

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

RSA No.4009 of 2011 (O&M)

Date of decision : 20.05.2016

Gurinder Singh and another

...Appellants

Versus

Harinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Vijay Sharma, Advocate for the appellants.

Mr. Rakesh Gupta, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.11542-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 25 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The appellants-plaintiffs are aggrieved of the dismissal of the suit seeking declaration and separate possession by way of partition in respect of following suit property as well as challenge to the gift deeds:-

“Amended suit for declaration to the effect that the four gift deeds dated 28.01.1977 executed by Major Chanan

Singh in favour of defendants No.1 to 3 and Smt. Balbir Kaur, pre decesor-in-interest of defendants at Sr. No.4 are null and void, illegal, ignorable, nor nest and are paper transactions:-

i) To the extent of 3 ½ /5 share of the plaintiff and defendant No.5 in house and vacant lands situated near Mohindera college, Samania Gate, Patiala and bounded as under:-

North: Street

South: Vacant land of plaintiffs and defendant No.5.

East: House of Hans Raj and Daya Wanti

West: Mohindera College premises.

Shown and marked by the letters ALDK in the site plan attached.

ii) To the extent of 1/5 share of the plaintiffs and defendant No.5 in shops No.3226, 3227, Rahdari between shops No.3223 and 3224 and the court yard attach back of the shop No.3224 and 3227 situated inside Sheran wala Gate, Patiala and suit for account.”

Mr. Vijay Sharma, learned counsel appearing on behalf of appellants submits that Major Chanan Singh had four daughters and one son Ranbir Singh. Appellant-plaintiffs are sons of Ranbir Singh whereas defendant No.5 is widow of Ranbir Singh. Rest of the defendants are the daughter of Major Chanan Singh. Property at the hands of Major Chanan Singh was ancestral. Property was purchased out of the funds of joint family property as he originally owned the land at Village Khiwa Khurd and after selling of the land had purchased the land at Village Kheri Gujran. Said land was acquired and in acquisition proceedings reached to this Hon'ble Court regarding determination of the shares of the legal representatives, wherein, it has been found that in the wealth tax returns and income tax returns of Major Chanan Singh had shown the property as ancestral. Both the aforementioned evidence

could not be led before the Courts below. However application under Order 41 Rule 27 in this Court has been filed to bring on record and this Court after noticing the same, issued notice of motion. Once it is established on record that property at the hands of Major Chanan Singh had been purchased out of joint family funds, therefore, he could not have gifted the property vide four gift deeds in favour of the daughters in respect of property situated in Samania Gate and Sherawala gate, Patiala. Amendment was also sought and even gift deed was also challenged and thus urges this Court for formulation of substantial questions of law as culled out in memorandum of appeal.

Mr. Rakesh Gupta, learned counsel appearing on behalf of respondents-defendants submits that donees of Major Chanan Singh instituted the suit for getting the possession of the property against Balbir Kaur wife of Ranbir Singh son of Major Chanan Singh and in those proceedings also, wealth tax returns and income tax returns of Chanan Singh were relied but the same were negated and ultimately it was found it to be a self-acquired property of Major Chanan Singh. Even gift deeds are registered and plaintiffs have not been able to prove its genuinity and authenticity. While filing the reply to the application under Order 41 Rule 27 CPC, annexed the copy of the order of Hon'ble Supreme Court passed in SLP No.14080-81 of 2014 (Annexure R-1) and copy of order passed in RSA No.1355 of 1988 titled as Balbir Kaur and others Vs. Chanan Singh and others (Annexure R-2). Even wife of Ranbir Singh i.e. Balbir Kaur instituted a suit for permanent injunction and same was also dismissed and urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit or force in submission in the

plea of Mr. Sharma as Wealth Tax Returns and Income Tax Returns had not been placed on record before the Courts below. Even taken on record by way of additional evidence does not reflect the suit property to be of joint family property as all the income tax returns and wealth tax returns are in individual capacity of Major Chanan Singh. In the findings rendered in respect of the land acquired under the Land Acquisition Act, distribution of compensation was in respect of property situated in Village which has nothing to do with two properties i.e. subject matter of suit property.

In my view, appellants-plaintiffs have miserably failed to prove that the suit property had been purchased by Major Chanan Singh out of the joint family funds, much less, ancestral at their hands. There is no direct, cogent and corroborative evidence, brought on record in this regard. Gift deed had attained finality up to the Hon'ble Supreme Court as per the Annexures R-1 and R-3 and rightly so, Courts below after discussing the oral and documentary evidence found that plaintiffs have failed to discharge the onus.

For the foregoing reasons, no ground for interference is made out, much less, no substantial questions of law arises for determination.

Judgment and decree of both the courts below are affirmed.

Suit stands dismissed.

Resultantly, RSA is dismissed.

20.05.2016

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(AMIT RAWAL)
JUDGE