

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-5974-2016 (O&M)
Date of Decision: 28.08.2018

Pawan Kumar

--Appellant

Versus

Joginder Singh & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Munish Jolly, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

CM-15731-C-2016

Application is allowed as prayed for.

The delay of 3 days in re-filing the accompanying appeal is
condoned.

Main Appeal

Plaintiff-appellant is in second appeal before this Court having
remained unsuccessful in both the courts below.

In brief, plaintiff filed a suit seeking a decree for declaration to
the effect that he was owner of land measuring 14 kanals 4 marlas i.e. 1/5th
share of the total land measuring 71 kanals 2 marlas being coparcener and
the judgement and decree dated 23.11.1996 passed by Addl. Civil Judge (Sr.
Divn.), Jind in Civil Suit No.451 of 1996 titled as Joginder Singh Vs.
Chatra in respect of land measuring 10 kanals 0 marla and registered gift
deed no.772 dated 4.2.1999 in respect of land measuring 4 kanals 4 marlas
executed by defendant no.2 in favour of defendant no.1 as also the
subsequent mutations on the strength thereof were against law. It was
asserted that the same have been obtained by way of fraud and by taking
advantage of the unfit state of mind of defendant no.2. Plaintiff further

sought the relief of possession qua the suit land. It was pleaded that plaintiff and defendant no.2 being father and son were members of the Joint Hindu Family and the suit land was coparcenary property and incorporated in the revenue records in the name of defendant no.2 being *Karta* of Joint Hindu Family. The plaintiff being a coparcener had a pre-existing right in the suit land by birth. Mental condition of defendant no.2 was not good as he was undergoing treatment from P.G.I.M.S, Rohtak. Taking undue benefit of such circumstance, defendant no.1 by playing a fraud, obtained a civil court decree dated 23.11.1996 of land measuring 10 kanals 0 marla from defendant no.2. Likewise, a gift deed no.772 dated 4.2.1999 in respect of land measuring 4 kanals 4 marlas was also got executed from defendant no.2 in favour of defendant no.1. Case of the plaintiff was that the decree as also the gift deed were mere paper transactions and were not binding upon his rights.

Suit was contested by defendant no.1 taking a stand that defendant no.2 was the absolute owner of the suit property. It was denied that the suit land was ancestral or coparcenary property. It was further denied that the mental health of respondent no.2 was not good. Defendant no.1 asserted that defendant no.2 was of sound mind and had himself appeared in the court, engaged counsel, filed written statement and even got his statement recorded.

Suit filed by the plaintiff was dismissed by the Trial Court on 20.11.2013 and even a civil appeal having been preferred, has met the same fate vide judgement dated 3.2.2016 passed by learned District Judge, Jind.

Learned counsel representing the plaintiff-appellant has argued that the courts below have misread and have not properly appreciated the

evidence brought on record. It is vehemently contended that there was no relationship between defendant no.1 and defendant no.2 and as such, there was no occasion for any part of the suit land being gifted in favour of defendant no.1. Further urged that the appellant being a member of the Joint Hindu Family was a coparcener and both the courts below have erred in denying to him his pre-existing right in the suit land.

Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the appeal and the same deserves to be dismissed.

The case projected on behalf of the plaintiff-appellant was that the decree dated 23.11.1996 as also gift deed no.772 dated 4.2.1999 had been obtained by defendant/respondent no.1 by playing fraud upon defendant/respondent no.2 on account of his mental illness. No evidence, however had been led to prove the fact as regards any treatment being undergone by defendant no.2 as regards his health/mental ailment. Likewise, it was the case of the plaintiff-appellant that the suit property was ancestral and as such, defendant/respondent no.2 had no right to alienate the same. In this regard also no documentary evidence had been adduced to prove the nature of the suit land to be ancestral. Appellant had merely relied upon Jamabandis for the year 1995-1996 (Ex.P-1) and for the year 2005-2006 (Ex.P-9) but wherefrom the nature of the suit land could not be proved.

The courts below have rightfully observed that the gift deed in question Ex.DW-5/A is a registered document and would carry a presumption of correctness and truth in its favour unless rebutted by any reliable and credible evidence. Defendant/respondent no.1 duly proved the

passing of the judgement and decree by examining DW-4 Jitender Chaudhary, Advocate and who had deposed that he was counsel for respondent/defendant no.2 in the previous suit. The written statement had been prepared on the instructions of respondent/defendant no.2 and he had also got his statement recorded in the court.

Strangely father of the plaintiff-appellant i.e. defendant no.2 was very much alive when the suit had been instituted. The father himself has chosen not to challenge the earlier civil court judgement and decree as also the gift deed. He was impleaded as a party/defendant and has filed a written statement admitting the case of the plaintiff. The courts below have rightfully inferred that there was a collusion between the plaintiff and his father so as to divest defendant/respondent no.1 of his rights emanating from the judgement and decree dated 23.11.1996 as also the gift deed dated 4.2.1999.

The impugned judgements are found to be well reasoned and based on due appreciation of evidence.

No interference in the matter is warranted.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

28.08.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No