

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

-:-

**R.S.A No. 3364 of 2014 (O&M)
Decided on : February 11, 2015**

Smt. Ankaur

... Appellant

Versus

Bhagmal

... Respondent

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Gorakh Nath, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Civil Suit No.368 of 2005 brought by the appellant to challenge gift deed dated 27.08.2003, Exhibit P-1, having been dismissed by learned Civil Judge (Junior Division), Mohindergarh, vide judgment/decreed dated March 20, 2010, she preferred Civil Appeal No.93 RT of 2010 which too has been dismissed by learned Additional District Judge, Narnaul, vide judgment/decreed dated January 04, 2014. To challenge judgment/decreed dated January 04, 2014, appellant is now in regular second appeal.

The appeal is barred by time as regards refiling but I have heard the learned counsel for the appellant on merits.

Learned counsel for the appellant argues that evidence adduced by the appellant clearly establishes that gift deed, Exhibit P1, was got executed from her by the respondent by playing a fraud taking undue advantage of her illiteracy and her relationship with the respondent but the

learned Courts below have failed to take note of this very material aspect of

the case.

As against appellant's plea in the plaint that the defendant/respondent, who happens to be her son, took her to the Court premises and took her thumb impressions on the gift deed by misrepresenting that it was required for the purpose of devolution of one third share in the suit property, respondent had pleaded in the written statement that she came to the Court premises of her own, purchased the requisite stamp papers, got the gift deed scribed by Gurdayal Sharma, deed writer, and thumb marked it in the presence of Ranbir and Subhash Chand after contents of the gift deed were read over to, and understood by, her.

Issues were framed, evidence was received and parties were heard. However, as aforesaid, appellant did not succeed in her suit and appeal.

Respondent, to prove due execution of the gift deed, Exhibit P1, has examined deed writer Gurdayal Sharma (DW1), Subhash Chand, an attesting witness of the gift deed as DW3 and Sub-Registrar Mahender Singh as DW2, besides appearing himself as DW4 to prove delivery of possession of the suit property to him. The appellant, on the other side, has failed to plead and prove the circumstances of fraud even though she was required to specifically plead such circumstances and then to prove them beyond reasonable doubt. She has rather admitted to have accompanied the respondent to the Court premises and to have put her thumb marks on the gift deed. It has also come on record that the appellant earlier executed a Will, Exhibit P5, in favour of Raj Bala but later cancelled it vide deed of

cancellation, Exhibit P-6, which shows that she is in the habit of making and breaking bequeathments at will. Learned counsel has not been able to show how the findings recorded by the Courts below are wrong and what substantial question of law is involved in this appeal.

As a consequence, the appeal fails and is dismissed in limine.

February 11, 2015
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[Mahavir S. Chauhan]
Judge