

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA-1479-2017 (O&M)

Date of Decision: 28.03.2017

Municipal Corporation, Rohtak

...Appellant(s)

Versus

Balwan Singh & others

...Respondent(s)

RSA-1480-2017 (O&M)

Municipal Corporation, Rohtak

...Appellant(s)

Versus

Dev Dutt & others

...Respondent(s)

RSA-1709-2017 (O&M)

Municipal Corporation, Rohtak

...Appellant(s)

Versus

Balwan Singh & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Vishal Garg, Advocate
for the appellant.

HARI PAL VERMA J.

This order shall dispose of three regular second appeals i.e. RSA Nos.1479, 1480 and 1709 of 2017, as similar facts and common question of law are involved in all these appeals. However, for brevity, facts have been taken from RSA-1479-2017.

CM-3540-C-2017:

For the reasons stated in the application, the same is allowed.
Delay of 2 days in filing the present appeal is condoned.

RSA-1479-2017 (O&M):

Appellant-defendant no.3 i.e. Municipal Corporation, Rohtak has filed the present regular second appeal against judgment and decree dated 15.10.2016 passed by learned Additional District Judge, Rohtak, whereby, the appeal filed against the judgment and decree dated 3.4.2013 passed by learned Civil Judge (Sr. Divn.), Rohtak, was dismissed.

Briefly stated, the respondent-plaintiffs (for short, “the plaintiffs”) had filed a suit for possession and injunction regarding land gifted to them. As per the plaint, the plaintiffs are members of scheduled caste and backward classes. Defendant no.2-Gram Panchayat, Village Kanheli was owner in possession of the agricultural land comprised in Khewat No.292/250 Min. Rect. No.10, Killa no. 16/2, Rect. No.11, Killa no. 20/2, 21/2, total measuring 22 Kanal, 17 Marla, situated at village Kanheli, Tehsil and District Rohtak. Defendant no.2-Gram Panchayat had passed a resolution dated 27.8.1993 under the provisions of Section 5(a) of the Punjab Village Common Land Act, 1961, recommending defendant no.1 i.e. the Collector for permission to gift plots to Harijans and backward class members in the suit land and a list of eligible persons was approved by the Gram Panchayat vide resolution dated 2.2.1994. Accordingly, the plaintiffs along with other persons were given plots by executing gift deed dated 9.3.1994. Resultantly, the plaintiffs became owners of the respective plots and were entitled to have physical possession of the same. However,

on 18.5.2008, defendant no.2- Gram Panchayat had passed another resolution and thereby, cancelled the allotment of the aforesaid plots to the plaintiffs arbitrarily, illegally and against the principles of natural justice, as the possession of the said plots were never delivered to the plaintiffs till date. The resolution dated 18.5.2008 is vague, as no particulars of persons were specified in the same. Moreover, no show cause notice or opportunity of hearing was ever given to the allottees before the cancellation of the said allotment. Thus, the very basic fundamental rights i.e. right of hearing was not afforded to the plaintiffs. Further, it was submitted that defendant no.2- Gram Panchayat had no jurisdiction to cancel the allotment of plots, as the plaintiffs had not violated any of the conditions of allotment letter. The plaintiffs filed Civil writ Petition No.15300 of 2008 before the Hon'ble High Court and the same was dismissed on 29.8.2008 with a liberty to the plaintiffs to seek redressal of their grievances by filing a separate suit for possession. Thereafter, the plaintiffs made repeated requests to the defendants-appellants (for short, "the defendants") to give physical possession of the plots, but the same were not acceded to, rather the defendants were threatening the plaintiffs to allot this land to some other persons and to convert the land for some other purpose. Since the request of the plaintiffs was not considered, the plaintiffs have filed the present suit.

On notice having been issued, defendants no.1 and 2 filed their separate written statements, taking various preliminary objections including false and frivolous suit, maintainability, cause of action, jurisdiction and the suit being bad for want of legal notice under Sections

80 CPC and 205 of the Haryana Panchayati Raj Act, 1994. However, on merits, the defendants resisted the claim of the plaintiffs that they were owners of the said plots, though it was admitted that the plots in question were allotted to the plaintiffs in the year 1994 on the terms and conditions laid down under Section 5A and Rule 13A of the Punjab Village Common Land Act, 1961 and the Punjab Village Common Land Rules, 1964. It was pleaded that as per the conditions of allotment, the plaintiffs along with other concerned persons were required to construct their houses and to complete the same within 12 months from the date of 'gift deed' when possession was actually delivered to them. Since the plaintiffs have failed to construct their houses on the suit land till 18.5.2008, defendant no.2 – Gram Panchayat had cancelled the allotment of plots to 89 persons including the plaintiffs, vide resolution dated 18.5.2008. Plaintiffs have violated the terms and conditions of Rule 13A of the Punjab Village Common Land Act, 1961 and the Punjab Village Common Land Rules, 1964. The suit land was resumed by the Gram Panchayat after cancellation of the allotments. The suit property is *shamlat deh* and the jurisdiction of Civil Court is barred under Section 13 of the Punjab Village Common Land Act, 1961 and therefore, the suit was sought to be dismissed.

From the pleadings of the parties, learned trial Court framed following issues:-

1. Whether the plaintiffs are entitled to possession of the suit land as prayed for? OPP
2. Whether the plaintiffs are entitled to permanent injunction restraining the defendants from using the suit land and from allotting the same as prayed for? OPP

3. Whether the plaintiffs are entitled to declaration to the effect that the resolution dated 18.05.2008 is illegal, null and void? OPP
4. Whether the suit of the plaintiffs is not legally maintainable? OPD
5. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD
6. Relief.

Learned trial Court after hearing both the parties and appreciating the evidence on record, had decreed the suit vide judgment dated 3.4.2013. Learned trial Court recorded a finding of fact that the gift deed was executed on 9.3.1994 and on 19.3.1994, the Sarpanch of Village Kanheli had written a letter to SDO, Rohtak, requesting him to provide police help *qua* demarcation and delivery of possession of the plots allotted to the plaintiffs. The said letter was endorsed by the SDM, Rohtak to SHO, Rohtak, directing him to provide police help for the demarcation and delivery of possession of the allotted plots to the plaintiffs. Though the defendants had adduced a copy of Rapat Roznamcha dated 8.3.1994 (Ex.D4), which depicts that the physical possession of the suit property was given to the plaintiffs on 8.3.1994 before execution and registration of the gift deeds, which were executed and registered on 9.3.1994, but on the basis of documents Ex.PW4/1 to Ex.PW4/3, the trial Court has opined that physical possession of the suit property was never delivered to the plaintiffs till 8.4.1994, despite efforts being made by the defendants to facilitate the delivery of possession of the suit property to the plaintiffs. Thus, the trial Court has recorded a finding that possession of the suit

property was never handed over to the plaintiffs and therefore, question of raising construction over the plots does not arise at all. Resultantly, the suit was decreed and it was found that the plaintiffs have not violated any of the terms and conditions of the gift deed. Moreover, jamabandi for the year 2002-03 (Ex.PX) has proved that the possession of the suit property remained with the Gram Panchayat and not with the plaintiffs.

Aggrieved against the aforesaid judgment and decree of the trial Court dated 3.4.2013, the defendants have preferred an appeal before the first Appellate Court which was also dismissed vide judgment and decree dated 15.10.2016. Learned lower Appellate Court has held that once the gift by the defendants in favour of the plaintiffs has come into existence on account of its due execution and registration, which fact has not been denied by the defendants-appellants, the gift became valid and final, even if it was a conditional gift, the same could be revoked by resorting to the provisions of Section 126 of Transfer of Property Act, by instituting a suit with the specific allegations that the donee had failed to fulfill the conditions incorporated in the gift deed and in no other way the gift could have been revoked. Even if the version of the defendants is accepted that the plaintiffs-respondents have violated the terms on which the gift was made, it only amounts to the gift being voidable and not void. Since the gift deed can only be cancelled or revoked through a decree of civil court and once a gift deed has been executed and registered in favour of the plaintiffs, it became valid and final. Thus, the defendants have no right to cancel the registered gift deed merely on the basis of violation of terms and conditions of the gift deed, as these registered gift deeds can only

be cancelled through the decree of Civil Court. Therefore, the resolution dated 18.5.2008, cancelling the gift deeds, was held bad in law. So far as the possession over the plots delivered to the plaintiffs is concerned, the plaintiffs have placed reliance upon registered gift deed dated 9.3.1994 and they have further relied upon document Exhibit PW4/1, which is letter dated 19.3.1994, written by the Sarpanch of Village Kanheli to SDO, Rohtak, requesting police help for the purpose of demarcation and delivery of possession of the plots to the plaintiffs-respondents. In pursuance of the aforesaid letter, SDO Rohtak had directed the SHO concerned to provide the necessary police help for the purpose of carrying out the demarcation and to facilitate delivery of possession to the plaintiffs. From perusal of Exhibit PW4/1 and PW4/2, and PW4/3, it becomes clear that physical possession of suit property was never delivered to the plaintiffs till 08.04.1994, despite the fact that various efforts were made by the defendants to get the physical possession of the plots to the plaintiffs-respondents. Therefore, it was proved that physical possession of the suit land was never handed over to the plaintiffs and thus, the question of raising construction over the suit land does not arise at all. While dismissing the appeal, the lower Appellate Court observed as under:-

“25. From the perusal of the documents Exhibit PW-4/1 to Exhibit PW4/3, it has become crystal clear that the physical possession of the suit property was not delivered to the plaintiffs-respondents till 8.4.1994 despite the fact that various efforts were made by the defendants to deliver the possession of the suit property to the plaintiffs-respondents. In these circumstances, it can be held that the physical possession of the suit property was never handed over to the plaintiffs-

respondents. Therefore, the question of raising construction over the said plots by the plaintiffs-respondents does not arise at all. Hence, the plaintiffs have not violated any terms and conditions of the gift deed. Moreover, the jamabandi for the year 2002-2003 Exhibit PX also reflects that possession of the suit property remained with the Gram Panchayat.

26. As far as plea regarding jurisdiction of the civil Court to decide the matter or not is concerned, the plaintiffs-respondents have relied upon copy of order Exhibit P57 passed by the Hon'ble High Court. On perusal of the same, it reveals that writ petition bearing No.15300 of 2008 has been filed by the plaintiffs-respondents against the defendants and the same has been dismissed by the Hon'ble Punjab & Haryana High Court with the liberty to the petitioners to seek the redressal of their grievances by filing a civil suit for possession. Hence, in view of the findings of the Hon'ble High Court in the said writ petition, it can be held that the Civil Court has jurisdiction to decide the matter.

27. In view of the above discussion, the appellants-defendants have not been able to prove the fact that neither the possession of the suit property was ever handed over to the plaintiffs-respondents nor the plaintiffs-respondents have violated the terms and conditions of the gift deeds by raising any construction over the same. As discussed above, it has also been held that the Civil Court has jurisdiction to try and decide the matter. Hence, the findings returned by the learned lower Court on these issues qua the present respondents-plaintiffs are quite legal and are hereby affirmed. Accordingly, the Civil Appeals No.176 of 2013 titled as Municipal Corporation Versus Balwan Singh and others and 177 of 2013 titled as State of Haryana Versus Balwan Singh and other, listed at Serial No.1 and 2, are hereby dismissed with costs throughout.”

Still not satisfied, the appellants-defendants have filed the instant appeal submitting that following substantial questions of law arise in this appeal for consideration of this Court:-

- “a. Whether the impugned judgments and decrees are liable to be set aside being perverse?*
- b. Whether the gift deed, executed in the year 1994 is liable to be cancelled in view of the mandatory terms and conditions given in the allotment letter?*
- c. Whether the deed executed in the year 1994 was strictly gift deed in terms of the provisions of Transfer of Property Act?”*

Learned counsel for the appellants-defendants has argued that the Courts below have totally ignored the fact that the gift deeds executed in favour of the plaintiffs-respondents were conditional ones, whereby, they were clearly bound to raise construction within a prescribed time limit. But the plaintiffs have failed to raise construction over the allotted plots. Hence, the allotment was rightly cancelled. Learned counsel has further argued that the Courts below have also ignored the fact that the allotment was cancelled after adopting the due procedure, as resolutions were passed by the Gram Panchayat with majority. The Courts below have also ignored that the land in dispute being a village common land, the same does not come within the purview of Civil Court, as provisions of Punjab Village Common Land Act, 1961 clearly bars the jurisdiction of a Civil Court on such like issues.

I have heard learned counsel for the appellant and perused the impugned judgments and decrees passed by the Courts below.

In the instant case, the respondents-plaintiffs were allotted the suit property by way of execution and registration of gift deeds dated 9.3.1994 by the appellants-defendants and this fact has not been denied by the appellants-defendants. Therefore, the gift deeds have become valid and final. Even if it was a conditional gift, the same could be revoked only by resorting to the provisions of Section 126 of Transfer of Property Act by instituting a suit with the specific allegations that the donee has failed to fulfill the conditions incorporated in the gift deed and in no other way. But in the present case, no such suit has been filed by the defendants seeking cancellation of gift deed. Moreover, defendant no.2-Gram Panchayat had passed resolution dated 27.8.1993, recommending defendant no.1 i.e. the Collector for permission to gift the plots to Harijans and backward class members in the suit land and subsequently, a list of eligible persons was approved by the Gram Panchayat vide resolution dated 2.2.1994. As a consequence thereof, respondents-plaintiffs along with other persons were not given delivery of plots on 9.3.1994. No doubt, the plaintiffs were required to raise construction over the plots in question within the specified period of 12 months. However, in the present case, physical possession of the plots was not handed over the plaintiffs, despite administrative efforts being made by the defendants and having recourse to use of police help. Thus, the defendants have no right to cancel the registered gift deeds merely on the basis of violation of terms and conditions of the gift deed, as the same could only be cancelled through the decree of a Civil Court. From perusal of Exhibit PW4/1 and PW4/2, and PW4/3, it becomes clear that physical possession of suit property was never delivered to the plaintiffs till

08.04.1994. Once a concurrent finding of fact has been recorded by the Courts below that physical possession of the suit property was never handed over to the plaintiffs, the questions of raising construction thereon does not arise at all. Moreover, the very object of allotting plots under the Government scheme/policy is to help the needy and poor people and even if it is assumed that the plaintiffs have failed to raise construction over the land allotted to them within the stipulated period, cancellation of the allotment is too harsh. In the case of **Teri Oat Estates (P) Ltd vs U.T. Chandigarh And Ors 2004(1) RCR (Civil) 540,** Hon'ble the Apex Court has held that power of resumption is a very drastic power and the same has to be invoked only as a last resort in a rarest case where the allottee has no intention at all to pay or construct.

Therefore, no exceptions can be taken to the concurrent findings of facts recorded by the Courts below. No substantial questions of law arise in these appeals.

In view of the aforesaid, this Court finds no merit in these appeals.

Dismissed.

March 28, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No