

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

**RSA No.4071 of 2016(O&M)  
Date of Decision:11.11.2016**

***Suman Rani***

**.....Appellant**

**Versus**

***Sham Lal and another***

**.....Respondents**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

**Present:** Mr. Pranav Chadha, Advocate  
for the appellant.

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**RAJ MOHAN SINGH, J.**

[1]. Plaintiff is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. Plaintiff filed a suit for declaration seeking to get the gift deed dated 19.04.2010 cancelled which was executed by defendant No.1 in favour of defendant No.2.

[3]. Defendant No.1 is the husband of the plaintiff whereas defendant No.2 is the daughter-in-law of the plaintiff. The gift deed was claimed to be illegal, null and void on the ground that Piara Lal was owner of the house in question. Before his death, he gave the property to the plaintiff by way of family settlement. On the strength of said family settlement, the plaintiff claimed

herself to be owner in possession of the suit property for the last more than 30 years.

[4]. Plaintiff asserted that she along with her son was in possession of the property and the defendants were residing separately. Electric connection and rent receipts of the shop were in name of the plaintiff. Plaintiff spent huge expenses towards the property in question. Gift deed was executed by defendant No.1 in favour of defendant No.2 with an intention to defeat the rights of the plaintiff.

[5]. The suit was resisted by the defendants on numerous counts. Plea of Order 2 Rule 2 CPC was taken on the ground that precisely plaintiff filed a suit against Sham Lal and others which was statedly pending. Alleged fact of family settlement was denied being forged and fabricated document. The alleged family settlement was unstamped and unregistered and had no evidenciary value in the eyes of law.

[6]. Both the parties went to trial after completion of pleadings. Trial Court dismissed the suit and the lower Appellate Court affirmed the judgment and decree passed by the trial Court.

[7]. I have heard learned counsel for the parties at some length.

[8]. Perusal of the material on record revealed that entries

in the house tax register were in the name of the defendants. Even defendant No.2 had issued notice to the tenant of the shop. Electric connection was also obtained by the defendants in the name of the plaintiff. The alleged family settlement could not be proved on record in terms of its execution. It remained as a mark document. Defendant No.1-Sham Lal was not made party to the family settlement. It is a settled principle of law that family settlement has to be executed by all the family members. Plaintiff was daughter-in-law of Piara Lal. In case of family settlement, Piara Lal was supposed to involve his son Sham Lal in the family settlement (if any). The execution of alleged family settlement could not be proved on record with reference to author and attesting witnesses.

[9]. Perusal of family settlement Mark A would reveal that it carried seal of notary public namely Satish Kumar Kansal, Advocate who had appeared as PW1. Notary public had not entered the document in his register which was maintained in due course of his professional duties. Notary did not mention the date of attestation of the document viz. the seal affixed by him. PW1 totally pleaded ignorance in respect of professional duties. He did not enter the family settlement in his register which was required to be maintained by him in regular course of his duty. The witness had admitted the fact that as per norms

and requirements, notary public is supposed to make entry of all the documents attested by him in the register to be maintained by him. The plea taken by the notary public was that he was newly appointed as notary public and was not aware of the mode vide which he was required to make entries of all the documents attested by him in register. The explanation was not considered to be proper as an Advocate used to be conferred with the status of notary after 10 years of his practice. Even otherwise, ignorance of norms cannot be an excuse for a notary not to incorporate the factum of attestation in the register maintained by him. The testimony of notary as PW 1 was discarded by the Courts below having no sanctity as per law. Execution of agreement to sell could not be proved on record by any other evidence.

[10]. Evidently, the stand taken by the plaintiff was in respect of Piara Lal being owner of the property before execution of the alleged family settlement. No evidence was brought on record. The title of the suit land in favour of Piara Lal was not established on record. Piara Lal could not have conferred better title than the one held by him.

[11]. On the contrary, defendants have proved house tax register for the year 1970-71, 1980-81, 1984-85, Exs.D4 to D6 on record. Sham Lal was shown to be owner of the property.

Thereafter, property was shown to have been transferred by Sham Lal to defendant No.2-Poonam Bansal. Even though these entries were not treated to be evidence of title, but still plaintiff was required to stand on the strength of her own case. Once the title of Piara Lal was not proved, entries of house tax register had weightage in favour of the defendants. The transfer in the form of gift executed by defendant No.1 in favour of defendant No.2 could not be attacked by the plaintiff by way of any cogent evidence on record.

[12]. No substantial question of law could be highlighted by the appellant during course of arguments, nor any substantial question of law involved for worth consideration of this Court. The questions framed by the appellant do not arise for consideration at the hands of this Court. The appeal is found to be totally bereft of merits and the same is dismissed along with other miscellaneous applications.

[13]. Since the appeal has been dismissed on merits, therefore there is no need to pass any order in the application for condonation of delay i.e. CM No.10498-C of 2016 as the same has become inconsequential.

11.11.2016

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**(RAJ MOHAN SINGH)  
JUDGE**

**Whether reasoned/speaking**

**Yes/No**

**Whether reportable**

**Yes/No**