

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

RSA-4669-2012 (O&M)

Date of decision: 04.03.2016

Gafooran and others

...Appellant(s)

Versus

Ahmed Din and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Mohd. Salim, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

CM-12984-C-2012

Heard.

Keeping in view the facts and circumstances reflected in the application, which is duly supported by sworn affidavit, delay of 50 days in re-filing the appeal is condoned.

Main case

The instant regular second appeal has been preferred against the judgment and decree dated 07.01.2006, passed by learned Addl. Civil Judge (Senior Division), Malerkotla (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellants has

been dismissed; and judgment and decree dated 28.02.2012, passed by learned Additional District Judge, Sangrur (for short, the 'first Appellate Court'), whereby, the appeal preferred against the impugned judgment and decree dated 07.01.2006, of the trial Court, has also been dismissed.

The plaintiff-appellants filed suit for exclusive possession of 3/4th share, by way of partition of the house detailed in the head note of the plaint, which was owned and possessed by Walia, the father of the plaintiff-appellants and maternal grandfather of defendant-respondents. After the death of Walia, the house in question was inherited by Biro, being his widow as well as by the plaintiff-appellants, being sons, and Sadiqan, being daughter. Sadiqan, after her death, left behind defendant-respondent Nos.1 to 6, as her legal heirs. Thus, plaintiff-appellants inherited 3/4th share, being sons of Walia, whereas, defendant-respondents inherited 1/4th share, after the death of their mother, Sadiqan. The appellants claimed legal right to get the house in question partitioned to the extent of their share.

Upon notice, the defendants appeared and filed written statement contesting the suit. It was averred that one Smt. Walaitun Nisha Begum was the original owner of the suit property and she sold the same, through her Attorneys, Mohd. Yasin and Abdul

Razak, to the father of the plaintiff/appellants, Walia, and the father of defendant-respondents, Ismail, in equal shares, for a sale consideration of Rs.280/- vide sale deed dated 22.07.1959. Both of them raised their houses after incurring huge expenditure on the same. Ismail, the father of the defendant-respondents had died about 4/5 years back and after his death, defendant-respondents became owners-in-possession of the suit property to the extent of half share. It was further pleaded that Walia, the father of the plaintiff-appellants, being owner to the extent of half share, made an oral gift deed in favour of his wife, Biro, in the year 1970. The physical possession thereof was handed over to Biro there and then and thus, she became owner of the suit property to the extent of half share. Said Biro sold her share to Sadiqan, the mother of the defendant/respondents for a sale consideration of Rs.40,000/-, which was executed on 15.06.1992. After the death of Sadiqan about one year back, the defendant-respondents became owners-in-possession of her share in equal shares, and thus, became owners-in-possession of the entire suit property. Thereafter, defendant No.1, Ahmed Din; defendant No.3 Hamid; defendant No.5 Salma; and defendant No.6, Shabeeran; made oral gift in favour of Noor Mohd. defendant No.2 and Sheera @ Bashir, defendant No.4, in the presence of respectables and relatives, which the latter

accepted. Now, defendant Nos.2 and 4 are the exclusive owners in possession of the whole disputed property. It was stated that defendant-respondent No.2, Noor Mohd., got installed electric and water connections, in his name, at the suit property.

The learned trial Court, after appreciating the evidence held that the plaintiffs did not have any ownership right in the suit property so, they were not entitled to its partition. Consequently, the suit was dismissed.

Feeling dis-satisfied, the plaintiff-appellants preferred appeal against the judgment and decree of 1st trial Court which was dismissed by the learned first Appellate Court.

Still dis-satisfied, the plaintiff-appellants have approached this Court.

The learned counsel for the appellants contends that both the Courts below have erred in accepting the oral gift made by Walia in favour of his wife Biro. It is further contended that the plaintiffs along with Sadiqan have inherited the suit property in equal shares i.e each party has got 1/4th share, therefore, the plaintiffs have every right to get the suit land partitioned and obtain their 3/4th share.

I have heard learned counsel for the appellants and gone through the case file.

It is a suit for partition filed by the daughters of Walia. The case of the plaintiffs is that they have inherited the property from their father, Walia. The stand taken by the plaintiffs was discarded by both the Courts below. The defendants have proved on record the sale deed dated 22.07.1959 Ex. D7, vide which the suit property was purchased by Walia i.e the father of the plaintiffs and Ismail i.e the father of the defendants in equal shares. Thus, it stood proved on record that the father of the plaintiffs was owner to the extent of half share only and the remaining half share belonged to the father of the defendants. There is a further concurrent finding of fact recorded by both the Courts below that said Walia made an oral gift in favour of his wife Biro in the year 1970 in the presence of three other persons, namely, Haji Shadi, Reham Din and Mohd. Salim. DW-7, Mohd.Yasin deposed that Walia died 30 years back and one year prior to his death, he made an oral gift (Hibba) of his half share in favour of Biro. The gift was accepted by said Biro. DW-7 further deposed that all the three witnesses to the gift had already died. Thus, both the Courts below have rightly dismissed the suit of the plaintiff inasmuch as the property i.e the house in question was not the ownership of the plaintiffs whereas, the defendants have proved on record that half share was purchased by their father, Ismail and the remaining half

share purchased by Walia was given to Biro through oral gift which was subsequently sold by said Biro to her daughter Sadiqan vide sale deed dated 15.06.1992, Ex. D5. The sale deed was proved by its attesting witness Mohd. Yamin. Thus, in this way, the defendants became the owners of the entire property.

This Court after going through the case file and re-appreciation of evidence on record does not find any infirmity or perversity in the finding of facts recorded by both the Courts below. There is no question of law much less substantial question of law involved in the present regular second appeal.

Consequently, the appeal is dismissed.

04.03.2016
SN

(JITENDRA CHAUHAN)
JUDGE