IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.876 of 2016 (O&M)
Date of decision : 24.07.2017

Kanwar Charanjit Singh and another

...Appellants

Versus

Managing Committee, DAV High School and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Rohit Sud, Advocate for the appellants.

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ANIL KSHETARPAL, J.

CM No.11038-C of 2016

Application is allowed, as prayed for.

Annexures A-1 and A-2 are taken on record, subject to all just exceptions.

Main Case

The plaintiffs have filed the present Regular Second Appeal against the concurrent judgments passed by the Courts below.

The plaintiffs had claimed that Late Sri Guru Amarjit Singh Sahib was the direct 12th descendant of the revered fifth Guru of the Sikh's Guru Arjan Dev Ji. The plaintiffs and proforma defendant No.3 claimed themselves to be heirs of Late Guru Amarjit Singh Sahib. It is claimed that Sh. Guru Amarjit Singh Sahib gifted 29 kanals 16 marlas of land by way of Gift Deed to defendant Nos.1 and 2. It is claimed that the land was gifted for the purpose of playground. However, now defendant Nos.1 and 2 are trying to alienate the property.

The plaintiffs had filed a suit for declaration that the Gift Deed executed and registered on 12.08.1960 is liable to be declared null and void and ineffective as essential condition of the gift is being violated by the defendants.

In the written statement, the defendant(s) took a stand that Gift Deed dated 12.08.1960 is complete. Possession was duly delivered to the defendants. It is further pleaded that once gift is complete, the gift cannot be rescinded for any reason. It is further pleaded that reading of gift deed does not show that the gift was conditional. The defendant(s) has further submitted that Managing Committee of defendants takes the decisions from time to time in the interest of Institution and plaintiffs cannot regulate the same.

The learned trial Court as well as First Appellate Court after appreciating the evidence available on the file recorded a concurrent finding of fact that gift was complete in 1960 and, therefore, the suit filed by the plaintiffs is liable to be dismissed.

Counsel for the appellants has placed on file a copy of the Gift Deed dated 12.07.1960. A reading of the Gift Deed shows that gift was absolute and all proprietary rights were transferred through Gift Deed and defendants were made absolute owner of the property. No doubt, it was recorded that the Managing Committee has a right to use the same as playground. However, the gift was not conditional.

Chapter VII of the Transfer of Property Act, 1882 deals with gift. Sections 122, 123 and 126 of the Transfer of Property Act, 1882 are extracted as under:-

"122. "Gift" defined

"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donor, and accepted by or on behalf of the donee.

Acceptance when to be made-Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. Transfer how effected

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

126. When gift may be suspended or revoked

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."

It is clear from the reading of Section 126 that gift may be suspended or revoked on the happening of a specified event. A reading of the Gift Deed does not show that any such provision was made in the Gift Deed. Since the Gift Deed is registered and it is an admitted document, the ownership passed on to the defendants on execution of the registered instrument.

Counsel for the appellants has not been able to point out any substantial questions of law involved in the present case. Counsel for the appellants has further not been able to point out any ground for interference in terms of Section 41 of the Punjab Courts Act, 1918. Accordingly, the present Regular Second Appeal is dismissed.

24.07.2017 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**