

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

108

RSA-6764-2016(O&M)

Date of Decision:17.07.2017

Joginder Singh and others

.....Appellants

Versus

Local Gurudwara Sahib and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.B.S.Bhalla, Advocate,
for the appellants.**

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the concurrent findings of facts recorded by both the learned courts below, whereby their suit for declaration challenging the gift-deed dated 10.09.1958 qua the suit land, was dismissed by the learned trial court, vide its impugned judgment and decree dated 03.11.2014 and their appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 17.05.2016, plaintiffs have approached this Court by way of present regular second appeal, for setting aside the impugned judgments and decrees.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiffs filed suit for declaration and permanent injunction on the averments that originally Hakam Singh was the owner in possession of land measuring 18 kanals bearing khasra No.94/1 (4-4), 9/4 (1-7), 10/1(4-1), 10/2(1-9), 95//5/1(6-19), situated at village Mannawala Kalan, Tehsil Amritsar II, District Amritsar

alongwith other land in the same village. Hakam Singh had two sons namely Jeeta and Ujagar Singh and he had no other issue. Hakam Singh died in the year 1944 and his wife Guranditti pre-deceased him. The suit land fell to the share of Jeeta. The date of birth of Jeeta was 1.5.1943 and on 10.9.1958 Jeeta was minor and, thus, was not competent to execute any gift deed in favour of any body without the permission of the Court under Section 8 of the Hindu Minority and Guardianship Act. Thus, the alleged gift deed dated 10.9.1958 was null and void Bhan Singh, Buta Singh, Gurdial Singh Maan and Dasunda Singh had played fraud with Jeeta and induced him to execute the gift deed and mis-represented the facts. Jeeta alias Bishan Singh Nihang died unmarried in the year 2005 and he has no issue. Ujjagar Singh, father of plaintiffs No.1 to 6 and husband of defendant No.7 had died in the year 1964 and the plaintiffs were sole surviving collaterals of Jeeta alias Bishan Singh Nihang and they were entitled to inherit the property in suit. The plaintiffs obtained copy of jamabandi of suit land from village Patwari on 25.4.2008 and they were astonished to see that ownership of the suit land stands transferred in the name of Gurudwara Sahib, situated in village Mannawala and then they further inquired about the matter and obtained the copy of consolidation record. The plaintiff approached the defendants through Baba Balwinder Singh to get the gift deed dated 10.9.1958 cancelled and admit their claim as owners and to hand over the vacant possession of the suit land to them being the sole surviving collaterals of Jeeta alias Bishan Singh Nihang but the defendant turned down the genuine claim of the plaintiff and to hand over the vacant possession of the suit and further threatened to alienate the suit land to some other person for the purpose of cultivation, which led them to file the suit.

Defendants were put to notice. They appeared and filed their 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 for declaration, as prayed for?OPP*
- (2) Whether the plaintiff is entitled for permanent injunction?OPP*
- (3) Whether the suit of plaintiffs is legally not maintainable?OPD*
- (4) Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD*
- (5) Whether plaintiffs have concealed material facts from the Court?OPD*
- (6) Whether suit of plaintiff is hopelessly time barred?OPD*
- (7) Whether plaint is vague, indefinite and no relief can be given on the basis of it as Jeeta @ Bishan Singh had not executed any sale deed dated 10.9.1958 in favour of the defendant?OPD*
- (8) Whether suit is bad for non joinder of necessary parties?OPD*
- (9) Whether no cause of action has accrued to the plaintiff to file the present suit?OPD*
- (10) Relief.”*

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their pleaded case by leading cogent and convincing evidence. Accordingly, their suit for

declaration qua gift-deed dated 10.09.1958 was dismissed by the learned trial court, vide its impugned judgment and decree dated 03.11.2014. Plaintiffs filed their first appeal, whereas defendants-respondents filed their cross-objections qua issues No.3 to 9. First appeal of the plaintiffs was dismissed, whereas cross-objections filed by the defendants-respondents were partly allowed, vide impugned judgment and decree dated 17.05.2016 passed by the learned Additional District Judge. Hence, this regular second appeal, at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It is a matter of record that gift-deed dated 10.09.1958 Ex.P2 was executed by Late Shri Jeeta @ Bishan Singh Nihang in favour of the defendants. Jeeta @ Bishan Singh Nihang and Ujagar Singh were real brothers. Ujagar Singh was father of the plaintiffs. Jeeta @ Bishan Singh Nihang died unmarried and issueless on 17.10.2003. It was the case set-up by the plaintiffs that they could not come to know about the gift-deed executed by Jeeta @ Bishan Singh Nihang during his lifetime. Present suit came to be filed by the plaintiffs as late as on 05.10.2009 challenging the gift-deed dated 10.09.1958 Ex.P2.

It is neither pleaded nor argued case on behalf of the appellants that since the suit land initially owned by Jeeta @ Bishan Singh Nihang was being cultivated by the defendants, the plaintiffs never tried to know the reason as to how and in which capacity the defendants were in cultivating possession of the suit land. In fact, this does not appeal to reason at all. It is so said because the land of Ujagar Singh and Jeeta @ Bishan Singh Nihang would be adjoining each other. Jeeta @ Bishan Singh Nihang was not cultivating the suit land himself. It was least

expected from the plaintiffs that they would immediately enquire from Jeeta @ Bishan Singh Nihang as well as the defendants as to how and in which capacity the defendants were in cultivating possession. Since the plaintiffs-appellants could not give any kind of explanation, whatsoever, in this regard about their own conduct, learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

The factum of gift-deed dated 10.09.1958 Ex.P2 could not have remained a mystery for such a long period of more than 45 years. In fact, the plaintiffs kept on sleeping over their rights, if any, for this inordinate period. Their own conduct would show that they had no case either on facts or in law right from day one. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned Additional District Judge in para 24 and 28 of his impugned judgment, which deserve to be noticed here, read as under:-

“On the analysis of entire evidence on record as well as admission of plaintiffs and their witnesses it is proved that Jeeta alias Bishan Singh executed a gift deed dated 10.9.1958 Ex.P2 regarding the suit land in favour of defendant and same has been duly reflected in the revenue record, as is evident from the copies of jamabandi Ex.DX/1 to Ex.DX/8 and copies of khasra girdwari Ex.DX/10,

Ex.DX/11. The plaintiffs have failed to prove any fraud or mis-representation regarding the execution of gift deed in favour of defendant. Moreover, Jeeta alias Bishan Singh never challenged the said document during his life time. So far as the birth certificate Ex.P1 and its translation copy Ex.P1/T of Jeeta alias Bishan Singh are concerned, perusal of same show that the same had been issued by Additional District Registrar Birth and Death District Tarn Taran on the application moved on 14.7.2009, wherein the date of birth of Jeeta is mentioned as 1.5.1943 and place of birth is mentioned as Nathu Chak, Police Station Sarhali, District Tarn Taran, whereas it has come in evidence on record that District Tarn Taran came into existence in the year 2008 and, thus same is not reliable document. So far as the documents Ex.PA and Ex.PB are concerned it clearly shows that at page no.128 Ex.PA the entry relating to birth of Jeeta is last entry on the said page and numbered as 9 whereas at page no.129 Ex.P2, again entry No.9 is mentioned despite the fact that both the pages are continues sequence, so learned trial Court has rightly observed that in such a scenario entry with regard to birth of Jeeta at serial No.9 on 20 Ex.PA cannot be considered as reliable entry and the plaintiffs have failed to prove that Jeeta was minor at the time of execution of gift deed. That being so plaintiffs are not entitled to declaration and injunction, as prayed for. The findings of the learned trial Court on issues No.1 and 2 are based on correct appreciation of evidence and record and law on the point and same are, thus, affirmed. The point of determination No.1 is decided accordingly.

Admittedly, Jeeta alias Bishan Singh Nihang executed a gift deed dated 10.9.1958 in favour of the defendant, which has been duly reflected in the revenue record and he died in the year 2003. If Jeeta alias Bishan Singh was minor at the time of execution of said gift deed

and the said gift deed was result of fraud, as alleged by the plaintiffs, he could challenge the same, during his life time but he had not challenged the same, which gives rise to the presumption that said gift deed was validly executed by Jeeta alias Bishan Singh and suit is hopelessly time barred. In such scenario the rulings referred by learned counsel for the appellants-plaintiffs are not applicable to the facts of the present case. The plaintiffs are estopped by their act and conduct from filing the present suit and no cause of action accrued to them to file the present suit and they have concealed the material facts from the Court. However, suit is maintainable and is not bad for nonjoinder of necessary parties. Learned trial Court has rightly decided issues No.3 and 8 against the defendant and same are, thus, affirmed. However, the learned trial Court has erred in deciding issues No.4,5,6,7 and 9 against the defendant. As such, the findings of the learned trial Court on the said issues are reversed and these issues are decided in favour of the defendant and against the plaintiffs. The point of determination No.2 is decided accordingly.”

It has gone undisputed before this Court that Jeeta @ Bishan Singh Nihang never challenged the validity of said gift-deed dated 10.09.1958 Ex.P2 during his lifetime. Further, plaintiffs-appellants raised the plea of fraud but failed to prove it, in accordance with law. Appellants being the plaintiffs, onus was on them to prove the plea of fraud raised by them against the defendants. It is also pertinent to note that the plea of fraud is liable to be proved like a criminal charge. It is easy to raise the plea of fraud but the same is equally difficult to be proved. In the case in hand, plaintiffs-appellants hardly made any sincere effort to substantiate their plea of fraud raised by them by leading cogent and convincing evidence. In such a situation they were bound to fail. That is what has been held by both the

learned courts below, while recording concurrent findings of facts which deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus 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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

July 17, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No