

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

RSA No. 3553 of 2014 (O&M)

DATE OF DECISION : 16.12.2017

Smt. Jiwani

.... APPELLANT

Versus

Smt. Anguri

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Navneet Singh, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

The present appeal is at the behest of the plaintiff being aggrieved of the concurrent judgments and decrees passed by the learned courts below, dismissing her suit for declaration and permanent injunction.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiff filed a suit for declaration with consequential relief of permanent injunction to the effect that the registered gift deed No. 496 dated 25.05.2004 is null and void being based upon fraud and has no effect over the rights of the plaintiff, with a further prayer that the defendant be restrained from alienating the land, as detailed in the heading of the plaint.

The brief facts, as averred in the plaint, are that the plaintiff was owner in possession of lands measuring 71 kanals 1 marla comprising khewat No. 623/945, being 1/4th share of the total land measuring 284 kanals 6 marlas, and 1 kanal 9 marlas comprising khewat No. 624/946, situated in village Khatkar, as detailed in the suit. A month before institution of the suit, brother of the plaintiff, namely Telu, died at village Khatkar. He was also a co-sharer in the suit land. It was stated that the suit land came into the hands of the plaintiff and her brother from their forefathers. The property was ancestral and part of joint hindu family property. Defendant is the widow of Telu. It was alleged that on the asking of the defendant, the plaintiff accompanied her to the office of Sub Registrar, Uchana, on 25.03.2004. She was allegedly taken under the impression of sanctioning the mutation of succession due to the death of Telu. She alleged that her thumb impressions were taken on papers and she being illiterate believing the version of the defendant put her thumb impressions. A day before filing the suit, when the plaintiff came to her parents house to lease out the land of her share, she was surprised to know that the defendant had become owner in possession of the said land on the basis of gift deed executed by the plaintiff. Hence, the suit was filed.

On notice, the defendant filed written statement. It was stated that the gift deed was executed at her free will and out of love and affection by the plaintiff. It was averred that the plaintiff was not a *parda nashin* woman. It was further averred that the plaintiff was married and was living with her husband.

The learned trial court framed the following issues :-

1. Whether the gift deed o. 496 dated 25.5.2004 is illegal, null and void, based on fraud and not binding upon the rights of the plaintiff? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to declaration as prayed for by her? OPP
3. Whether the plaintiff is entitled to permanent injunction as prayed for by her? OPP
4. Whether the present suit is not maintainable? OPD
5. Relief.

The plaintiff, in order to support the suit, herself appeared as PW.1 and her nephew Jagbir Singh deposed as PW.2. Copy of the registered gift deed and copy of the jamabandi were exhibited as Ex.PA and Ex.PB, respectively.

The defendant, in order to rebut the claim of the plaintiff, examined Sukhbir Singh Bura, Naib Tehsildar, as DW.1. Ramesh, attesting witness of the gift deed, and the defendant appeared as DW.2 and DW.3, respectively. Copy of the registered gift deed dated 25.05.2004 was produced as Ex. DW1/A.

The learned trial court, after considering the facts and appreciating the evidence produced, decided issues No.1, 2 and 3 against the plaintiff and issue No.4 was decided in favour of the defendant. The net result was that vide judgment and decree dated 28.01.2011, the suit was dismissed.

Aggrieved of the aforesaid judgment and decree, appeal was filed by the plaintiff. Learned Additional District Judge, Jind,

vide judgment and decree dated 05.03.2014 dismissed the appeal.

Hence, the Regular Second Appeal.

Learned counsel for the plaintiff argued that the learned courts below had erred in dismissing the suit, as the gift deed was result of fraud by the defendant. He contended that the defendant failed to prove the genuineness of the gift deed, as its scribe was not examined. He further contended that the plaintiff was related to the defendant and she was an illiterate lady. Under the wrong impression, the defendant while playing fraud, got her thumb impressions on the papers. His contention is that the onus to prove that the transaction was in good faith was on the defendant, which she failed to discharge.

No other issue was raised or argued.

The contentions raised by learned counsel have no substance and are liable to be rejected. In the present case, apart from the self serving statement of the plaintiff that the gift deed was a result of fraud, no evidence worth reliance was brought on record. PW.2 Jagbir Singh, nephew of the plaintiff, deposed in her favour but it was proved that he was not present at the time of execution of the gift deed. In such circumstances, his evidence was of no value. On the other hand, the defendant examined DW.1 Sukhbir Singh Bura, Naib Tehsildar, and DW.2 Ramesh, one of the attesting witness of the gift deed. Both these witnesses deposed that the impugned gift deed was executed and was registered in the office of Sub Registrar. DW.1 stated that the gift deed was presented before him and he had registered it as per

rules and had read over the instrument to the parties in presence of the witnesses. The attesting witness, namely DW.2 Ramesh, deposed that he had put his thumb impressions on the gift deed on 25.05.2004 and the said gift deed was read over to the plaintiff and she at her own free will executed the deed. DW.2 also deposed that the plaintiff had two brothers, namely Telu and Partapa, and the defendant is Telu's widow. In such circumstances, merely because the scribe of the gift deed was not examined will not mean that the onus placed upon the defendant was not discharged.

Section 68 of the Indian Evidence Act, 1872 (for short, 'the Act') reads as under :-

68. Proof of execution of document required by law to be attested — *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

As per the aforesaid provision, a document which was required to be attested in law shall only be used in evidence when at least one of the attesting witnesses is called for proving the same. The only proviso is that the attesting witness should be alive.

It is further to be considered that the gift deed was a registered document carrying the photographs of donor, donee as well as the attesting witnesses. The document being a registered one, presumption of truth is attached to the same.

The legal position is well settled that one who alleges fraud has to prove it. Reliance is placed upon a decision of the Hon'ble Apex Court in **Union of India Versus M/s Chaturbhai M. Patel and Co.,** 1976 (1) SCC 747, wherein it has been held as under :-

*“7. The High Court has carefully considered the various circumstances relied upon by the appellant and has held that they are not at all conclusive to prove the case of fraud. It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; per Lord Atkin in **A.L.N. Narayanan Chettyar v. Official Assignee, High Court Rangoon, AIR 1941 PC 93.** However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are*

sometimes faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stranger than fiction. In these circumstances, therefore, going through the judgment of the High Court we are satisfied that the appellant has not been able to make out a case of fraud as found by the High court. As such the High Court was fully justified in negating the plea of fraud and in decreeing the suit of the plaintiff.”

In the above decision, the law has been enunciated that one who alleges fraud or forgery has to prove it.

In the present case, even Section 111 of the Act would not be of any help to the plaintiff, for the reasons that the plaintiff had not been able to prove the position of active confidence held by the defendant. Further, the defendant had been able to establish that the document was executed by the plaintiff after clearly understanding the nature of the transaction. In such circumstances, the concurrent judgment and decrees passed by the learned courts below cannot be faulted with.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

No other argument was raised.

Considering the facts and circumstances of the case noted

above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no order as to costs.

December 16, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes