

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

RSA No.2079 of 2014 (O&M)

1)

Indraj Singh and others

.....Appellants

Versus

Sarjeet and others

.....Respondents

RSA No.2640 of 2014 (O&M)

2)

Indraj Singh and others

.....Appellants

Versus

Bharto and others

.....Respondents

Date of Decision: 15.07.2015

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- | | |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. R.A.Sheoran, Advocate,
for appellants.

SHEKHER DHAWAN, J

Both the present Regular Second Appeals are against concurrent findings of Courts below whereby suit of plaintiff for declaration and permanent injunction were dismissed.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of the present appeal that Shamu @ Shayam Lal was the common ancestor. He had six sons; one son Chandra had gone in adoption in the year 1920 to one Sheokaran. Chandra used to live there as adopted son of Sheokaran and he had no interest in the property of Shamu. The Court of first instance after appreciating the evidence returned the findings that impugned gift deed No.110 dated 08.06.1979 and mutation No.568 dated 26.09.2000 were null and void against the rights of plaintiff and proforma defendants. Consequently proforma defendants along with contesting defendants were declared co-owners in possession of 1/6th share of Chandra by way of succession. The findings were returned by the Courts below on the basis of oral as well as documentary evidence that there was no family partition and the total land measuring 24 kanals 15 marlas was owned by six co-sharer. Court of first instance placed reliance upon cross-examination of PW-1 on this point whereby this fact was admitted by him that there was no document regarding partition and the same was not incorporated in the revenue record. Claim was also raised on the basis of alleged Will of Chandra but the same was not proved.

4. The said findings of fact were confirmed by Court of first appeal in its judgment dated 06.02.2014. Court of first appeal also observed that there was no document regarding transfer of possession in favour of donees Amar Singh, Indraj Singh, Subhash and Rawat Singh at the time of execution of alleged gift deed dated 08.06.1979 (Exhibit DW-1/B). Relevant *jamabandies* Exhibit D-12 (1978-79), Exhibit D-13 (1983-84), Exhibit D-14 (1988-89), Exhibit D-15 (1993-94) do not reflect the possession of donees Amar Singh, Indraj Singh, Subhash and Rawat Singh

on the share of Chandra. The delivery of possession is certainly an essential ingredient to prove its acceptance by the donee which has not been proved before the Courts below.

5. Learned counsel for the appellant also taken the plea that application for additional evidence was filed before the Court of first appeal and the same was not allowed. However the Court of first appeal has dealt with acceptance of application for additional evidence and rightly came to the conclusion that admittedly there was no pleadings of the donees Indraj Singh, Amar Singh, Subhash and Rawat Singh that the gift deed was signed by Subhash, one of the donees in token of its acceptance and in absence of any pleadings on behalf of defendants that Subhash one of the donee had signed the gift deed Exhibit DW-1/B in token of its acceptance, no such evidence could be led on the file by way of additional evidence.

6. In view of the above, both the Courts below have recorded the concurrent findings based on facts and evidence available on file and there are no ground to interfere and set aside the said findings.

7. There is absolutely no substantial question of law involved in this case. In view of law laid down by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., JT 2001(2) SC 407**, present Regular Second Appeals are not maintainable.

8. In view of the above, both Regular Second Appeals stands dismissed.

(SHEKHER DHAWAN)
JUDGE

July 15, 2015

msd