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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 31.05.2016

1.

RSA-1670-2014 (O&M)

Piara

... Appellant

Versus

Kelo Devi and others

... Respondents

2.

RSA-1671-2014 (O&M)

Piara

... Appellant

Versus

Kelo Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagdish Manchanda, Advocate
for the appellant (in both the appeals).

Mr. Navmohit, Advocate
for respondent No.1 (in both appeals).

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?

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA**
No.1670 of 2014 titled as **“Piara V/s Kelo Devi and others”** and **RSA**
No.1671 of 2014 titled as **“Piara V/s Kelo Devi and others”**.

The appellant(s)-defendant No.10 is aggrieved of the
concurrent findings of fact, whereby the suit seeking the following relief has

been decreed:-

“The same is hereby partly decreed with costs. To the cost that the entries in column no.5 of the Jamabandi for the year 1996-97 and 2001-02. Showing the possession of the defendants nos.10 and 11 are illegal, null, void, ab-initio. The plaintiff is proved to be in possession of the suit land and the defendants are restrained from interfering into the possession of the plaintiff, except in due course of law.”

Mr. Jagdish Manchanda, learned counsel appearing on behalf of the appellant-defendant No.10 submits that the suit for declaration qua permanent injunction was not maintainable, for, the property in the name of Shamlat Jumla Chamaran (Saroj Gotra) of Shamlat Jumla Chamaran Darwaja Siwan is belonging to the proprietor and in order to show the possession, umpteen number of documents i.e. Ex.D-1 and Ex.D-44 have been placed on record. The respondent(s)-plaintiff(s) are not in possession, but under the garb of the suit, they are claiming the possession as no relief of possession was sought . The alleged story coined in the plaint had not been supported by any documentary evidence. Both the Courts below have, thus, committed illegality and perversity in partly decreeing the suit. In fact, the respondent No.1-plaintiff has no concern with the land, in dispute. The evidence qua identity and descriptions of the property is lacking as it has been proved on record through cross-examination, much less, no document of title with regard to the land, in question, have been placed on record and thus, gift deed allegedly executed by the husband in favour of respondent No.1-plaintiff would be meaningless. Even the execution of the gift deed has also been proved on record thus, urges this Court to formulate the

substantial questions of law as carved out in the memorandum of appeal.

Mr. Navmohit Singh, learned counsel appearing on behalf of respondent No.1-plaintiff submits, that the appellant-defendant No.10 has miserably failed to prove any evidence on record to claim the land belonging to the proprietor, whereas on the contrary the respondent No.1-plaintiff has placed on record the numerous documents to show the nature and character of the land, much less, ownership and gift deed. It is the entry in the column of possession, which has been shown in favour of the defendant(s), whereas none of the documentary evidence shows their ownership. Even the entry of the possession is only with regard to the symbolic possession of appellant(s)-defendant No.10 and actual physical possession is of respondent No.1-plaintiff. The suit was perfectly maintainable. Moreover, the gift deed bearing No.4970 dated 31.01.2007 (Ex.PW-5/A) executed by her husband, has been proved on record. He further submits that even an application moved under Order 41 Rule 27 CPC before the lower Appellate Court at the instance of the respondent No.1-plaintiff, was also dismissed, thus, urges this Court for affirming the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appellant-defendant No.10 has miserably failed to prove any evidence on record to claim the land belonged to the proprietor, whereas on the contrary, the respondent No.1-plaintiff has proved the gift deed and ownership through revenue record as discussed in extenso by both the Courts below. It is a settled law that the revenue record, as per Section 44 of The Punjab Land Revenue Act, 1887, carries a

presumption of truth, until and unless the same is rebutted, the defendants have failed to rebut.

In view of the what has been noticed above, the appellant-defendant No.10 has failed to lead any evidence to rebut the unimpeached evidence, even the entry of possession was only with regard to the symbolic possession, whereas the other documentary evidence showed the respondent No.1-plaintiff to be in possession, rightly so, the lower Appellate Court has decreed the suit *in toto*.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeals are dismissed.

31.05.2016
yogesh

**(AMIT RAWAL)
JUDGE**