

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

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SAO 66 of 2013 (O&M)

Date of decision: 11.05.2016

Ved Vyas and others

..... Appellants

Versus

Raj Kumari and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Vipul Dharmani, Advocate
for the appellants

Mr. Naveen Batra, Advocate
for respondent Nos. 1 to 4

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

Rekha Mittal, J. (Oral)

The present appeal lays challenge to the order dated 29.08.2013 passed by the District Judge, Ropar whereby the judgment and decree dated 04.05.2011 passed by the Civil Judge (JD) Anandpur Sahib, dismissing suit of the respondent/plaintiff has been set aside and the matter has been remitted to the trial Court for decision afresh with a direction to provide two effective opportunities to the respondent/plaintiff (appellant therein) to lead secondary evidence by way of additional evidence and thereafter to provide two opportunities to the appellants/defendants to rebut the additional evidence.

Counsel for the appellants would contend that the respondent/plaintiff filed an application before the trial Court for permitting him to prove the gift deeds by way of secondary evidence purported to be executed by defendants No. 3 to 5 along Smt. Laxmi Devi in favour of the plaintiff and defendants No. 1 and 2 but the said application was dismissed by the trial Court vide order dated 01.02.2011 (Annexure A-3). It is further submitted that the order rejecting the application of the respondent/plaintiff was not challenged before this Court, therefore, has attained finality. Another submission made by counsel is that once the application to prove gift deed dated 13.08.1962 and two gift deeds dated 18.09.1962 by way of secondary evidence has been dismissed by the trial Court, there was no occasion with the respondent/plaintiff to file a similar application before the appellate Court and, thus, the appellate Court has committed a serious error rather illegality in permitting the respondent/plaintiff to prove the aforesaid gift deeds by way of secondary evidence by adducing additional evidence. In addition, it is submitted that the application filed by the respondent/plaintiff for secondary evidence has been allowed without appreciating the provisions of Section 66 of the Indian Evidence Act 1872 requiring issuance of notice to the person in whose possession or power the original documents were stated to be.

Counsel for the respondent/plaintiff has supported the impugned judgment with the submissions that the rules of procedure cannot be allowed to stand in the way of substantial justice and in case the respondent is not permitted to prove the gift deeds, basis of the suit, it would result in miscarriage of justice. It is further argued that any remiss on the part of counsel for the respondent/plaintiff in filing the application at an

appropriate stage of the proceedings before the trial Court should not be allowed to enure to the benefit of the appellants/defendants. The last submission made by counsel is that as the gift deeds are the registered documents and they are sought to be proved by way of certified copies thereof obtained from the office of the concerned registering authority, no fault much less illegality can be found in the order passed by the Court in appeal.

I have heard counsel for the parties and perused the paper book particularly the various annexures appended therewith.

It is an admitted position of the case that Ram Kishan alias Ram Parkash (since deceased) represented by his legal representatives staked his claim to the suit property primarily on the basis of three gift deeds purported to be executed in his favour and Sukhdev Singh and Ved Vyas by defendants No. 3 to 5 and their mother Smt. Laxmi Devi (since deceased). The plaintiff produced certified copies of the gift deeds and they were marked as exhibits along with their translation in Punjabi. It appears that due to failure of counsel representing the plaintiff before the trial Court to file an appropriate application before producing the documents in evidence, the respondent filed the application before the trial Court at the stage when case was fixed for rebuttal and arguments and later a similar application was filed before the Court in appeal.

Perusal of the judgment passed by the trial Court, non-suiting claim of the respondent/plaintiff would make it evident that suit of the respondent failed for his failure to prove the gift deeds in accordance with law i.e. producing certified copies without necessary permission to prove the documents by way of secondary evidence. Keeping in view the serious

consequences of failure to seek permission to prove the documents by way of secondary evidence coupled with the factum that the documents are registered gift deeds and certified copies thereof have been obtained from the office of registering authority along with the factum that technicalities and rules of procedure cannot be allowed to stand in the way of substantial justice, I find myself unable to accept the submissions of counsel for the appellants that the judgment passed by the Court in appeal suffers from any error much less illegality. The appellate Court has rightly rectified the error committed by the trial Court by dismissing the application to prove the gift deeds by way of secondary evidence. Had the trial Court taken a serious view of the matter and decided the application in right perspective, the entire effort of the parties in seeking adjudication from the Court in appeal and then approaching this Court would have been saved.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the controversy.

(Rekha Mittal)
Judge

11.05.2016
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