

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

RSA No.2847 of 2016 (O & M)
Date of Decision:31.07.2018

Lal Singh @ Laliya

...Appellant

Versus

Sunil @ Sunil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Varun Goyal, Advocate and
Mr. Gaurav Aggarwal, Advocate
for the appellant.

Mr. Sandeep Kumar Yadav, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff through his LRs is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff (unmarried), who is since no more, had challenged two registered gift deeds executed by him in favour of two minor grandsons of his brother Prabhu.

Plaintiff admits his thumb impression on the gift deeds and also admits that he appeared before the Sub Registrar for registration of the gift deeds, however, he submits that the gift deeds were on account of misrepresentation as he was given to understand that a Will is being got executed in favour of two brothers. Plaintiff claims that he is blind by birth and is hard of hearing and, therefore, on the misrepresentation of Jaipal (nephew) son of Prabhu, he executed and got registered these two gift deeds although he

never intended to gift the property to the grandsons of his brother.

Both the Courts below after examining the evidence have dismissed the suit after noticing that both the attesting witnesses have been examined, both the scribes have also been examined, both the Registrar before whom the gift deeds were registered have also been examined. It has been noticed that stamp paper for execution and registration of the gift deed were purchased by the plaintiff himself and both the gift deeds were executed and registered in different offices of the Sub Registrar on different dates. First gift deed with regard to property situated in village Dongra Ahir was registered in Tehsil Kanina whereas second gift deed was executed and registered on 27.05.2003 with respect to land situated at village Bhalkhi at the Office of Sub Registrar Mohindergarh.

This Court has heard learned senior counsel for the appellant and learned counsel appearing for the respondents and with their able assistance gone through the judgments passed by the Courts below and the record of the Courts.

Learned senior counsel has made following submissions:-

(i) he has submitted that since the parties were in fiduciary relationship, therefore, onus shifts on the defendant to prove that the gift deed was intended to be executed upon and there was no misrepresentation. Counsel has relied upon provisions of Section 111 of the Evidence Act and Section 16 of the Contract Act in support of his submission. Learned counsel has further relied upon a judgment of the Hon'ble Supreme Court in **"Krishan Mohan Kul v. Pratima Maity"** (2004) 9 SCC 468.

He has further submitted that no evidence has been led to prove that Jaipal nephew or his children had ever served the donor. On the other hand, learned counsel for the respondents while drawing attention of the Court to Ex.D-9 has submitted that the executant was staying with the family of

Jaipal at Ajmer. He has further drawn attention of the Court to Ex.D-10, a ration card issued by the Central Reserved Police Force, which also depicts that Lal Singh, the donor plaintiff is listed as one of the member of the family of Jaipal for the purpose of issuance of ration. He has also drawn attention of the Court to the evidence of Harish Chander Nambardar, the attesting witness of the gift deed wherein he has stated that initially Lal Singh used to live with his brother Mahadev but later on he shifted with his other brother namely Prabhu Dayal, father of Jaipal.

This Court has analyzed the arguments of the learned counsel for the parties. No doubt, in case the parties are in fiduciary relationship and burden of proving the gift deeds are genuine and were executed in good faith, is heavy upon the recipient of the property.

In the present case, defendant has discharged that responsibility by examining both the attesting witnesses, both the scribes and both the Sub Registrars.

Still further, it has been proved that Lal Singh was residing at Ajmer with the family of Jaipal, his nephew. It is not in dispute that stamp papers for execution of the gift deed were purchased by the plaintiff. Gift deeds which are Ex.D-1/A and D-3/A also bear photograph of the executant. Sub Registrars have also deposed that the gift deeds were read over and explained to the executant.

In such circumstances, defendants-respondents have led sufficient evidence to discharge the onus which lay upon them.

Learned counsel for the appellant while referring to ration card has submitted that Lal Singh was also staying with Mahadev. He submitted that there is no reason why Lal Singh, executant gave all the property to the grandsons of his brother Prabhu.

This Court cannot set aside a registered document only on the basis of assumptions and presumptions. What was going through the mind of the executant at the time of execution and registering the gift deed cannot be answered by the Court.

Next argument of learned counsel for the appellant is that there is no evidence to the effect that Jaipal or his children ever served late Sh. Lal Singh. As noticed earlier, Ex.D-9 and D-10 proved that Lal Singh used to reside with the family of Jaipal Singh at Ajmer.

No doubt, some evidence has come on record that he also used to reside in the village in District Mahendergarh, however, on this basis two registered documents executed and duly registered cannot be set aside.

This Court has also carefully examined the judgment passed by the Hon'ble Supreme Court in the case of Krishan Mohan (supra). Hon'ble Supreme Court had decided the aforesaid case in a peculiar fact situation. The Court in Para 12 had noticed that no witness has been examined to prove execution of the deed. In the present case, both the attesting witness has been examined.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular second appeal is dismissed.

All the miscellaneous applications, if any, are disposed of, in view of the above said judgment.

31.07.2018
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(ANIL KSHETARPAL)
JUDGE

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