

Regular Second Appeal No.571 of 2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.571 of 2016 (O&M)

Date of Decision: July 11, 2016

Santokh Singh & another

...Appellants

Versus

Sohan Singh Dosanjh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Raman Sharma, Advocate,
for the appellants.

AMIT RAWAL, J.

Appellant-plaintiffs are aggrieved of the concurrent findings of fact, whereby claim in the suit for seeking declaration and proprietary possession by way of pre-emption qua the suit property, has been declined by both the Courts below, however, the defendants were restrained from dispossessing the plaintiffs from the suit land, except in due course of law.

Mr.Raman Sharma, learned counsel for the appellant-plaintiffs submits that the suit, aforementioned, was instituted by challenging the gift deed dated 27.11.2007 and the relief as mentioned in

the suit is that defendant Nos.2 and 3 were the owners of the land, which

was purchased by them vide sale deeds bearing No.340 and 341 dated 9.6.1971. Defendant No.2 and one Inderjit son of Chanan Singh acting as attorney of defendant No.3 agreed to sell the land detailed in para No.1 of the plaint to the plaintiffs alongwith their two brothers, namely, Balbir Singh and Nirmal Singh vide agreement dated 7.12.1993 at the rate of ₹90,000/- per acre and received a sum of ₹2,50,000/- as earnest money, which was entered in the register of the Deed Writer, which was duly signed by all the persons and in pursuance to the agreement to sell, defendant No.2 and Inderjit Singh, being attorney of defendant No.3, executed registered sale deed dated 20.7.1998. Balbir Singh vendee, i.e., brother of the plaintiffs, had been in cultivating possession of land measuring 8 kanal bearing rect. no.130, killa no.25, land measuring 24 kanal bearing rect.no.133, killa no.5, 6, rect.no.134, killa no.10 as a tenant under the vendors on payment of 1/3rd batai to the vendors. Plaintiff No.1 Santokh Singh had been and is in continuous possession of land measuring 28 kanals bearing rect.no.133, killa no.15, 16, 25, rect.no.134, killa no.22m, entered at khewat no.949, khatoni no.1352 as per jamabandi for the year 2005-06 and 1/3rd batai was being paid to the landlords. Similarly, Paramjit Singh plaintiff No.2 had been in continuous possession of land measuring 16 kanals bearing rect.no.134, killa no.12, 19, entered at khewat no.949, khatoni no.1353 and land

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measuring 16 kanals bearing rect.no.129, killa no.20, 21 as per jamabandi for the year 2005-06 as a tenant on payment of 1/3rd batai to the landlords. Likewise, Karnail Singh plaintiff No.3 had been in continuous possession of land as tenant on payment of 1/3rd batai to his owners in respect of land measuring 15 kanals bearing rect.no.134, killa no.12m, entered at khewat no.949, khatoni no.1349, land measuring 8 kanals bearing rect.no.130, killa no.16 and land measuring 8 kanals bearing rect.no.130, killa no.17 entered at khewat no.248, khatoni no.360 as tenant on payment of 1/3rd batai and also with regard to the other lands as mentioned in the plaint. Possession of five brothers, including the plaintiffs stood admitted by defendant Nos.2 and 3 as there is no order of ejectment against the plaintiffs. Defendant No.1 is claiming to be owner of the land on the basis of the gift deed allegedly executed by Acharya Bal Krishan Shishya of Swami Shanker Dev in his favour on the basis of the power of attorney dated 1.6.2007 purported to have been scribed by one Ram T. Bansal. Gift deed was a null and void document as the contents of the power of attorney, referred in the gift deed, reveal that vide power of attorney, defendant No.1 himself was appointed as attorney by defendant Nos.2 and 3 and the original owners, i.e., defendant Nos.2 and 3 did not come forward. The power of attorney did not empower the agent to execute the gift deed. In fact, the sum and

substance of the gift deed is nothing but a sale deed and, therefore, pre-emptory right was sought. Both the Courts below have committed illegality and perversity in dismissing the suit. The gift deed does not prescribe handing over of the possession and, thus, there is no gift deed in the eyes of law and in this regard, relied upon the judgment rendered by this Court in **Nihal Kaur Versus Dhan Kaur and another, 2004(3) R.C.R. (Civil) 527.**

The Courts below have gravely erred in ignoring the overwhelming evidence, oral evidence corroborated by documentary evidence to prove that the appellant-plaintiffs were tenants of land on payment of 1/3rd batai. Defendant Nos.2 and 3 had intentionally gone ex-parte and the evidence of the plaintiffs ought to have been taken into consideration. Lower Appellate Court has erroneously held that the plaintiffs have no locus standi to challenge the gift deed as they were not party to the same and since no receipts qua payment of rent had been proved, therefore, they could not have been held to be tenants and, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

I have heard the learned counsel for the appellant-plaintiffs, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Sharma, for, right of pre-emption in challenging

the gift deed is not permissible. It is only with regard to the sale deed. The oral evidence with regard to the payment of rent is not sufficient. In fact, the plaintiffs have miserably failed to prove the payment of rent, thus, there was no relationship of landlord and tenant and, therefore, question of claiming pre-emptory right did not arise. Pre-emptory right is only given where there is sale deed, but the instant case is a case of gift deed. The donor and the donee had not come forward in challenging the gift deed and, therefore, the plaintiffs have no locus standi to challenge the gift deed, thus, ratio decidendi culled out in **Nihal Kaur's case (supra)** would not be applicable to the facts and circumstances of the present case. The Court below had examined all the jamabandies for the years 1995-96, 2000-01 and 2005-06 and formed an opinion that the appellant-plaintiffs are in possession of the suit property mentioned in Para 18(b) (i) to (iii), but not with regard to property mentioned in para No.18(b) (iv) of the plaint and in my view, rightly partly decreed the suit with regard to injunction restraining the defendants from dispossessing the plaintiffs from the land mentioned in para No.18(b) (i) to (iii) of the plaint, except in due course of law. Since the plaintiffs had failed to prove the tenancy, they could not claim the declaration and suit for possession on the basis of pre-emption has been rightly dismissed. The concurrent findings of facts are based upon appreciation of oral and

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documentary evidence. I do not intend to differ with the findings. No substantial question of law arises for determination by this Court.

Appeal stands dismissed.

July 11, 2016
ramesh

(AMIT RAWAL)
JUDGE