

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1737 of 2015 (O&M)
Date of Decision: 08.11.2017

Bahadur Singh and another

... Appellants

Versus

Amarjit Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Brijeshwar Singh Bhalla, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

1. There is no merit in this appeal in the light of the *Hibanama* which is registered as gift of immovable property belonging to Babu Singh bequeathing the suit property in favour of one of his sons, namely, Amarjit Singh. The gift deed was registered on December 15, 1972. It could not be disputed that late Babu Singh had the capacity to gift his property.

2. The case is that two co-plaintiffs, sons of late babu Ram and brothers of the defendant No 1 Amarjit Singh filed the suit for separate possession by way of partition to the extent of 4/8 sahare (½ share) of vacant site shown by the letters ABCD in the site plan attached with the plaint forming part of House No.B-1/2530 as described in the head note to the plaint. In addition, prayer for permanent injunction was made for restraining defendant No.1 for making any addition or alteration by raising construction or otherwise changing the nature of the property in dispute.

3. To prove their case, the plaintiffs depended on a family

settlement which they were unable to produce in evidence in the original while the defendants proved the execution of the registered gift deed by examining Sher Singh, Clerk in the office of the Sub Registrar, Rajpura as DW-3. Mere photocopy of the alleged family settlement cannot be received as secondary evidence in terms of Section 63 of the Evidence Act. Photocopy is not admissible in evidence. So long as superior evidence of title is in possession of the defendant No 1, he would succeed against party possessing inferior claim.

4. Both the Courts have concluded against the plaintiffs and dismissed the suit and I find no infirmity in the judgment and decree passed by the learned District Judge, Patiala dated August 05, 2014 and would hereby dismiss the appeal treating it under Section 41 of the Punjab Courts Act, 1918 as per law in *Pankajakshi (D) through LRs. & others vs. Chandrika & Others.*, (2016) 4 SCC 68 : AIR 2016 SC 1169.

(RAJIV NARAIN RAINA)
JUDGE

08.11.2017
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Whether speaking/reasoned	Yes
Whether reportable	No