

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

**Regular Second Appeal No.4271 of 2015 (O&M)
Date of Decision: August 01, 2016.**

Sawan Singh

.....APPELLANT(s).

VERSUS

Krishan and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal against the concurrent judgments of the Courts below dismissing the suit filed by appellant Sawan Singh along with proforma respondents No.1 to 5 seeking the relief of declaration to the effect that the oral gift deed dated 13.03.1950 and mutation No.283 dated 30.05.1950 are illegal, ineffective against rights of the plaintiffs and has no force in the eyes of law.

2. Learned counsel for the appellants-plaintiffs argues that Sardara, father of appellants, was owner of 27 acres of land out of which he gifted 7.5 acres to Kabal, father of respondents-defendants. This fact came to the knowledge of appellants-plaintiffs when they searched for the revenue record.

3. Sardara and Kabal are uterine brothers born to Bakhtauri from

the loins of Attra and Gopi. Bakhtauri was earlier married to Attra, grand father of plaintiff and after the death of Attra, she married with Gopi. From the marriage of Bakhtauri with Attra, Sardara was born while from her marriage with Gopi, Kabal was born. Plaintiffs are sons of Sardara while defendants are sons of Kabal. The present suit was filed in the year 2010 i.e. 60 years after the gift which was an oral gift.

4. Learned counsel for the appellants has admitted that at the relevant time, oral gifts were permissible, provided the same were accompanied with delivery of possession of gifted property.

5. Admittedly, possession over the land gifted to Kabal is with the defendants and this gift deed was without any monetary consideration.

6. Learned counsel for the appellants has argued that the gift by Sardara was invalid as he was an illiterate person, had six sons and five daughters and there was no reason for him to gift his land to his uterine brother.

7. Both the Courts below discarded the contention of appellant-plaintiff for want of any evidence that the gift deed of land by Sardara to his uterine brother Kabal is inadmissible in law. Part of the gifted land to Kabal was later on sold to Banwari Lal and Chandu Ram and learned Additional Civil Judge (Senior Division), Kurukshetra on appraisal of evidence observed in para 20 and 21 as follows:-

“20. The ownership of Banwari Lal and Chandu Ram have been duly reflected in the jamabandi relied upon by the plaintiffs. Therefore, it can not be said that it was not in the knowledge of the plaintiffs that suit property after 1950 was transferred from Gopi Chand to the defendants in the year 1985 and same was transferred to Banwari Lal and Chandu Ram vide

sale deeds dated 22.1.1987. PW-1 in his cross-examination stated that his father Sardara had given 7-1/2 acres of land to Sardara(sic Kabal) and this fact was told to him in the year 1955. Therefore, in view of above mentioned documentary and the oral testimony it is clear that the factum of gift in favour of Kabal by Sardara Ram was in the knowledge of Sardara from the very beginning. But the gift deed was never challenged during life time of Sardara. Gift has not been challeged even by Gopi Chand during his life time. The plaintiffs had complete knowledge regarding the ownership and possession of the land in dispute in favour of the predecessor of defendants and thereafter to defendants. Moreover, even the plaintiffs never raised objection when mutation No.548 (Mutation of inheritance) was sanctioned on 27.9.79 after death of Sardara.

21. In the present case, the gift deed related to the year 1950 and the present suit has been instituted in the year 29.5.2010 i.e. much after the period of 60 years. It has already come on the file that the plaintiffs were having knowledge about the transfer of the land in favour of Gopi (in the) revenue record therefore, the suit is barred by limitation also.”

8. It is a high time to condemn the adventure in which the appellant and other plaintiffs have indulged after 60 years of the gift made by their father on the basis of which mutation was sanctioned and factum of gift was incorporated in the revenue record. Such type of cases not only waste valuable time of the Court but also add to the volume of frivolous litigation.

9. Learned counsel for the appellant had no arguments but to concede that the gift in the year 1950 could be oral followed by delivery of possession of the gifted property. In this case also, it was an oral gift which was incorporated in the revenue record vide mutation No.283 sanctioned on 30.05.1950. Possession of the land gifted is admittedly with the defendants.

Claiming right in a property which was gifted 60 years back by the predecessor-in-interest of plaintiff is nothing but mischievous adventure on their part.

10. During the course of arguments, Mr. V.K. Jindal, learned Senior counsel representing the appellants could not make out that gift made in this case suffers from any legal infirmity or while dismissing the suit of the plaintiffs, the Courts below have misread any evidence or ignored or misinterpreted any evidence on record, calling for any interference.

11. No question of law, what to talk of substantial question of law, requiring determination arises in this appeal, which has no merits.

Dismissed.

August 01, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No