did not make any specific contest. The 4th defendant was the 3rd defendant's husband.

2. It would appear from the course of trial that the defendants 3 and 4 were favourably disposed of towards the plaintiff. The plaintiff herself would state that only the defendants 3 and 4 were protecting her and the 4th the defendant himself was her power of attorney. The trial court found from the examination of the plaintiff in court that although she suffered from low vision, she was cogent in her evidence. The court disbelieved the version that she was duped into executing the document. Her plea that the document was void or that it had been vitiated by fraud was hard to believe. The appellate court confirmed the decision finding nothing amiss in the conduct of the defendants 1 and 2 to suspect that they were guilty of securing a gift from the mother by misrepresentation.

3. At the stage of 2nd appeal, I find that although it was instituted in February 2014, there have been persistent pleas for adjournment. On the last date of hearing on 27.08.2005, the counsel for the appellant had sought an adjournment. I declined the same. It

is always the duty of the High Court to examine if the 2nd appeal involves any substantial question of law for consideration. I have examined the records and I have proceeded to pass the following order.

4. I must observe the appeal itself is not competent. If the mother had filed a suit to have the gift deed set-aside, then the only person who could treat herself as aggrieved is the mother. She had filed the suit and the suit was dismissed. She preferred the appeal and the appeal was also dismissed. If there was any grievance against the judgement, it is only the mother who could have preferred the appeal. In this case the 3rd defendant is before this court contending that the findings of the courts below are erroneous. There is nothing brought on record to show that the mother had executed any document transferring an interest in the property to the 3rd defendant or constituted her as a power of attorney to enable her to canvass on her behalf. The appellant herself has no subsisting interest in the property to clamour for any right or seek for setting aside the judgements rendered by the courts below.

5. I have seen through the grounds of appeal. She would contend that only the scribe and the witness have been examined and another witness has not been examined. There is no compulsion for the person propounding a document to examine both the witnesses. The document is required to be attested as per law. It is sufficient

that at least one attesting witness is examined in court as per the requirement of Section 68 of the Indian Evidence Act. The only point in such a situation would be that one witness must speak about the attestation of not only himself or herself but shall also be of the other witness. The court found that there was cogent evidence of the scribe and the witnesses to vouch for the genuineness of execution and attestation.

6. There is also a ground of appeal urged that there is no reference to the donor as having purchased the stamp papers. There is also no proof that she had incurred expenses for registration. I do not think that it is necessary in law that the stamp papers must be purchased in the name of the donor or she must have paid the registration expenses. It is fully competent for a person who is a benefited under the document to purchase the stamps in his/her name and also submit it for registration before the registering officer. There is also a contention in the grounds of appeal that the witness spoke about the thumb impression of the executant mother but the thumb impression was not found in the document but only a signature was. I do not think this discrepancy as of any consequence since it is an admitted fact that the document was executed by the plaintiff herself but according to her it was brought about by misrepresentation regarding the nature document. There is also a contention that the respective husbands of the defendants 1 and 2

were not examined. I do not think there is any compulsion for the husbands to be examined when the defendants 1 and 2 themselves were examined.

7. I have merely outlined the several grounds of the appeal to examine whether there is any point made for admission of appeal. There exists simply none. That apart, the appeal itself is not maintainable at the instance of the 3rd defendant who has no subsisting interest in the property.

8. There exists no substantial question of law for consideration. The second appeal is dismissed.

(K.KANNAN)
JUDGE

11.09.2015

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