

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3947 of 2016(O&M)
Date of Order: 17th April, 2018

Capt. Heera Lal Memorial Society, Jhajjar and another

...Appellants

Versus

Sanatan Dharam Education Trust, Jhajjar and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Sanjiv Kumar Aggarwal, Advocate,
for the appellants.**

**Mr. Kulvir Narwal, Advocate,
for respondent no.1.**

ANIL KSHETARPAL, J.

Defendants no.72 and 73-appellants are in the regular second appeal against the judgment passed by the learned first appellate court dated 04.05.2016.

At the outset, it must be noticed that the remaining defendants neither filed the first appeal nor they have filed the second appeal. In fact, the suit was not contested by defendants no.4 to 51, 55 to 64 and 67 to 71. Total land in dispute is 44 kanals and 19 marlas. Out of the aforesaid land, 5 kanals and 8 marlas was gifted to the respondent-plaintiff-Society in the year 1975 and a Pharmacy College and Medical Technology College is being run. Land comprised in khasra no.876(12-5) is “gair mumkin shivala” whereas land comprised in khasra no. 875(5-11) is “gair mumkin Dharmashala” and land comprised in kahsra no.874 (11-18) is “gair mumkin pond”. Total of this land comes to 37 kanals and 2 marlas, so only area left

is 7 kanals and 7 marlas. Plaintiff-Society is running College and Pharmacy in the name of Sanatan Dharam Institute of Pharmacy and Medical Technology. Plaintiff had constructed the building after getting it approved from the Municipal Committee, Jhajjar. It has been found by both the courts below that initially the suit land was gifted to Punjab Government for running a Girls School. The gift deed is available on the file. It is recorded in the gift deed that the owners of the suit property wanted to run an educational institution over the suit property. Earlier litigation was decided in the year 1938. The then Punjab Government did not construct the Girls School and therefore, the land measuring 5 kanals 8 marlas was gifted to the plaintiff-society. In another litigation, a judgment came to be passed by the Ld. Additional District Judge, Rohtak on 20.09.1986, wherein it was recorded that the possession of the plaintiff-respondent would not be interfered with respect to the land forming part of the gift deed dated 08.10.1979. It was further recorded that the defendants in the previous suit being defendant nos.1 to 9, shall have right to lease out the remaining property to augment the income of Shiva Ji Maharaj Mandir and the plaintiff-respondent would provide passage through the disputed land if the “Mandir, Dharamshala and Pond” falls within the land which is subject matter of gift deed.

After this judgment, a lease deed was executed in favour of the plaintiff-society with respect to land measuring 39 kanals 11 marals on 27.01.1999 registered on 15.02.1999. Of course, the mutation of the land which was subject matter of lease has been cancelled by the authority, however, mutation proceedings do not decide the question of title. It is also not in dispute that a suit for declaration was filed challenging the aforesaid

registered lease deed but later on the suit was withdrawn.

Plaintiff-respondent-society filed this suit for permanent injunction with consequential relief of mandatory injunction.

Learned trial court after appreciation of evidence available on the file, decreed the suit with respect to land measuring 5 kanals 18 marlas on which the plaintiff-Society is running its Pharmacy and Medical Technology College. However, suit with respect to 39 kanals and 11 marlas was dismissed. Plaintiff filed the first appeal. Defendants no.72 and 73-appellants filed cross-objections which were not decided by the first appellate court.

Learned counsel for the parties have agreed that rather than remanding the case back to the first appellate court, this court should also decide cross objections filed before the first appellate court.

An application under Order 41 Rule 27 of the Code of Civil Procedure filed by the plaintiff before the first appellate court also remained undecided, however, learned counsel for the plaintiff-respondent has submitted that he has instructions to make a statement that his client does not press the aforesaid application.

Defendants no.72-73-appellants claim to be subsequent purchasers of a share in the joint property. Counsel for the appellants has submitted that the land could not be transferred to the plaintiff-Society as there was specific stipulation debarring the transfer. Learned first appellate court has noticed the aforesaid contention and has found that in view of changed circumstances, the aforesaid stipulation would not invalidate the transfer particularly when defendants no.72 and 73-appellants are themselves transferees of the part of the land. It may be noticed that the

learned first appellate court has only decided relief of permanent injunction without adjudicating upon title of the parties or opining above validity of the gift deed and lease deed, after noticing that various other litigations are pending.

Learned counsel for the appellants has submitted that the learned trial court has dismissed the suit with respect to land measuring 39 kanals 11 marlas after noticing that the lease deed executed and registered on 15.02.1999 was not signed by all the co-owners. He submitted that the mutation of the lease deed sanctioned in favour of the plaintiff-respondent-society was also set aside by the revenue authorities. He thus submitted that the judgment by the first appellate court ignoring this fact is erroneous. Learned counsel has further submitted that even the gift deed executed on 08.10.1979, is liable to be set aside being against the stipulation. He has submitted that on this count, cross objections were filed before the first appellate court, which has not been decided.

On the other hand, learned counsel for the respondent-plaintiff has submitted that the learned first appellate court has only granted relief of permanent injunction to the plaintiff-society which is in possession and the question of title or validity of the gift deed or the lease deed have not been adjudicated upon noticing that various other litigations are pending between the parties.

This court has considered the submissions of learned counsel for the parties and with their able assistance gone through the judgments passed by the courts below and photocopies of the record produced.

It is not in dispute that defendants no.42, 46 to 50 have admitted that the plaintiff-respondent is running a Pharmacy and Medical Technology

College on some part of the suit property. This court has also noticed that the land measuring 12 kanals 6 marlas is under a Shivala Mandir, whereas land measuring 5 kanals and 11 marlas is under Dharamshala and land measuring 11 kanals and 18 marlas is a "Pond". All these properties are for common use of the residents of the village and as directed in the judgment by the learned Additional District Judge, on 20.09.1986, a passage has been provided by the plaintiff-respondent and everyone is entitled to use the aforesaid facility. Real dispute appears to be only with respect to land measuring 7 kanals and 7 marlas, which is also subject matter of the lease deed. Validity of the gift deed and lease deed since has not been decided by the courts below, therefore, this court also refrain from venturing into the aforesaid field.

The learned first appellate court has noticed that all this litigation is being managed by one Shri Narinder who has involved the plaintiff-society into multiple/multifarious litigations.

Till date, the registered lease deed has not been set aside by any competent court of jurisdiction. Plaintiff-society is imparting education to the residents of the area. The building constructed by the Society is after approval from the Municipal Committee. Plaintiff-society has also prayed for relief of mandatory injunction as some portion of the suit land was forcibly encroached upon by some of the respondents. However, taking into consideration the entire evidence available on the file, this court does not find that the first appellate court has committed any error in decreeing the suit filed by the plaintiff-respondent while granting injunction. The question as to what is the effect of all the co-owners not signing the lease deed would be adjudicated upon by the court in a separate suit.

Without commenting upon the validity/ legality of the gift deed or the lease deed, this Court is of the considered opinion that the judgment of the learned first appellate court needs no interference. Hence, the regular second appeal is dismissed.

17th April, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No