IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 912 of 2015 (O&M)

Date of Decision: 08.01.2016

Gurdev Kaur through LR Amarjit Singh Pardesi

......Appellant

Versus

Gurdial Singh @ Bhangu and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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. Vaibhav Sehgal, Advocate,
for the appellant.

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SHEKHER DHAWAN, J

Present Regular Second Appeal against concurrent findings of both the Courts below whereby suit filed by plaintiff was dismissed by the Court of first instance and appeal filed before first appellate Court was dismissed.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance. Relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff filed suit for declaration that she is exclusive owner in possession of House No.B-XX 3405, measuring 905 sq. yards. Defendant Gurdial Singh alias Bhangu is her son, who is permanent resident of New York, USA. In May

2002, he came to India and asked to present plaintiff that he wanted to take her to USA as she was living alone at Ludhiana and there was no one else to look after her at Ludhiana. Plaintiff could not doubt the representation made to her. Defendant took the plaintiff to the Court on the pretext of obtaining documents for taking her to USA. Defendant got documents executed from her on the pretext of obtaining Immigration/Visa for going to USA. The said documents were not read over to the plaintiff and were got signed from plaintiff. Plaintiff was residing peacefully in House No.B XX 3405 Gurdev Nagar, Ludhiana since May 2002. Plaintiff on persistent request made by her at that time to take her to USA defendant started giving evasive replies. Plaintiff became suspicious about his conduct and came to know that defendant got mutation No.6058 of the property sanctioned in his favour vide gift deed No.2748 dated 29.05.2002. Plaintiff inquired for the reasons on telephone but defendant continuously assured the plaintiff to take her to USA. However, in the last week of August 2007, two Massons and labourers started raising construction on the open plot adjoining the property in dispute and came to know about the fraud played upon her. Request was made to defendant to treat gift deed No.2748 dated 29.05.2002 as void but no effect.

3. Defendant was proceeded against ex-parte before the Court of first instance. However, learned trial Judge after considering the material and evidence available on file, recorded finding of facts on the evidence available on file that on the basis of certified copy of gift deed (Ex.P4) and the fact that plaintiff was the owner of the property as per Ex.P1, there is nothing to conclude that the said document was bogus one. Learned Court of first instance returned the findings that plaintiff has not led any evidence

to establish that gift deed was a forged and fabricated document.

4. Plaintiff preferred first appeal before the Court of first appellate Court and learned Court of first appellate Court observed that the plea taken by plaintiff that she was victim of fraud at the hands of her son is not tenable and not proved on file and dismissed the appeal.

5. At the time of arguments, learned counsel for the appellant submitted that relationship between the present appellant and respondent are of such a nature that appellant had no reason to suspect the conduct of the respondent. There was no reason for appellant, being mother, to exclude other sons while executing gift deed in favour of her son, who is respondent in this case. Otherwise also, respondent was resident of USA and papers were signed on mis-representation that the same were to be used for migration purpose and for issuance of passport and visa but the Courts below have not appreciated the controversy and the said findings are liable to be reversed.

6. Learned counsel for appellant also placed reliance upon judgment from Hon'ble Karnataka High Court in case **B.C. Ravindra Vs. Deviramma, 2010(3) Alr Kar R 780**, wherein appellant was alone and was victim of fraud and Karnataka High Court was held that the gift deed was void.

7. Having considered the submissions made by learned counsel for the appellant and also gone through the judgment from Hon'ble Karantaka High Court, the facts of the case in hand are entirely distinguishable because there is absolutely no evidence available on file, so as to return the finding that the appellant was victim of fraud. It is very easy to allege fraud but requirement of law is that fraud must be proved, which has not been done in

this case. In the present case, most of the facts are not disputed that appellant is mother of respondent-Gurdial Singh @ Bhangu, who is resident of New York, USA. The alleged gift deed was executed and duly registered, vide gift deed No.2748 dated 29.05.2002. Appellant is not disputing the fact that she had signed the documents. As regards to plea of fraud taken by appellant, the evidence has already been appreciated by both the Courts below and specific findings have been returned by both the Courts below.

8. There is absolutely no substantial question of law involved in this case, calling by re-appreciation of evidence by this Court, by way of present Regular Second Appeal. Hence, the Regular Second Appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

January 08, 2016
naresh.k.