

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 06.03.2017

1. RSA No.830 of 2016 (O&M)

Naseem

... Appellant

Vs.

Jamilan and others

... Respondents

2. RSA No.1645 of 2016 (O&M)

Naseem

... Appellant

Vs.

Mohd. Salim

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Deepak Goyal, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical regular second appeals, filed by the same appellant, against two sets of impugned judgments and decrees passed by the learned Courts below, by recording concurrent findings of facts, whereby in one case suit for permanent injunction filed by the appellant-plaintiff was dismissed and in other case, suit for declaration and permanent injunction, wherein present appellant was defendant, was decreed, are being decided together vide this common order, with the consent of learned counsel for the appellant, in both these cases, as both these appeals are arising out of similar set of facts regarding same property. However, for the facility of reference, facts are being culled out

from RSA No.830 of 2016 (Naseem Vs. Jamilan and others).

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the parties are Muslim Kamboj by caste and are governed by Mohammedan Law in the matter of succession and alienation. Originally, Mohd. Ibrahim was owner in possession to the extent of half share out of 64 bigha 7 biswa as fully detailed and remaining half share was owned and possessed by Mohd. Hanif and Mohd. Rashid in equal shares vide Sanad Partition order dated 23.07.1998. In September 2000, Mohd. Ibrahim orally gifted land measuring 32 bigha 3 biswas 10 biswasi i.e. $\frac{1}{2}$ share out of suit land to plaintiffs No.1 and 2 in equal share in the presence of parties of suit, relatives, Mohd. Juamil, Mohd. Halim and other respectable persons of society. The said gift deed was accepted by them in presence of plaintiffs No.3 and 4 and defendant. Mohd. Ibrahim also handed over possession of gifted property to plaintiffs No.1 and 2 and Mohd. Ibrahim also handed over four original sale deeds to them. By way of oral gift plaintiffs No.1 and 2 were owners in possession over gifted property. On 25.09.2001 Mohd. Ibrahim executed oral gift deed with regard to above said property in favour of plaintiffs No.1 and 2. At the time of death, Mohd. Ibrahim was not owner in possession of any portion of suit land. The defendants in connivance with revenue officials at the back of plaintiffs got sanctioned nutation No.1618 of inheritance of Ibrahim on the basis of natural succession. So the plaintiffs No.1 and 2 were owners in possession of suit land in equal share. They were also entitled to get the mutation sanctioned in their favour and the alleged mutation No.1618 was illegal, null and void and liable to be set aside. The defendant was also liable to be restrained from alienating the suit property and dispossessing plaintiffs No.1 and 2 illegally and forcibly.

Having been served, defendant put appearance and filed her contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court in Civil Suit No.120 dated 02.04.2009 framed the following issues: -

1. Whether Mohammad Ibrahim gifted the disputed property to plaintiffs No.1 and 2 in September 2000? OPP.
2. Whether Mohammad Ibrahim executed the memorandum of gift on 25.09.2001 in favour of plaintiffs? OPP.
3. Whether the defendants are threatening to alienate the disputed property illegally and forcibly? OPP.
4. Whether the defendants are threatening to dispossess the plaintiffs from the disputed property illegally and forcibly? OPP.
5. Whether the suit is maintainable in the present form? OPD.
6. Whether the plaintiffs have concealed the true and material facts from the Court? OPD.
7. Whether the memorandum of gift dated 25.09.2001 is forged and fabricated document? OPD.
8. Whether plaintiffs and all the legal heirs of Mohd. Ibrahim are joint owners in possession of the disputed property? OPD.
9. Relief.

Similarly, in the suit for permanent injunction filed by the appellant-plaintiff in RSA No.1645 of 2016, brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that

the parties were co-sharers and they jointly owned and possessed the suit land after death of their father Mohd. Ibrahim, who was original owner of suit property. Mutation No.1618 regarding inheritance of Mohd. Ibrahim was also sanctioned in favour of parties. The defendant wants to alienate some of specific portion of suit property in an illegal manner without getting the same partitioned and without due course of law. He was requested number of times not to do so but to no effect.

Defendant was served. He put appearance and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed her replication. On completion of pleadings of the parties, learned trial Court in Civil Suit No.124 dated 09.04.2009 framed the following issues: -

1. Whether plaintiff is entitled to relief of permanent injunction as prayed for? OPP.
2. Whether the suit is not maintainable? OPD.
3. Whether the plaintiff has no cause of action to file the present suit? OPD.
4. Whether the suit is bad for non-joinder of necessary parties? OPD.
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Relief.

In order to substantiate their respective stands taken in both the abovesaid civil suits, parties led their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have duly proved their suit for declaration and permanent injunction in RSA No.830 of 2016 and their suit was decreed, vide impugned judgment and decree

dated 26.11.2013 passed by the learned trial Court.

Similarly, on the same date but vide separate judgment, the learned trial Court dismissed the other suit for permanent injunction filed by the present appellant Ms. Naseem, as she has failed to prove her pleaded case. Against both the abovesaid impugned judgments and decrees of even date i.e. 26.11.2013 passed by the same learned Civil Court, two appeals were filed, which came to be dismissed by the same learned first appellate Court, by passing two different judgments in both these appeals, but on the same date i.e. 14.12.2015. Hence these two identical regular second appeals at the hands of unsuccessful plaintiff in one case and unsuccessful defendant in other case, against the concurrent findings of facts recorded by the learned Courts below, in both these cases.

Heard learned counsel for the appellant.

Both these appeals revolve around one basic fact, as to whether the oral gift made by Mohd. Ibrahim, predecessor-in-interest of the parties to present litigation, in favour of the plaintiffs of the suit for declaration and permanent injunction in RSA No.830 of 2016, was a valid gift or not.

In view of the concurrent findings of facts recorded by the learned Courts below, learned counsel for the appellant could not deny this material fact that the gift made by late Mohd. Ibrahim was a valid one and rightly so, it being a matter of record. Further, despite making his best efforts, learned counsel for the appellant could not refer to any material available on record to show that the appellant-plaintiff in her suit for permanent injunction was, as a matter of fact, in cultivating possession of the suit land. Having said that and keeping in view the abovesaid undisputed fact situation obtaining on record of these two cases, this Court feels no hesitation to conclude that the appellant was bound to fail in both the cases and the impugned judgments and decrees deserve to be upheld.

In fact, suit for permanent injunction filed by the appellant in RSA No.1645 of 2016 was not even maintainable in view of the law laid down by two Full Benches of this Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204** and **Ram Chander Vs. Bhim Singh and others, 2008 (3) RCR (Civil) 685**. It is so said because the appellant was claiming herself to be co-sharer on the basis of mutation No.1618, which was recorded by the revenue authorities on the basis of inheritance of Mohd. Ibrahim. However, it is the settled proposition of law that neither the mutation confers any title nor it establishes the possession of the appellant. On the other hand, there was a gift in favour of the plaintiffs in suit for declaration and permanent injunction. Under these peculiar facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees, in both these appeals and the same deserve to be upheld, for this reason also.

Before arriving at just conclusion, the learned first appellate Court in paras 12 and 13 of its impugned judgment in RSA No.830 of 2016 reconsidered and appreciated true facts of the case as well as principles of law applicable thereto, in the correct perspective. The cogent findings recorded by the learned first appellate Court in paras 12 and 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“It is not disputed that oral gift is valid under Mohammedan Law. It also could not be disputed that memorandum of gift does not require registration. The counsel for the plaintiff has also referred to 2011 AIR (SC)-1695 Hafeeza Bibi and others Vs. Shaikh Fraid (Dead) by L.Rs and others, where it has been held that oral gift is valid provided if it satisfied the following essentials:-

- (1) Declaration of the gift by the donor;*
- (2) acceptance of the gift by the donee and*
- (3) delivery possession.*

It has been further held that if the gift is later on reduced into writing, the document does not require registration.

The counsel for the defendant argued that three essential conditions of oral gift are not proved by the plaintiff. He referred to cross-examination of PW1 Mohd. Salim, where he admitted that at present suit land was lying vacant. He argued that it shows that possession was never delivered to the plaintiffs. However, the plaintiff and other witnesses have specifically submitted about the delivery of possession of property to them. Simply because the suit land was lying vacant at the time of his statement does not mean that possession was not delivered to the plaintiffs. Totality of evidence is to be seen. Plaintiff in his cross-examination stated that his father Mohd. Ibrahim died on 06.12.2001. In his cross-examination there is suggestion and he admitted that his father had gifted the property to them in the year 2000 which was accepted by plaintiffs. Thereafter, they went to the Well. He further stated that he had produced the writing before Patwari after 10-15 days but patwari had returned the same on the ground that mutations were closed in those days. Thus the reason for non entering of mutation on the basis of gift also stands explained from the cross-examination of plaintiff himself. PW2 Mohd. Jamil has also supported the version of plaintiffs and he is witness of the gift deed. In his cross-examination he stated that stamp paper was not

purchased in his presence. He had not seen the land in dispute. He further stated that defendant Naseem is not in possession of the suit land. PW3 Irshad Ahmed is scribe of gift deed. He admitted that he did not know the parties personally. He admitted that gift deed was scribed in the Court complex. The counsel for the defendant argued that there is no explanation as to why the gift deed was not registered when it was executed in the Court complex. However as discussed above, the memorandum of gift does not require registration and even if it was executed in the Court complex, the parties was well within their right not to get the same registered. Plaintiffs have also placed on the file original sale deeds by which Mohd Ibrahim purchased property. The counsel for the plaintiffs argued that Mohd Ibrahim handed over to them original sale deeds which also corroborate the factum of gift by Ibrahim in their favour. Defendant on the other hand examined one Jiwan as DW1, who simply stated that defendant is in possession as per his share. In his cross-examination he identified photographs of plaintiff No.1 and 2 and Mohd. Ibrahim on the gift deed. He stated that defendant is in possession for the last five years. The counsel for the plaintiffs argued that there is no explanation as to how defendant came into possession five years before his statement, which was recorded in the year 2013 when Mohd. Ibrahim died in the year 2001 itself. Jamabandi does not show possession of defendant over any portion of the suit land. The learned lower Court has rightly observed that mutation in itself does not confer any title. Defendant Naseem examined

herself as DW2 and has reiterated her version of written statement. She admitted that her marriage was performed 21-22 years back. She admitted that her father was residing with his brother and mother. She also identified the photographs of his father and plaintiffs No.1 and 2 on the memorandum. She denied the knowledge if plaintiffs were called at the time of sanctioning of mutation on the basis of natural inheritance. There is nothing to show if plaintiffs were present at the time of sanctioning of mutation on the basis of natural inheritance. From the oral and documentary evidence on record, the gift of property by Mohd. Ibrahim in favour of plaintiffs No.1 and 2 is fully proved and is rather admitted from the cross-examination of PW1. All the essential of oral gift under Mohammedan Law are duly established. Plaintiff has specifically stated that he was taken to the Well and possession was delivered. After taking into consideration all these facts the learned lower Court has rightly held that Mohd. Ibrahim has gifted the property in favour of plaintiffs No.1 and 2 in September, 2000 and memorandum of gift deed was executed on 25.09.2001. The learned lower Court has thus rightly decreed the suit of plaintiffs.”

Similarly, in RSA No.1645 of 2016, wherein the appellant was plaintiff in her suit for permanent injunction, true factual as well as legal aspects of the matter were considered and appreciated by the learned first appellate Court. Relevant findings recorded in paras 11 and 12 of the impugned judgment passed by the learned first appellate Court, which deserve to be noticed here, read as under: -

“Now the plaintiff has filed the present suit for permanent injunction restraining the defendant from illegally and forcibly alienating specific portion of joint land measuring 327 bighas 17 biswas as fully detailed. Mohd. Ibrahim was previous owner of the suit land to the extent of 32 bighas 3 biswas 10 biswasi. Plaintiff is daughter of Mohd. Ibrahim while defendant is son of late Mohd. Ibrahim. Defendant has claimed that his father has gifted suit property to defendant and his mother in the year 2000 by way oral gift deed and writing of gift was prepared on 25.09.2001. Plaintiff besides herself has examined one Pala Singh, while defendant examined marginal witness of memorandum of gift Mohd. Jamil and scribe thereof Irsad Ahmed as DW2. The learned lower Court has rightly observed that defendant has not filed any counter claim in the present suit nor any issue regarding validity of gift has been framed in this suit. It is simple suit for permanent injunction. However, even if plaintiff is held to have inherited the property on the basis of natural inheritance, then even she is to be treated as co-sharer along with defendant and other co-sharers. Plaintiff has appeared as PW1. She admitted in her cross-examination that her father had half share in 64 bigha 07 biswas. Her father must be knowing about sale deed. She admitted that defendant and her mother Jhamila used to serve her father. She claimed that she is in possession of quarter to six bigha of land for the last four years. However her statement was recoded in the year 2012, while Mohd. Ibrahim died in the year 2001. There is nothing to show as to how she came into possession of the land four years back. Pala Singh

PW2 also stated that plaintiff is in possession as per his share but no specific portion is mentioned, over which plaintiff is in possession. Jamabandi however does not show exclusive possession of plaintiff over any portion of the suit land. Defendant has examined Mohd. Jamil and Irshad Ahmed who have proved memorandum of gift dated 25.09.2001. However, as discussed earlier also the validity of memorandum of gift is not in question in the litigation. Defendant has examined himself and reiterated his version of written statement. Nothing could be made out from his cross-examination.

Even if the parties are considered to be co-sharers in the suit land, rights of a co-sharer inter-se are well settled. The learned lower Court has rightly observed that a co-sharer has interest in the whole property. Even, if a co-sharer sells specific portion, the same is considered as sale of share only which is subject to adjustment at the time of final partition as per law. If any party is aggrieved, then he or she can seek partition which is efficacious remedy available to him. The learned lower Court after taking into consideration all these facts has rightly held that plaintiff is not entitled to injunction against the defendant and suit against co-sharer for permanent injunction is not maintainable. The learned lower Court has thus rightly dismissed the suit of plaintiff.”

During the course of hearing, learned counsel for the appellant, in both these cases, could not point out any patent illegality or perversity in any of the impugned judgments passed by the learned Courts below. Once the validity

of gift made by Mohd. Ibrahim, predecessor-in-interest of the parties, has been found to be valid one and authenticity or validity thereof, was not found under any cloud at any point of time, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below. The view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. *Abdul Rahim and others Vs. Sk. Abdul Zabbar and others, 2009 (2) RCR (Civil) 934.*
2. *Hafeeza Bibi and others Vs. Shaikh Farid (Dead) by LRs and others, 2011 (2) RCR (Civil) 940.*
3. *Janatha Dal Party Vs. The Indian National Congress and others, 2014 (6) SCC 731.*
4. *Parsin Kaur (dead) through her LRs and another Vs. Apar Singh and others, 2011 (3) RCR (Civil) 375.*
5. *Rakesh Goel Vs. Manish Goel and others, 2015 (5) RCR (Civil) 485.*

Learned counsel for the appellant could not 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 law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered

view that both the regular second appeals are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both the abovesaid regular second appeals stand dismissed, however, with no order as to costs.

06.03.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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