

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.232 of 2010 (O&M)

Date of Decision: November 30, 2016

Mohd.Zamil

...Appellant

Versus

Abdul Hameed & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ashok Bhardwaj, Advocate,
for the appellant.

Mr.Amarjit Markan, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby his suit decreed by the trial Court, has been dismissed.

Mr.Ashok Bhardwaj, learned counsel for the appellant-plaintiff submits that the respondent-defendants have not been able to prove the sale deed dated 8.2.1991 as no witness of the same has been examined. Kudrat Ali had entered into an oral gift in favour of the appellant-plaintiff on 14.1.1990 and the writing to this effect was effected on 26.9.1996 and, therefore, he had no salable right or interest and could not have sold the property on 8.2.1991. Kudrat Ali had great love and affection with the appellant and in this background, the gift was made. Before the trial Court, the defendants failed to prove record of the case, much less possession. It is only in 1996, the defendants started threatening, therefore, the suit

aforementioned was filed. The writing had been proved by leading oral and documentary evidence. Respondent No.1 has also appeared in the witness box to prove the same and, thus, failed to comply with the requirement of Section 68 of the Indian Evidence Act and, thus, urges this Court for setting-aside of the impugned judgment and decree. He further submitted by taking aid of provisions of Order 41 Rule 27 CPC that effort was made to prove voter list.

Per contra, Mr.Amarjit Markan, learned counsel for respondent No.1 submits that the sale deed carries a presumption of truth and the defendant himself is a signatory to the same, thus, the requirement of law, i.e., Section 68 of the Indian Evidence Act has been complied with. In support of his contention, relies upon the ratio decidendi culled out by this Court in **Jasvir Singh Versus Mohan Singh and others, 2010 (3) R.C.R. (Civil) 654**. In fact, the oral gift has not been proved and the writing was an afterthought in order to take away the valuable right of the defendants. Writing could not have been done as Kudrat Ali was not having any title, right and interest in the property and, therefore, the findings are perfectly legal and justified.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Bhardwaj, for, the oral gift has not been proved, whereas the writing, if at all proved, would pale into insignificance in view of the fact that Kudrat Ali had already passed on the title on 8.2.1991 in favour of his two sons, i.e., Abdul Hamid and Abdul Majid and the plaintiff is the son of Abdul Majid. Registration certificate issued by the Registrar is admissible for the purpose of proving the document and this fact has been

reiterated in the judgment referred supra.

There is no force in the submission of Mr.Bhardwaj regarding production of some voter list along with the application for additional evidence. No explanation has come forth that despite exercise of due diligence, the aforementioned evidence was not in the knowledge. Having failed to do so, the Lower Appellate Court has rightly dismissed the suit.

There is another aspect of the matter. On the date of the alleged oral gift, plaintiff was minor and in this background of the matter, an application under Order 41 Rule 27 CPC has been moved to prove the birth certificate and as well as voter list. Getting registered the birth after 15.6.1971 would not carry presumption of truth. It is too late in a day to prove the same by way of additional evidence.

In my view, the findings rendered by the Lower Appellate Court are perfectly legal and justified. No interference is called out.

Appeal stands dismissed.

November 30, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No