

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

1. RSA No.2879 of 2015 (O&M)
Date of decision : 25.05.2018

Randhir Kaur (deceased) through her LRs

...Appellants

Versus

Balwinder Kaur and others

...Respondents

2. RSA No.4771 of 2015 (O&M)
Date of decision : 25.05.2018

Randhir Kaur (deceased) through her LRs

...Appellants

Versus

Balwinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sarju Puri, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.8185-C of 2018 in RSA No.2879 of 2015

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of the appellant-Randhir Kaur, as mentioned in the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is allowed.

Amended memo of parties, is taken on record.

Main Cases

By this common judgment, RSA Nos.2879 and 4771 of 2015 which arise out of a suit shall stand disposed of.

The plaintiff was owner of land measuring 4 kanals 10 marlas. She through her husband (as General Power of Attorney holder) gifted the aforesaid land vide registered gift deed dated 27.05.1981. It was specifically recorded in the gift deed that apart from the institution, to whom the property is being gifted, no one would have any concern with the same. It is the allegation of the plaintiff that the land measuring 24 kanals of inferior quality has been exchanged by the school with the land of Balwant Singh for equivalent land which includes this 4 kanals 10 marlas.

The defendants contested the suit and pleaded that the aforesaid exchange is for the benefit of the society.

Learned trial Court partly decreed the suit by declaring that defendant No.2 is the owner of the property and defendant No.1 is restrained from alienating the same. However, in appeal, when both the parties had challenged the judgment of the trial Court, learned First Appellate Court has accepted the appeal and dismissed the suit.

The argument of exchange of superior quality of land with inferior quality, has been dealt with by the First Appellate Court. It has been observed that land has been exchanged for setting up a school in a remote area which would give an opportunity to the children of the remote area to become educated. No error is found in such conclusion drawn by the First Appellate Court.

Learned counsel for the appellant has made sincere attempt by

referring to Section 123 of the Transfer of Property Act and Sections 3 and 6 of the Indian Trusts Act, 1882 to contend that the donation of the property by a registered gift deed amounted to creation of the Trust and hence the plaintiff being donor could regulate and ensure that the property is used for the purpose for which it was given.

With the assistance of the learned counsel for the appellant, this Court has gone through the registered gift deed. In the registered gift deed, the donor had not reserved any right. No doubt, the property was given for a laudable object i.e. for the facility of the students studying in the school. However, once the gift deed has been executed without reserving any right in the property, then Section 126 of the Transfer of Property Act clearly bars the revocation of the gift deed.

The argument of the learned counsel with reference to the provision of the Indian Trust Act can be only examined if there is any Trust created. In the present case, the property was gifted to defendant No.2-School which is run by defendant No.3-Society.

In view of the aforesaid, this Court does not find any scope for interference in the judgments passed by the First Appellate Court.

Both the Regular Second Appeals are dismissed.

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

25.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No