

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

RSA No.5410 of 2016 (O&M)

Date of decision : 21.08.2018

Jaswant Singh

...Appellant

Versus

Shiromani Gurdwara Parbhandhak Committee

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Narinder Kumar Vadehra, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.14067-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 57 days in filing the present appeal is condoned.

Application is allowed.

CM No.14068-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 60 days in refiling the present appeal is condoned.

Application is allowed.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the First Appellate Court.

The plaintiff claimed that he is owner in possession of the land measuring 134 kanals and 14 marlas being adopted son of Ishar Singh, the original owner on 17.03.1942 Ex.P1 on the file. The plaintiff thus claimed that he is entitled to the possession of the property.

The defendant which is religious institution contested the suit and pleaded that the plaintiff was never in possession and the suit filed by the plaintiff is barred by time. In para 4 of the written statement, the defendant had made a reference to the plea of the plaintiff that the suit land was donated by Ishar Singh in favour of the defendant. It was further pleaded that the plaintiff is bound by the donation made by Ishar Singh, if any, in favour of the defendant. Para 4 of the written statement filed on behalf of defendant is extracted as under:-

“Para 4 of the plaint is incorrect and denied. The defendant Shri Darbar Sahab through Shromani Prabhandhak Committee, Amritsar is owner in possession of the suit land. The plaintiff has himself alleged in this para of the plaint that land in suit was donated by Ishar Singh in favour of Darbar Sahab through Shromani Gurdwara Prabhandhak Committee, Amritsar. The plaintiff has now come forward with this plea that the donation made by Ishar Singh was not binding on him. The entries in the revenue record clearly show that the defendant is owner in possession of the suit land since long and the plaintiff cannot challenge the right of the defendant after a period of more than 50 years. The plaintiff is bound by the donation made by Ishar Singh, if any, in favour of defendant.”

During the pendency of the suit, the defendant filed an application under Order 6 Rule 17 CPC to amend the written statement and

take a specific plea that Ishar Singh had donated the property in favour of the defendant vide registered gift deed dated 31.05.1950. The application was allowed by the learned trial Court. However, in revision petition, the order passed by the trial Court was set aside on the ground that inconsistent and mutually destructive plea should not be allowed to be raised at the fag end of the trial. It may be noted that the Special Leave Petition, against the aforesaid order passed by this Court on 17.05.1996, was also dismissed by Hon'ble the Supreme Court by observing as under:-

“3. The same contention has been reiterated before us. We find no force in the contention of learned counsel for the petitioner that the pleading does contain the gift clause in the original written statement and that it is sought to be elaborated by obtaining proper documents at this belated stage. It is settled law that the defendant can raise mutually inconsistent pleadings in the written statement it is for the Court to consider whether the case can be properly considered in deciding the issue. But in this case the plea in the written statement is mutually destructive. In the first written statement, they have denied the title of Isher Singh himself. When such is the situation, how can they set up a title in him and plead gift made by Isher Singh in favour of the petitioner-Committee. Under these circumstances, the High Court has rightly refused to grant the plaint. Moreover, there is no explanation given as to why they came forward with this plea at the belated stage after the parties had adduced the evidence and the matter was to be argued. Under these circumstances, we do not find any error of jurisdiction or material irregularity in the exercise of jurisdiction warranting interference. ”

It is not in dispute that initially First Appellate Court had

dismissed the appeal filed by the respondent. However, in the Regular Second Appeal, counsel for both the parties made a statement that the additional evidence be allowed and the Appellate Court should be directed to re-decide the matter. The relevant part of the order passed by this Court while deciding RSA No.4319 of 2005 on 16.05.2012 is extracted as under:-

“In the light of such undisputed factual position as noticed hereinabove, respective counsel for the parties are agreed that the matter be remanded to the lower Appellate Court for decision afresh and keeping in mind the order dated 12.09.2000, whereby, the prayer for leading additional evidence in terms of adducing the gift deed dated 31.05.1950 had been permitted.”

Pursuant to the aforesaid position, the registered gift deed was produced and the Appellate Court reversed the judgment of the trial Court holding that once the certified copy of the registered gift deed was produced which is more than 30 years old document, therefore, the plaintiff has no right to file the suit for declaration that he is owner in possession.

Learned counsel for the appellant while relying upon the order passed by Hon'ble the Supreme Court on 04.09.1996 while deciding a Special Leave Petition against the order of this Court, declining the amendment of the written statement, submitted that once the defendants were not permitted to take a mutually destructive plea, with respect to gift deed, therefore, the Appellate Court has committed an error in relying upon the aforesaid gift deed.

This Court has considered the submissions. However, finds no substance therein. No doubt, the written statement as filed is not happily

worded, however, the defendant in the written statement filed has in para 4 referred to a donation made by Ishar Singh and has also pleaded that the plaintiff is bound by the donation so made by Ishar Singh. Once in the written statement, the defendant had taken an alternative plea which is permissible, the additional evidence produced could not be thrown out on the ground that the application for amendment has been dismissed.

This Court, while deciding CR No.1023 of 1996, has noticed that the amendment apart from being mutually destructive is only the elaboration of the facts. Still further, as noticed in the previous round before this Court, counsel for the plaintiff had agreed for allowing the application for additional evidence and remand of the case.

In view of the aforesaid, once it is proved on file that late Sh. Ishar Singh had gifted the property in question in favour of defendant-respondent, the First Appellate Court has rightly dismissed the suit filed by the plaintiff.

In view of the above, the present Regular Second Appeal is dismissed.

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

21.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No