

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

**RSA-1450-2016
Date of Decision: May 25, 2018**

Surinder Singh

...Appellant

Versus

Kesar Singh (Deceased) through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Avtar Singh Bhatti, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the appellant-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 30.10.2012. As even the appeal preferred against the said decree failed and was dismissed on 22.08.2014, the appellant-plaintiff No. 1 is in Regular Second Appeal. The parties to the *lis*, hereinafter shall be referred to their original positions in the suit.

Kesar Singh (Defendant No. 1) happened to be the father of the plaintiffs, as also defendant No. 2, whereas defendant No. 3 happened to be his grandson, and son of defendant No. 2. In the present suit, the plaintiffs sought a declaration that they alongwith defendant Nos. 1 and 2 were co-owners in equal shares regarding the share/entry mentioned in the name of Kesar Singh, i.e. 1/6th share in the total land depicted in the cause title of the plaint, and the said land was Joint Hindu Family Coparcenary property.

Further, the gift deed, dated 12.02.2009, executed by defendant No. 1 (Kesar

Singh), in favour of defendant No. 3 (Amrinder Singh), was illegal, null and void.

In the written statement filed on behalf of defendant Nos. 2 and 3, it was pleaded that Kesar Singh was the absolute owner of the suit land. He not only executed the gift deed, dated 12.02.2009, in favour of defendant No. 3, but also a Will, dated 25.09.2008. In fact, pursuant to the gift deed, Mutation No. 726 was sanctioned in favour of defendant No. 3, and since then he was owner in possession of the suit land.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the plaintiffs failed to lead any evidence to show that the suit property was indeed ancestral and coparcenary in nature in the hands of Kesar Singh. To succeed, the plaintiffs were required to produce the excerpts from the revenue record or entries, to establish that the property was inherited by Kesar Singh from his forefathers up to three degrees. Burden of proof to prove the nature of the suit property was upon the plaintiffs, which they failed to discharge for lack of any cogent evidence. Rather on the contrary, plaintiff No. 1 (PW-1) conceded in his cross-examination that the entire suit property was in the control of the defendants. Kesar Singh had executed a gift deed in favour of Amrinder Singh (defendant No. 3), whereafter it was even mutated in his name. He also conceded that at the time of execution of the gift deed, his father Kesar Singh was hale and hearty, and the gift deed was a genuine document. He not only admitted the execution of the gift deed, but even identified the photograph of his father Kesar Singh, affixed thereupon. Therefore, from

the cross-examination of the said witness alone, the case of the defendants fully proved.

On being pointedly asked, learned counsel for the appellant-plaintiffs could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the position on record or suffered from any material illegality.

No question of law, much less any substantial question of law arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

May 25, 2018
P Kapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO