

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

RSA No.4425 of 2011 (O&M)

Date of Decision.01.11.2016

Gurmail Singh and another

.....Appellants

Vs

Smt. Manjeet Kaur and others

.....Respondents

2. RSA No.4426 of 2011 (O&M)

Gurmail Singh and another

.....Appellants

Vs

Smt. Manjeet Kaur and another

.....Respondents

Present: Mr. Arun Jain, Senior Advocate with
Mr. Arjun Veer Sharma, Advocate
for the appellants.

Ms. Rupinder Kaur Thind, Advocate
for respondent No.1.

Ms. Sukhpreet Grewal, Advocate for
Mr. Sandeep Khunger, Advocate
for respondent No.27 in RSA No.4425 of 2011.

Ms. Arti Gupta, Advocate
for respondent Nos.2, 3, 4, 11, 17 to 211 in in RSA No.4425 of
2011.

Mr. Yogesh Putney, Advocate
for respondent Nos.7 and 8 in RSA No.4425 of 2011.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

The order of mine shall dispose of two regular second appeal bearing Nos.4425 and 4426 of 2011. In both the appeals, the appellants-plaintiffs are aggrieved of the concurrent finding of fact rendered by both the Courts below.

of 31.1.1996 whereby the suit of the appellants-plaintiffs seeking declaration that the plaintiffs continued to be owners in possession of agricultural land measuring 112 kanals 14 marlas situated in the revenue estate of Talwandi Bhai, Tehsil Ferozepur, agricultural land 29 kanals 10 marlas situated in revenue estate of village Haraj, Tehsil and District Ferozepur and three shops, a room, a stair case, *rasta* of a building situated at bus stand, Talwandi Bhai as shown in red colour in the site plan attached as (Annexure P-3) and the alienation made by sale deed given in Annexure P-4 attached to the plaint being illegal, void and inoperative against the rights of the plaintiffs with consequential relief of permanent injunction restraining the defendants from alienating any part of the suit land and from raising any construction thereon to destroy the identity of the property, has been dismissed by both the Courts below.

The latter second appeal is arising out of Civil Suit No.278-1 of 19.08.1998 whereby the suit of the appellants-plaintiffs seeking declaration that notwithstanding anything to the contrary contained in the revenue record and the execution of a Will dated 13.12.1996 alleged to have been executed by Kartar Singh son of Karam Singh in favour of defendants, the appellants-plaintiffs continued to be owners in possession of agricultural land measuring 36 kanals 3 marlas, 250/356 share in 17 kanals 16 marlas of land situated in Talwandi Bhai, Tehsil and District Ferozepur and three shops, a room, stair case, *rasta*, verandah and open land on the ground floor and a *chubara* on the first floor as shown in the site plan situated at bus stand, Talwandi Bhai, as Kartar Singh had no right, title or interest in the property in question and was not competent to execute any Will in respect of this property, with consequential relief of possession of the agricultural

land referred to in Part A and B of the heading of the plaint and for a decree of permanent injunction restraining the defendants from alienating any part of the suit property and for getting the same mutated in their name on the basis of forged and fabricated Will referred to above, has been dismissed by both the Courts below.

The aforementioned suits were consolidated before the trial Court. The case set up by the appellants-plaintiffs before the Courts below was that Kartar Singh son of Karam Singh resident of Talwandi Bhai was serving in Punjab Police and in the year 1983, retired as Sub Inspector. His wife Basant Kaur died in May, 1972 and the plaintiffs are none else but the sons of Kartar Singh. Kartar Singh had another brother Kirpal Singh and both are sons of Karam Singh son of Waryam Singh. Karam Singh had a step brother Jhagar Singh and both are from the same mother but different fathers. Jhagar Singh had two daughters namely Balwant Kaur and Sant Kaur. Inheritance of Balwant Kaur is in dispute. Balwant Kaur was the owner of land measuring 223 kanals 8 marlas. According to the appellants-plaintiffs, Balwant Kaur died on 04.10.1972 as per Ex.P8, death certificate and further submitted that Balwant Kaur during her life time executed a registered Will dated 11.05.1967 bequeathing her entire share in favour of the plaintiffs. On the death of Balwant Kaur, the appellants-plaintiffs became the owners, however, Kartar Singh, defendant No.1, taking undue advantage of his position and influence over the plaintiffs got sanctioned the mutations in his favour on the basis of gift deed dated 19.01.1973 in respect of 60 kanals 14 marals and another gift deed dated 12.09.1973 for 87 kanals 4 marlas.

He further submitted that when Balwant Kaur died in the year

1972, there was no question of executing the aforementioned gift deeds. Thereafter, a dispute arose between the plaintiffs on one hand and defendant No.1 on the other, which was compromised by family settlement on 19.08.1984 and was reduced into writing on 3.9.1984 wherein, Kartar Singh-defendant No.1 admitted the execution of registered Will by Balwant Kaur in favour of plaintiffs on 11.5.1967 and also admitted the date of death of Balwant Kaur as 04.10.1972. He further stated that the aforementioned gift deeds itself were forged and fabricated documents and would continue to retain the property but could not Will away or transfer, much less, fetter away the property. The civil suit in this regard was filed by the appellants-plaintiffs against Kartar Singh on the basis of family settlement in respect of land measuring 74 kanals 17 marlas which was decreed by the trial Court vide judgment and decree dated 5.6.1987.

The dispute arose when Manjit Kaur @ Gurnam Kaur claiming to be wife of Kartar Singh propounded a Will dated 13.12.1996. However, Kartar Singh, during his life time had sold the land measuring 28 kanals of land and the remaining land has been bequeathed in favour of Manjit Kaur @ Gurnam Kaur as other property had already been mutated in favour of the appellants i.e. 74 kanals 17 marlas vide judgment and decree dated 5.6.1987, Ex.P13.

It was further submitted that Kartar Singh remained alive till 08.07.1998 which fact has been proved through the death certificate, Ex.P22. Manjit Kaur @ Gurnam Kaur was married to Chand Singh in the year 1952-53 and from wedlock of Chand Singh she gave birth to Naib Singh, Jarnail Singh, Harjinder Singh and Ajmer Kaur. During the subsistence of 1st marriage, she was already married to one Teja Singh

Chohan from whose loins gave birth to one Baljit Singh and one daughter Kuldeep Kaur. Teja Singh vide Will dated 1.11.1973 transferred his property measuring 7 acres in favour Manjit Kaur @ Gurnam Kaur. Teja Singh died in the year 1974 i.e. on 17.06.1974, which has been proved through death certificate Ex.P23.

PW-5, Ram Parkash stated on record that Manjit Kaur @ Gurnam Kaur was earlier married to Chand Singh @ Harchan Singh. The factum of death certificate of Ex.P8 of Balwant Kaur dated 04.10.1972 has rather been proved by the defendants through the testimony of DW-11, Amarjit Kaur, who stated that there was a complaint with regard to the issuance of registration of the death certificate but the said certificate was found to be genuine. Even the register, Ex.DW11/A has been proved on record but it is not discernible that the entry in the register has been introduced, as entry with regard to the death of Balwant Kaur at Sr. No.25 whereas, with regard to death of some other person namely Sukhchain Singh was also at Sr. No.25.

The decree dated 05.06.1987 has not been challenged by the defendants nor any counter-claim has been set up but the Courts below have disarded the aforementioned decree on the ground that it required registration. The Courts below have erroneously dismissed the suit having been held to be barred by limitation as the suit was filed in 1996 whereas the gift deeds are of the year 1973 and according to the finding of the Courts below. It was in the knowledge of the appellants since 1984, whereas, there is no limitation for claiming inheritance.

He further submits that once the Will of Manjit Kaur @ Gurnam Kaur and gift deeds of Balwant Kaur are found to be illegal and

null and void, the appellants would also be entitled of the land i.e. approximately of 52 kanals 14 marlas i.e. 80 kanals 14 marlas minus 28 kanals. The defendants have failed to believe or lead any evidence to prove that Balwant Kaur died in the year 1975. The Courts below have abdicated in misconstruing and misreading of the revenue record regarding her inheritance where it has been mentioned that she died in the year 1975. Even the death certificate would carry more authenticity than what was recorded by the revenue entries. The family settlement has been discarded by both the Courts below on the ground that Kartar Singh was a police man who could never admit the forgery of the gift deeds as he knew it is an offence, but have failed to appreciate the fact as to background of the family settlement came into existence. The occasion for the appellants to arrive at a settlement arose when they acquired the knowledge that Kartar Singh had two mutation entries in his name which had come to him through the act of Balwant Kaur by executing two gift deeds but when confronted they emphatically denied the same. In fact, Kartar Singh had no right and title or interest in the land as per the gift deeds executed by Balwant Kaur as she was not alive on the date of execution of the aforementioned gift deeds. Original gift deeds have not seen the light of the day as DW1, Manjit Kaur @ Gurnam Kaur admitted that she was in custody of the original gift deeds but in the same breath stated that they have been lost. The appellants have been prevented to compare the signatures of Balwant Kaur who alleged to have impersonated her as she was not alive in the year 1973 and adverse inference was liable to be drawn. The scribe of the family settlement Amar Singh PW1 and as well as witnesses have deposed in the cross-examination that it was Kartar Singh who had called upon them and not the appellants,

therefore, the plea of the defendants cannot even remotely be considered, thus, urges this Court for setting aside the judgments and decrees rendered by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

Per contra, Ms. Rupinder Thind, learned counsel appearing for respondent No.1 submits that Kartar Singh died in the year 1998 whereas the present suit has been filed in the year 1996 and in written statement filed, denied the family settlement as well as other things. During his life time even he also executed a gift deed dated 06.01.1992 and sale deed dated 23.06.1994. The suit has been held to be barred by limitation as it was in their knowledge with regard to gift deed from the year 1984 but did not challenge the same all these years till the filing of the suit in the year 1996. The appellants-plaintiffs have been harping on the written statement filed in the civil suit filed by Kartar Singh but have not noticed the fact that he has denied everything rather it has been specifically denied that he even hired/engaged the service of the advocate who filed the written Statement.

Gamdoor Singh had not examined. The ink used in making of the entry regarding the death of Balwant Kaur was found to be comparatively fresh to the entry immediately recorded. Entry at Serial No.25 was of a different handwriting and ink. The person, who allegedly made the entry was not in service at that point of time i.e. in the office of Municipal Corporation, Talwandi Bhai.

The family settlement created a right for the first time and therefore, it required registration. In fact, Kartar Singh had relinquished the right in the aforementioned property and relinquishment always require registration. The gift deeds, Ex.P9 and P10, are registered documents and

therefore, carry presumption of truth being 30 years old document.

In order to prove the Will dated 13.12.1996, Ex.D4, the defendants examined Dial Singh, one of the attesting witnesses, who deposed in terms of the provisions of Section 63(c) of the Indian Succession Act. Even in the compromise, there is a reference that Kartar Singh had brought Manjit Kaur at his home, thus, urges this Court for confirming the findings rendered by both the Courts below.

In rebuttal, Mr. Arun Jain, learned Senior Counsel submits that the finding of the Courts below with regard to taking into account the gift deeds, Ex.P-9 and P-10 being 30 years old documents, is not only perverse but also fallacious as the originals have not seen the light of the day. Presumption could have been drawn under Section 90 of the Indian Evidence Act, had the originals been brought on record.

In support of his contentions, he relied upon judgment of this Court regarding the authenticity of death certificate as per the provisions of Section 35 of the Indian Evidence Act i.e. **Harnam Singh Vs. Gurbax Singh 1997(3) RCR (Civil) 257.** With regard to his contention that the consent decree cannot be challenged on the ground of non-registration, he relied upon ratio decidendi culled out from the judgment of this Court in **Parveen Kumar Vs. Shiv Ram alias Sheo Ram 2000(1) RCR (Civil) 122.** In similar lines, he relied upon judgment of this Court in **Rajjo Vs. Jawahar Singh 2007(1) RCR (Civil) 246.**

I have heard 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. Jain, learned Senior Counsel for granting the declaratory relief by holding the gift deeds as null and void, for, the appellants-plaintiffs had

acquired the knowledge of the memorandum of settlement dated 19.08.1984 which was reduced into writing on 03.09.1984, copy of the same has been attached as Annexure A-1 wherein there is reference to the aforementioned gift deeds. Once the gift deeds were in their knowledge, nothing prevented them to challenge the same. Mentioning the Will to be fraud and fabricated by Kartar Singh would not declare the registered document as nugatory. The institution of the suit filed in the year 1996, ex facie, was barred by limitation.

As regards the Will dated 13.12.1996, the same has been proved in accordance with law. A valuable right has accrued in favour of third parties who have purchased the land in parcels i.e. 28 kanals, out of the total land. Even the said sale deed could not have been set aside as third party rights have been created in their favour.

As regards the plea of execution of the gift deeds aforementioned, that Balwant Kaur could not have executed the same cannot be accepted, for, if she died on 04.10.1972 as per Ex.P8 but the fact remains that the register Ex.DW11/A revealed that there were two entries at Sr. No.25, one is relating to Sukhchain Singh and another of deceased Balwant Kaur and the information submitted to the authorities is by none else but Gamdoor Singh who had not been examined. A different ink has been used *viz-a-viz* the other entry made at Sr. No.25 and the person who alleged to have made the entry in the register was not in service at the relevant point of time, in essence, the death certificate dated 14.10.1972 has not been proved, therefore, it would not carry presumption as per the provisions of Section 35 of the Indian Evidence Act. It has come on record that Gamdoor Singh, appellant, produced the registered Will dated

11.05.1967 before the Halqa Patwari and stated that Balwant Kaur had expired two months ago and he along with Gurmail Singh entitled to equal share. If it is so then how as per the rapat, she died in the month of May, 1975 i.e. *rapat roznamcha wakiati* and mutation No.6339, Ex.P21, in respect of the property of Balwant Kaur in favour of the appellants on the basis of registered Will was sanctioned. The aforementioned order was passed in the presence of Gurmail Singh who was identified by Gurbachan Singh.

In view of the aforementioned, it cannot be said that gift deeds were fabricated. Once the gift deeds had been held to be genuine one then Kartar Singh had inherited the property as per the gift deeds and had executed the Will in favour of Manjit Kaur.

In my view, the findings rendered by the lower Appellate Court are perfectly legal and justified as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. Both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 01, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No