

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

RSA No.2971 of 2013 (O&M)
Date of decision : 20.04.2018

Katto Devi (deceased) through her LRs

...Appellants

Versus

Chalti Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hamid Hassan, Advocate and
Mr. Yowan Sharma, Advocate for the appellants.

Mr. J.K. Chauhan, Advocate for respondent Nos.1 to 4.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff-Smt. Katto Devi who is no more, was having 5 daughters. She executed two registered gift deeds dated 21.02.2003 Ex.D1 and Ex.D3 in favour of one of the daughter i.e. Chalti Devi-defendant No.1. Thereafter, Katto Devi-plaintiff filed a suit challenging the gift deeds being result of fraud.

The defendants contested the suit and pleaded that the gift deeds were executed by Smt. Katto Devi with her free will and volition.

Both the Courts after appreciating the evidence available on the

file have concurrently recorded a finding of fact that the gift deeds executed by Smt. Katto Devi was with her free will and volition and without any pressure and Katto Devi appears to have now changed her mind and filed the suit.

Learned First Appellate Court has relied upon the statement of plaintiff-Katto Devi who has stated that it is Chalti Devi (recipient in the gift) and her husband who were serving her when she was ill and thereupon she executed that gift deeds in sound mind. She further stated that other daughters were not taking care of her.

This Court has heard the learned counsel for the appellants at length.

Learned counsel for the appellants has submitted that the possession of the land has not been delivered and, therefore, the gift is invalid. Learned counsel has further submitted that Katto Devi when appeared in the witness-box has stated that she was under the impression that the property is being willed away in favour of 5 daughters. Hence, he submits that the gift is not proved. Counsel has further read the cross-examination of Katto Devi to submit that the Sub-Registrar did not read over the gift deed. On these arguments, learned counsel for the appellants submitted that the gift is liable to be set aside.

It is not in dispute that the property is being cultivated through some one. It is recorded in the gift deed that the possession of the property in dispute has been handed over to Chalti Devi. Gift deeds are registered documents, wherein this fact is specifically recorded. Apart from it, Chalti Devi when appeared in the evidence has stated that she is cultivating the land alongwith her mother. In such situation, this Court does not find any substance in the arguments of the learned counsel for the appellants.

Next arguments of the learned counsel is that Katto Devi when appeared in the evidence has stated that she was under the impression that a Will is being executed in favour of 5 daughters. The statement is contradictory. Katto Devi has specifically stated that she was being taken care of by Chalti Devi, her husband and their family members. She has further specifically stated that other daughters are not taking care of her and they have never visited her. In view of the evidence of Smt. Katto Devi particularly when the registered documents, recording that the property is being gifted to Chalti Devi, the statement of Katto Devi is against the record. It is not the case of one registered gift deed. Two registered gift deeds have been executed and both bear the photograph of Katto Devi. Next argument of the learned counsel is that Katto Devi has stated that Sub-Registrar has not read over the contents of the gift deeds. The registered gift deed has a endorsement that the document has been read over and explained to the executant. The aforesaid endorsement has been duly thumb-marked by Katto Devi.

In view of the aforesaid position, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

20.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No