

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

**RSA No. 3269 of 2015 (O&M)
Date of Decision: 25.9.2017**

Mandeep Kaur

.....Appellant

Vs.

Pardeep Gill and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.S. Bajaj, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment of reversal dated 18.3.2015 passed by the learned first appellate court thereby setting aside the judgment and decree dated 9.12.2014 of the learned trial court and decreeing the suit for declaration filed by the plaintiffs claiming themselves to be owners in possession of suit land measuring 20 kanals, defendants have approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para No.2 and 3 of its impugned judgment, are that before the learned trial court the plaintiffs-appellants Mrs. Pardeep Gill and others filed a suit against the defendant-respondent for declaration to the effect that the plaintiffs were owners in possession of the land measuring 20K to the extent of 400/1407 share in the land measuring 70K 7-M bearing Qillas No. 16/25, 15/20, 20/4, 5/11, 16/15/1, 19/7, 8/1, 12/1/3, 19/15/1, 19/15/2, 16/16, 15/19/2, 20/12 bearing khewat No. 185, 257, 258 and khata No. 270, 272, 382, 383, 385, 386, 387 Hadbast No. 255, as entered in the jamabandi for the year

2004-05 situated in the area of village Chappa Ram Singh, Tehsil and Distt. Amritsar and the alleged gift deed dated 13.8.2007 alleged to have been executed by the husband of plaintiff No.1 and father of plaintiffs No.2 and 3 in favour of defendant was absolutely illegal, invalid, null and void, ineffective against the provisions of law and not binding upon the plaintiffs and also being the result of pressure tactics, misleading, coercion and the result of undue influence etc. and in the alternative, suit for possession and also for permanent injunction restraining the defendant from transferring, mortgaging, alienating or creating any charge etc over the property in question in any manner whatsoever.

It was contended in the plaint that plaintiffs were the owners of the suit property on the basis of natural succession having inherited the same from Kanwardeep Singh Gill who was the husband of plaintiff No.1 and father of plaintiffs No.2 and 3. Kanwardeep Singh died on 3.1.2008. He was the co-sharer in the land measuring 70 kanal 7 marlas and was also in possession thereof. Originally Rajinder Singh-grandfather of deceased Kanwardeep Singh was the owner of the land and he was also having other land. Said Rajinder Singh stood survived by his widow Gurdip Kaur, two sons Harinder Singh and Jagwinder Singh and two daughters namely Rajbir Kaur and Jagdish Kaur. Jagwinder Singh son of Rajinder Singh was married to Sukhraj Kaur and out of this wedlock, three daughters namely Charanjit Kaur, Harjit Kaur and Mandeep Kaur and one son Kanwardeep Singh were born. Jagwinder Singh died in the year 1977 while Sukhraj Kaur died in the year 2005. Out of three daughters of Jagwinder Singh, Harjit Kaur was residing abroad. However, daughters of Jagwinder Singh started alleging that their real brother Kanwardeep Singh was, in fact, adopted by Jagdish Kaur wife of

Swaran Singh-his paternal aunt, which fact was wrong. Kanwardeep Singh, in order to protect his lawful and legitimate rights qua the estate left by his father Jagwinder Singh, filed a suit regarding land measuring 69 kanals 14 marals out of the total land measuring 230 kanals 5 marla, claiming his ownership and possessory rights qua the land and this suit stood filed by him against his mother as well as against his sisters and this suit was registered as Civil Suit No. 395/91 and the same stood decreed, vide judgment dated 17.8.91 and Sukhraj Kaur appeared in the said case for self as well as guardian for the minor daughters and admitted her relationship with Kanwardeep Singh and also admitted his claim and accordingly, the suit stood decreed. Subsequently the marriage of sisters and Kanwardeep Singh were performed and after their marriage, attitude of sisters of Kanwardeep Singh changed. They started keeping an eye over the estate left by their father Jagwinder Singh and the defendant filed a civil suit against said Kanwardeep Singh, thereby the validity of the aforesaid judgment dated 17.8.91 was challenged and in this suit, present defendant also admitted Kanwardeep Singh to be son of Jagwinder Singh and his relationship with Jagwinder Singh, Sukhraj Kaur and his sisters stood admitted.

Kanwardeep Singh, during his life time also, purchased land measuring 38 kanals vide sale deed dated 3.12.92 and gave this land on lease to Jagdish Kaur-his parental aunt. Present defendant also filed an injunction suit titled as Mandeep Kaur Vs. Kanwardeep Singh and laid her claim on the basis of adverse possession of the land covered in the said suit and with malafide intention, however, denied the relationship with Kanwardeep Singh. In the said suit, an injunction was also sought by her, which was dismissed by the court vide order dated 11.5.2005. However, Charanjit Kaur, the other

sister of Kanwardeep Singh, also filed a civil suit for declaration regarding land measuring 19 kanal 3 marals claiming inheritance from Gurdeep Kaur wife of late Rajinder Singh. This suit was subsequently withdrawn by her from the court on 25.7.07 but the same was finally finished on 20.10.07 by Lok Adalat. In the meantime, Sukhraj Kaur-mother of Kanwardeep Singh also got an FIR dated 1.6.2005 bearing No. 158 registered against Kanwardeep Singh under Section 420-B IPC with P.S. Jandila Guru. In fact, there was a deep rooted connivance and collusion amongst the sisters and mother of Kanwardeep Singh and they were acting under a planned conspiracy and had joined hands with each other simply with the object to jeopardize the lawful and legitimate rights of Kanwardeep Singh qua the property which he inherited from his father as well as which he himself purchased. It was further the case of the plaintiffs that the gift deed dated 13.8.2007 alleged to have been executed by Kanwardeep Singh Gill in favour of the defendant was never executed by him and it was the result of illegal pressure and fear psychosis which was created in the mind of deceased Kanwardeep Singh by the defendant.

Defendant was served in the suit. She appeared and filed her contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiffs are entitled to declaration as prayed for?OPP
2. Whether the plaintiffs are entitled to relief of possession as prayed for?OPP
3. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP
4. Whether the plaintiffs have not come to the court with

clean hands. If so, its effect?OPR

5. Whether plaintiff No.1 is wife of Pardeep Gill?OPP

6. Whether Rattan Singh is lawful attorney of Pardeep Gill?OPP

7. Relief

With a view to substantiate their respective stands taken in their pleadings, plaintiffs brought voluminous material on record in the form of documentary as well as oral evidence. On behalf of the defendant-appellant, she examined herself as DW1. With a view to support her version taken in the written statement, she also examined two more DWs namely Jagdish Raj Sharma as DW2 and Balwinder Pal Singh as DW3 and closed her evidence. Plaintiffs brought on record as many as 28 exhibited documents. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs could not prove their case. Accordingly, their suit for declaration was dismissed by the learned trial court, vide its judgment and decree dated 9.12.2014. Plaintiffs felt aggrieved and filed their first appeal which came to be allowed by the learned Additional District Judge, vide his impugned judgment and decree dated 18.3.2015. Hence this regular second appeal at the hands of unsuccessful defendant.

Heard learned counsel for the appellant.

It is a matter of record that during the course of earlier litigation, appellant-defendant entered into an agreement to sell to the effect that if Kanwardeep Singh will not pay an amount of ₹50 lacs, appellant would be entitled to sell the suit property allegedly gifted to her by late Sh. Kanwardeep Singh. It is pertinent to note here that late Sh. Kanwardeep Singh was brother of the appellant. He was husband of plaintiff No.1 and father of plaintiffs

No.2 and 3. The alleged gift deed was not the gift deed in the true sense of word. In fact, it was only a security document.

The entire case of the appellant-defendant is based on this fact that she was claiming the security document to be a gift deed dated 13.8.2017. While putting her claim in this manner, appellant was also trying to back out from her agreement qua which she never raised any kind of protest at any point of time in any court of law. She has also not alleged any coercion or misrepresentation qua the said agreement dated 13.8.2007 because of which she could not have been permitted to resile therefrom. Since all these crucial aspects of the matter could not be appreciated by the learned trial court, while dismissing the suit of the plaintiffs recording patently illegal findings, the learned first appellate court was well within its jurisdiction to pass the impugned judgment of reversal and the same deserves to be upheld.

In fact, as per the peculiar fact situation obtaining on record of the case, defendant-appellant had no right on the property in question, right from day one. Her conduct also seems to be unnatural reflecting her unending greed for the property with which she had no concern. The suit property was the exclusive ownership of late Sh.Kanwardeep Singh who was husband of plaintiff No.1 and father of plaintiffs No.2 and 3. When the appellant-defendant was trying to grab the suit property under the garb of abovesaid misconceived approach based on the document of security, treating it to be a gift deed, plaintiffs were left with no other option except to file the suit for declaration claiming themselves to be owners in possession of the suit property. They were also entitled to seek permanent injunction against defendant-appellant.

When the case is tested from another angle, it is found that late

Sh. Kanwardeep Singh had no occasion to suffer the alleged gift deed in favour of the appellant to the detriment of his own wife and children. When confronted with the abovesaid material aspects of the matter, learned counsel for the appellant had no answer and rightly so, it being a matter of record. In this view of the matter, no fault can be found with the cogent and convincing findings recorded by the learned first appellate court in its impugned judgment which deserves to be upheld

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“ After considering all the facts and circumstances of the case, this Court is of the considered view that the point to be determined in the present appeal is whether gift deed dated 13.8.2007 executed between the parties was a conditional document as per agreement dated 13.8.2007 and which was placed on record in the case which is Ex.PX and gift deed is Ex.D1. As per contents of Ex.P1- Mandeep Kaur filed suit against Kanwardeep Singh which was decided on 14.8.2007 which was bearing case No. 81/2005. Ex.P2 is copy of written statement filed by Kanwardeep Singh dated 28.4.2005. Ex.P5 is power of attorney in favour of Rattan Singh, duly registered. Ex.P6 was a copy of plaint of case which was instituted by Pardeep Gill against Kanwardeep Singh, which was decided on 21.12.2008. Ex.P7 is the copy of plaint which was filed by Kanwardeep Singh against Mandeep Kaur and others. Ex.P8 to Ex.P25 are the copies of litigations

pending between Kanwardeep Singh and Mandeep Kaur and it reveals that there were strained relations between Kanwardeep Singh and Mandeep Kaur. Moreover, as per Ex.PX, which is a certified copy of judgment of as which was instituted by Mandeep Kaur against Kanwardeep Singh and same was decided on 14.8.2007 and beas No. 94/2003 and General No. 956/2007 TACT in which there is a certified copy of Ex.C1 which is agreement between Mandeep Kaur party No.1 and Kanwardeep Singh os of late Jagbinder Singh party No.2, in which it was settled that cases pertaining Urna to Gagga, they agreed to withdraw the same against each other and further agreed that petitioner No.2 Kanwardeep Singh who has initiated the case against Mandeep Kaur and her sisters will pay Rs. 50,00,000/- and in this regard, gift deed dated 13.8.2007 was kept as security in the hands of Mandeep kaur. Further, it is agreed between the parties, as per agreement that if Kanwardeep Singh party No.2 will not pay Rs. 50.00 lakh within two years to Mandeep kaur, party No.1, then Mandeep Kaur party No.1 is entitled to sell the gift deed property to 20 kanals to realise the amount of Rs. 50 lakh from sale consideration of said property and after adjusting the same, she will refund the remaining amount to Kanwardeep Singh, petitioner No.1 and this agreement is duly signed by Mandeep Kaur, Kanwardeep Singh and witnesses. Even the same is duly signed by two respective Lawyers namely Sh. Harminder Singh Chohan and Shri P.S. Sethi, Advocates. As per this document and copy of the cases titled Mandeep Kaur Vs. Kanwardeep Singh in which this agreement is attached and the case was decided as per terms and conditions of agreement dated 13.8.2007 and which was produced before the said court on 14.8.2007 reveals that gift deed dated 13.8.2007 is a mere security document, which was in possession of Mandeep Kaur and same was kept as a

security just to realize Rs. 50 lak amount settled between the parties. Now the contention raise by respondent's counsel Sh. S.K. Daversar is not reliable and as per Section 115 of the Indian Evidence Act, respondent Mandeep Kaur is estopped from her act and conduct and agreement dated 13.8.2007 which is placed on record by Mandeep Kaur itself is duly proved as Ex.C1 in that case and that case was decided on the basis of Ex.C1, which was placed on record by Mandeep Kaur herself. Now subsequently, she cannot resile from her agreement dated 13.8.2007 and with malafide intention, she cannot held that gift deed property as genuine. However, it was executed by late Kanwardeep Singh as a security just to realize Rs. 50,000 lakh amount. The same was handed over to Mandeep Kaur by said Kanwardeep Singh. So without discussing anything else, this court is of the considered view that gift deed dated 13.8.2008 is a conditional document which was given by late Kanwardeep Singh in the hands of Mandeep Kaur as a security and Mandeep Kaur is required to follow all terms and conditions which they were agreed upon. So the present cases of the appellant is decreed and gift deed dated 13.8.2007 is set aside being given as a security, under undue influence and circumstances and there were no cordial relations between the parties. However, conditions of the gift deed as required under Section 123 of T.P. Act is not fulfilled and respondent/defendants is restrained from transferring, alienating the property on the basis of said gift deed dated 13.8.2007 and the learned lower court has not considered these facts before dismissing the suit of the plaintiffs/appellants and hence impugned judgment dated 9.12.2014 is hereby set aside and suit of the plaintiffs/appellants is decreed as prayed."

Abovesaid were the specific reasons because of which defendant-

appellant had no case on merits. This was one of the reasons that defendant was trying to build up her claim, as sought to be argued by learned counsel for the appellant, on technicalities alone. It goes without saying that conduct of the parties is also one of the relevant consideration for deciding the case. Instead of helping the plaintiffs after the death of late Sh. Kanwardeep Singh, defendant tried to grab the suit property with a view to satisfy her unending lust for property. Since the learned trial court could not appreciate true factual as well as legal aspect of the matter, while dismissing the suit of the plaintiffs, the learned first appellate court was well justified to set aside the patently illegal findings recorded by the learned trial court, while passing the impugned judgment of reversal and the same deserves to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1) Pratibha Singh and another Vs. Shanti Devi Prasad and another, 2003 (2) SCC 330 (SC)
- 2) H.K.K. Bali and another Vs. M/S Cyma Exports Pvt. Ltd and another, 2011 (15) SCC 370 (SC)
- 3) Kishore Samrite Vs. State of U.P. 2013 92) SCC 398 (SC)
- 4) Dr. K.P. Ranga Rao Vs. K.V. Venkatesham and others, 2015 (1) RCR (civil) 301 (SC)
- 5) Mehar Singh and another Vs. Kasturi Ram and others, 1962 AIR (Punjab) 394 (P&H)
- 6) M/s Dashmesh Rice Mills and others Vs. M/s Govind Ram Anil Kumar, 2003 (3) RCR 9civil) 734 (P&H).

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned

judgment passed by the learned first appellate court. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

25.9.2017
Ak Sharma

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No