

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**RSA No.1156 of 2017 (O&M)
Date of Decision: 05.07.2017**

Paramjit Singh and another

.....Appellants

Versus

Sohan Singh and another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Pankaj Sharma, Advocate,
for the appellants.

RITU BAHRI, J.

Present second appeal has been filed against the judgments of concurrent findings of facts dated 02.03.2013 and 18.11.2016 passed by the Additional Civil Judge (Senior Division), Kharar and the Additional District Judge, S.A.S. Nagar (Mohali) respectively, whereby the suit filed by the plaintiff-appellants, for declaration, has been dismissed.

Plaintiff-appellants filed a suit for declaration to the effect that they and proforma defendant Labh Singh (respondent No.2 herein) were owners in possession to the extent of 2/3rd share of the land left by deceased-Joginder Singh, as detailed in head note of the plaint, in equal shares. Originally, the said land was owned and possessed by Joginder Singh, who was real brother of appellants's father. He used to live separately in his house and died unmarried & issueless at the age of 80 years. As per plaintiff-appellants, Joginder Singh was suffering from various ailments due

to old age and had lost his mental equilibrium. Taking advantage of his mental condition, defendant-respondent No.1 got numerous documents executed from Joginder Singh, including gift deeds dated 16.03.1999 and 18.03.1999. Later on, on the basis of those gift deeds, defendant-respondent No.1 got mutation sanctioned in his name qua the properties left by Joginder Singh. Claim of plaintiff-appellants was that the aforesaid gift deed were the forged and fabricated documents as Joginder Singh had equal love and affection for all his sons. Hence the suit.

Upon notice defendant No.1 appeared and filed written statement taking preliminary objections with regard to maintainability; plaintiffs being not in possession of the suit property; suit being not properly valued for the purpose of Court fee and jurisdiction, suit barred by Order 2 Rule 2 CPC etc. On merits, it was stated that Joginder Singh had been residing with him (defendant No.1), as he (Joginder Singh) was not having good relations with plaintiff-appellants. Defendant No.1 used to look after serve Joginder Singh as his father. Due to this reason, Joginder Singh had executed gift deeds in his favour. It has been denied that the aforesaid gift deeds were false and frivolous. It has been further denied that Joginder Singh was not in sound disposing state of mind at the time of execution of the gift deeds. Rest of the averments made in the plaint were denied and prayer for dismissal of the suit was made.

In the replication, the plaintiff-appellants reiterated the averments made in the plaint and controverted those of the written statement.

From the pleadings of the parties following issues were framed:-

1. Whether the plaintiffs are entitled to declaration, as prayed for? OPP
2. Whether the plaintiffs are entitled to permanent injunction, as prayed for? OPP
3. whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiffs are estopped by their act and conduct from filing the suit? OPD
- 4 (a). Whether the defendants are owner in possession of the suit property on the basis of gift deeds dated 16.03.1999 and 18.03.1999? OPD
- 4 (b). Whether the suit of the plaintiffs is barred under Order 2 Rule 2 CPC? OPD
5. Relief.

Both the Courts below have decided against the plaintiff-appellants.

The plaintiff-appellants have relied upon a Will dated 17.09.1992 alleged to have been executed in favour of Labh Singh-defendant No.2 and Sohan Singh-defendant No.1 in equal shares each. In order to prove the said Will, they had examined Piara Singh, Registration Clerk, who proved certified copy of the Will as Ex.P2. Baljit Kaur, Advocate (PW-3), had drafted the said Will. But, she was not an attesting witness of the same.

On the other hand, defendant-respondent No.1 had proved the gift deed dated 16.03.1999 as Ex.D1/A and gift deed dated 18.03.1999 as

Ex.D2, which were executed by Joginder Singh in his favour. Both these deeds were duly registered. Supinder Singh (DW-2) deposed that the gift deeds were scribed at the instance of Joginder Singh on 16.03.1999 and 18.03.1999 in his presence. Contents of the same were read over and explained to Joginder Singh. Joginder Singh thumb marked the gift deeds after admitting the same to be correct, in his presence and in the presence of another attesting witness namely Ajaib Singh son of Nanak Singh. Thereafter, Supinder Singh (DW-2) and Ajaib Singh signed as attesting witnesses. The gift deeds were duly accepted by Sohan Singh, who also appended his signatures upon the same. Thereafter, the gift deeds were presented before the Sub Registrar, Majri, who again read over and explained the contents thereof to Joginder Singh. Joginder Singh again thumb marked the gift deeds in token of correctness. Supinder Singh and Ajaib Singh also signed as attesting witnesses before the Sub Registrar. During the cross-examination of Supinder Singh (DW-2), nothing substantial could be elucidated by the plaintiffs. Paramjit Singh (PW-1), in his cross-examination, admitted that mutation of inheritance on the basis of gift deeds, had been signed in the name of defendant No.1 and admittedly, he did not prefer any appeal against the same. He had further admitted that gift deeds were executed by Joginder Singh in favour of defendant No.1. PW-1 further deposed that during the lifetime of Joginder Singh, he did not bother to inquire the reasons for his having gifted the property only to defendant No.1. As per Ex.P3, defendant No.1 was the owner in possession of the suit property. Ex.D3 is the certified copy of the plaint of civil suit which was earlier filed by the present plaintiffs against defendant No.1 and Joginder Singh. The said suit was filed for permanent injunction restraining

original owner-Joginder Singh and Sohan Singh (defendant No.1) from obstructing the plaintiffs from taking water from the tubewell or in any other manner. In that suit, Joginder Singh and Sohan Singh had filed their written statement, Ex.D5, pleading that Joginder Singh had gifted away his entire land along with tubewell to Sohan Singh vide registered gift deeds dated 16.03.1999 and 18.03.1999. The said suit was dismissed vide judgment and decree dated 23.07.2004 Ex.D6, whereby plea of defendant No.1 with regard to the execution of the gift deeds in his favour by Joginder Singh, was upheld. Appeal against the said judgment was dismissed on 05.10.2005 Ex.D9 by the Additional District Judge, Ropar. Ex.D10 is the certified copy of order dated 04.10.2006 passed by this Court, whereby RSA No.1741 of 2006 filed by the present herein, was dismissed in limine. Defendant No.1 has proved certified copy of cross-examination of plaintiff-Paramjit Singhf (in the earlier suit) as Ex.D13, whereby he admitted that Joginder Singh had gifted his property to defendant No.1 vide gift deeds dated 16.03.1999 and 08.03.1999.

There is no bar that a person, who makes a Will cannot make a subsequent Will or gift in favour of some other person during his lifetime. Even if, any Will had been executed by Joginder Singh in respect of his estate, it was to come in force only after his death. The testator cannot be debarred from executing any subsequent gift deed in respect of his property. With the execution of the gift deed, the Will automatically pales into insignificance. Moreover, the plaintiff-appellants were not able to prove execution of the Will by examining the attesting witnesses. Hence, the question of granting ancillary relief of restraining defendant No.1 from alienating the suit property was rightly declined by the trial Court and issue

Nos. 1 and 2 were decided against the plaintiffs and in favour of defendant No.1. Plaintiff-appellant filed an appeal against the judgment passed by the trial Court, which was dismissed vide judgment dated 18.11.2016. While dismissing appeal, the first appellate Court observed that in the earlier civil suit Ex.D3, written statement Ex.D5 had been filed in the year 1999, wherein plea of execution of the gift deeds was raised. However, no plea against the claim of respondent No.1 was raised at that time. The first appellate Court observed that the provision of Order 2 Rule 2 CPC specifically bars splitting of the cause of action on the principle that no one should be vexed twice for the same cause of action, if plaintiff omits to sue any part of his claim, which he is required to raise, later on he cannot seek the same relief by way of separate suit.

Having examined the impugned judgments, this Court is of the view that suit of the plaintiff-appellants has been rightly dismissed by the Courts below and no illegality, much less perversity, has been found therein. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

05.07.2017

ajp

(RITU BAHRI)
JUDGE

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