

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

RSA No.4710 of 1999 (O&M)

Date of decision:05.10.2018

Ajay Kapoor

... Appellant

Vs.

Sheela Rani and others

... Respondents

CR No.5908 of 2011 (O&M)

Ajay Kumar Kapoor

... Petitioner

Vs.

Sheela Rani and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain, Advocate
for the appellant in RSA No.4710 of 1999 and
for the petitioner in CR No.5908 of 2011.

Mr. Vijay Sharma, Advocate
for the respondents in both cases.

AMIT RAWAL J.

This order of mine shall dispose of RSA No.4710 of 1999 arising out of decision of civil suit no.816 of 1986 titled as “Kanhia Lal (died) through Ajay Kapoor Vs. Sheela Rani and others and CR No.5908 of 2011 arising out of decision of rent petition no.110T of 2000 titled as “Sheela Rani Vs. Kali Charan and Ajay Kumar Kapoor.”

Since the property in dispute is same, therefore, the aforementioned cases are clubbed and decided together.

In the civil suit, aforementioned, declaration was sought that Kanahia Lal (since deceased) represented through Ajay Kapoor was owner of the house in dispute which was rented out to two persons. The plaintiff was an opium addict and it transpired that defendant no.1-Sheela Rani and defendant No.2- Prem Krishan, who was watch repairer had played a fraud by obtaining the registered gift deed no.2271 dated 28.9.1984 in respect of the suit property. The challenge was laid to the aforementioned gift deed on the following grounds:-

- i) the deed was quite unconscionable, much less without consideration as it was referred that defendant no.1-Sheela Rani was daughter of Kanahia Lal, whereas, factually it was incorrect.
- ii) defendant no.2 was mischievous person and contents of the Will were never explained to the plaintiff.
- iii) house was more than 48 square yards whereas area given in the gift deed was 38 square yards.
- iv) possession was not handed over to defendant no.1 and the value of the property was much more than ₹16,000/- as referred to.
- v) The deed suffered from suspicious circumstances as it seemed that under the influence of opium, defendants obtained the signature of the plaintiff.

Upon notice, defendants opposed the suit on the premise that

gift deed was executed by Kanahya Lal on account of his own volition as defendant no.1 was treated as daughter, for, he was issueless. The Registrar registered the gift deed after recording the satisfaction as the contents of the gift deed were read over to Kanahya Lal. The possession of the property was given to defendant no.1.

During the pendency of the suit, one Bimal Kumar was joined as defendant no.4 and set up an agreement to sell dated 09.03.1984 executed in his favour by Kanahya Lal for a total sale consideration of ₹20,000/- against receipt of earnest money of ₹5,000/-.

Defendant no.4 had filed a suit for specific performance which was decreed by the trial Court on 18.01.1988. Even the sale deed dated 25.03.1988 was also executed and therefore, set up a title.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction?OPD*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether the suit has not been properly described?OPD*
- 4. Whether the plaintiff is estopped from filing the present suit?OPD*
- 5. Whether the suit has been filed at the instance of Ajay Kumar and thus he does not disclose any cause of action?OPD*

6. *Whether the gift deed dated 28.09.1984 executed by plaintiff in favour of defendant no.1 is illegal, null and void?OPP*

6-A *Whether the defendant no.4 has become the owner of suit property as alleged by him?OPD-4*

6-B *Whether the gift deed dated 28.9.1984 executed by Kanhaya Lal plaintiff in favour of defendant no.1 is illegal, null and void and fraudulent?OPD-4*

6-C *Whether the agreement of sale dated 9.3.1984 and judgment and decree dated 18.1.1988 and sale deed dated 25.3.1988 are result of collusion between Kanhaya Lal plaintiff and defendant no.4 and are illegal, null and void, inoperative against the rights of defendant no.1?OPD-1*

6-D *Whether defendant no.4 is estopped from claiming any right on the basis of alleged agreement dated 9.3.1984 as alleged in further objections in rejoinder of defendant no.1?OPP-1*

7. *Relief.”*

The plaintiff in support of the evidence examined as many as five witnesses, whereas, defendants examined nine witnesses.

On the basis of evidence brought on record, the trial Court found that gift deed Ex.DW5/1 was not signed by Kanhaya Lal at one page but at four places and written by a deed writer, resultantly, dismissed the suit by rejecting the story coined by the plaintiff regarding the factum of

execution of gift deed being an opium addict as he was a license holder for consumption of one gram in a month.

The appeal taken before the Lower Appellate Court by both plaintiff and defendant no.4 was also dismissed.

Revision Petition No.5908 of 2011

Sheela Rani instituted the ejectment petition seeking eviction of Kali Charan and Ajay Kumar Kapoor from tenanted premises i.e. chaubara in the first storey house no.B-45/46, Jyoti Ram Street, Katcha Patiala as Kali Charan was inducted as a tenant by Kanhaya Lal and thereafter in the rent petition seeking arrears of rent w.e.f. 01.01.1985 to 31.12.1985 @ ₹50/- per month, the same was tendered but thereafter, payment of rent was stopped and unauthorisedly handed over the possession of the disputed premises to Ajay Kumar Kapoor. Respondent no.1 was proceeded against ex parte whereas respondent no.2-Ajay Kumar Kapoor contested the rent petition by denying the gift deed in favour of Sheela Rani, much less relationship of landlord and tenant, therefore, came out with a plea that payment of rent to the petitioner did not arise. It was averred that Kali Charan handed over the possession of the demised premises to legal representatives of Kanhaya Lal in pursuance to a decision in rent appeal decided on 29.10.1990.

Since the parties were at variance, the Rent Controller framed the following issues:-

“1. Whether there is relationship of landlord and tenant between the petitioner and respondent no.1?OPA

2. *Whether respondent no.1 is in arrears of rent?OPA*
3. *Whether respondent no.1 has sublet the premises to respondent no.2?OPA*
4. *Relief.”*

The Rent Controller dismissed the rent petition necessitating Sheela Rani to file the appeal. However, Appellate Authority constituted under the Rent Act noticing the fact that civil suit filed by Kanhaya Lal seeking declaration regarding the gift deed had been dismissed and ordered the eviction on the ground of sub-letting.

This Court while issuing notice of motion in the aforementioned revision petition stayed the dispossession of the petitioner primarily on the ground that there was status quo order passed in the accompanying Regular Second Appeal.

In the Regular Second Appeal, vide order dated 21.02.2003, this Court while admitting the appeal framed the following substantial question of law:-

“Whether in the absence of any natural love and affection and having regard to the fact that appellant who was the donor himself challenged the gift deed on the ground that he was an opium addict, inference of gift being voluntary could be drawn?”

Mr. Ajay Jain, learned counsel representing Ajay Kumar Kapoor in both the cases raised the following submission:-

The Courts below have not read the contents of the gift deed

Ex.DW5/1 in correct perspective as no evidence has come on record that Sheela Rani was proved to be daughter of Kanhaya Lal. Kanhaya Lal himself appeared as PW2 and brought on record that by virtue of license he was permitted to consume one gram of opium in a month. It was a clear cut case of fraud which has been proved on record.

The gift deed was without consideration and surrounded by suspicious circumstances as date of execution of the gift deed was 28.09.1984 but attested on 01.10.1984. In such circumstances, identity of the attesting witness was in doubt. Since no possession was delivered by the donor to donee, therefore, the question for execution of the gift deed did not arise. Mere receiving of rent does not confer a title upon the defendants and respondent no.1. Sheela Rani was never treated as a daughter by Kanhaya Lal. She failed to lead any evidence qua relationship of daughter or having been treated as such under Section of 50 of Indian Evidence Act.

In the revision petition, it was argued that petitioner was impleaded as legal heir of Kanhaya Lal, who originally filed the suit on the basis of the Will executed by him but died during the pendency of the suit. No plausible explanation has come forth as to how and under what circumstances, Sheela Rani maintained silence for such a long time as rent petition was filed in the year 2000 claiming the arrears w.e.f 01.01.1985. It has come in the statement of AW5, attorney of respondent no.1, that one Bimal Kumar was in possession of ground floor of the house. It has also been proved on record that respondent No.1-Kali Charan, (whose service was dispensed with as per the order dated 02.05.2012), had been proved to

be no longer a tenant in the demised premises since 29.10.1990. In the rent petition, it is not necessary that landlord may be owner. However, there was no relationship of landlord and tenant. Mere ownership of the property by virtue of gift deed could not clothe the status of Sheela Rani, as landlord.

Per contra, Mr. Vijay Sharma, learned counsel representing the respondents in both cases submitted that admittedly, the property in question was immovable property and the possession was of two tenants and in the remaining portion, Sheela Rani used to reside. As per the copy of the judgment rendered in rent petition, filed in 1985, under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against Kali Charan, rent was tendered and accepted by Sheela Rani, whereas, civil suit was filed in the year 1986, by Kanhaya Lal much prior to filing of rent petition. The provisions of Sections 122 and 123 of the Transfer of Property Act, prescribed the procedure of gift. The ingredients of fraud and misrepresentation have not been proved on record, much less findings recorded with regard to admission. There is no challenge to the findings where Kanhaya Lal to a specific question in cross-examination admitted Sheela Rani to be his daughter.

The gift deed was attested by Rachhpal Singh and Varinder Singh Sekhon, Advocate. The decree of specific performance was an ex parte as Kanhaya Lal intentionally after appearing did not contest thereafter. The decree was passed on 18.01.1988, whereas, gift deed was executed on 28.08.1984, therefore, Kanhaya Lal did not have any valid title and interest in the property as agreement to sell does not confer any title and thus, urged

this Court for dismissal of the appeal.

In the revision petition, it was argued that after gift deed, Sheela Rani became the owner of the house and Kali Charan was already a tenant in the house under Kanhaya Lal. Kali Charan attorned Sheela Rani as a landlord but when he failed to pay the rent, ejectment petition was filed, wherein, Kali Charan tendered the rent and the rent petition was dismissed as withdrawn. Kali Charan without the consent of Sheela Rani sub-let the premises to Ajay Kumar Kapoor but the Rent Controller erroneously dismissed the ejectment petition. Once Kali Charan had been proved to be a tenant and therefore, the possession in favour of Ajay Kumar Kapoor, on the basis of the testamentary documents of Kanhaya Lal, was without any authority or consent.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that there is no force in the submissions of Mr. Jain.

PW2 - Kanhaya Lal to a specific question in cross-examination, which was read out in Court during the course of hearing, candidly admitted that he used to treat Sheela Rani, as her daughter but thereafter, made an attempt to wriggle out of the statement by suffering a voluntary statement that it was only in papers. The witnesses may not tell truth in examination-in-chief but under the cross-examination spilled the beans realising the statement to be read against them suffered voluntary statement. It is a common practice to rectify the admission in cross-examination by suffering the voluntary statement. Such act is not un-intentional but deliberate, thus,

would not partake the admission. The gift deed is a registered document and carried a presumption of truth. It has not been proved on record through the testimony of any doctor that consumption of one gram of opium, permitted under license, Kanhaya Lal was coherent or otherwise.

The signatures on the gift deed have been admitted but attempt had been made to explain to be under the influence of opium. Had it been so when the parties appeared before the Registrar for registration, the Registrar as per the statement recorded Ex.DW2/21 read out the contents to Kanhaya Lal, thus, for all intents and purposes, Kanhaya Lal understood the effect of the gift deed. In fact, he was divested of the right and title and in such circumstances, could not have challenged the same, for, ingredients of fraud and misrepresentation which is essential requirement of law to be proved for setting aside an act done by a person, are conspicuously absent.

Defendant no.4 in connivance with the plaintiff, Kanhaya Lal created an agreement to sell of back date but non-appearance of Kanhaya Lal in a suit for specific performance resulted into a decree of 1988, post execution of gift deed would pale into insignificance.

Had it been so, a person who has actually been befooled and frauded, would not remain silent but run from pillar to post to lodge an appropriate criminal proceedings. Perhaps Kanhaya Lal was afraid that truth may not surface. It is a fact that Kanhaya Lal had not appended the signatures on one page but were at four places. DW5-Kirpal Singh, deed writer, who had written the gift deed, had appeared as witness and proved the contents of the same. Tarsem Lal, another witness was also examined as

DW6. Despite extensive cross-examination, plaintiff has not been able to bring the element of fraud or misrepresentation to surface. In such circumstances, I do not hesitate to affirm the findings of the Courts below by observing that the substantial question of law framed hereinabove is answered against the appellant-plaintiff.

Regular Second Appeal is dismissed.

Civil Revision No.5908 of 2011

The factum of filing of rent petition prior to the suit aforementioned has been proved on record wherein Kali Charan tendered the rent and attorned Sheela Rani as landlord, thus, relationship between Kali Charan and Sheela Rani had been proved. In such situation, question arises is “whether Ajay Kumar Kapoor, who claimed the possession in the suit property without any authority has been able to prove the circumstances of retaining possession of the tenanted premises”?

Though there was emphatical denial as a sublettee but fact of the matter is that Ajay Kumar Kapoor had claimed to have succeeded the property of Kanhaya Lal as legal representative by virtue of testamentary document and took the plea that he was delivered the possession of the portion under the tenancy of Kali Charan, being the LR, but once Kali Charan held to be a tenant, therefore, when Kali Charan left the premises, his status would that of subtenant. This is what the import of the findings rendered by the Appellate Authority. Filing of the ejectment petition on 19.12.1985 on the ground of non-payment against Kali Charan had been proved on record as Ex.P2, wherein, arrears of rent w.e.f. 1.12.1985 to

31.12.1985 @ Rs.50/- was tendered, and thereafter, on 06.02.1986 (Ex.P6) was dismissed as withdrawn. Thus, question raised is answered in above terms.

I do not find any illegality and perversity in the order of the authority ordering ejectment of the petitioner from the demised premises.

Ultimately, revision petition is also dismissed.

Interim order dated 16.01.2012 granted by this Court stands vacated.

(AMIT RAWAL)
JUDGE

October 05, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No