

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

RSA No.6581 of 2016(O&M)

Date of decision: 1.10.2018

Kulwantbir Singh and anotherAppellants

VERSUS

Tejinder Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Thakur, Advocate for the appellants.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the appellants to challenge the transfer deed dated 14.10.2009 in respect of ground floor of house No.3518, Sector 23-D, Chandigarh in favour of Tejinder Singh – defendant No.1, has been dismissed.

The contesting parties to the litigation are real brothers being sons of late Sh. Shangara Singh. Indisputably, the suit house belonged to father of the parties. The transfer deed in respect of 50% of suit house comprising first and second floor was executed by Sh. Shangara Singh in favour of Kulwant Bir Singh – appellant No.1 in the year 2003.

The appellants/plaintiffs challenged the impugned transfer deed in respect of remaining 50% of the suit house comprising ground floor primarily on two grounds. It is averred that respondent/defendant No.1 in connivance with his friends and officials of Estate Officer got transfer deed in his favour when Sh. Shangara Singh was not in his full

senses by taking advantage of ill health and improper state of mind of Sh. Shangara Singh. Another plea raised by the appellants is that as per family settlement, on the basis whereof defendants No.1 and 3 had executed affidavits and receipt- cum- understanding, they have no right in any portion of the property. Shangara Singh was not happy with defendant No.1 and 3. He disowned them and publication to this effect was made in the newspaper Amar Ujala dated 29.07.2003.

Counsel for the appellants would argue that the transfer deed is dated 14.10.2009 and Sh. Shangara Singh passed away on 05.11.2009. Sh. Shangara Singh remained admitted in Government Medical College and Hospital, Sector 32, Chandigarh and was discharged few days before the transfer deed dated 14.10.2009 came into existence. It is vehemently argued that Kuldip Singh – defendant No.2 appeared in the witness box and has strongly supported cause of the appellants that Sh. Shangara Singh was not in a fit state of mind nor fully conscious few days prior to transfer deed dated 14.10.2009. He has also stated in his cross examination that after his discharge from hospital, Shangara Singh never regained consciousness, did not recognize anyone and could not put his signatures on a document.

Another submission made by counsel is that the appellants filed an application dated 21.10.2015 under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (in short 'CPC') for permission to lead additional evidence but the same was not decided by the Appellate Court either way, therefore, judgment and decree passed by the Court in appeal are liable to be set aside and the matter needs remittance to the Appellate Court for decision of the appeal afresh along with application for additional

evidence. It is further argued that the appellants have been deprived of their right to produce the records pertaining to treatment of Sh. Shangara Singh in the hospital at Sector 32, Chandigarh, but on the contrary respondent No.1 admitted in his cross examination that he would produce the documents on record but later backed out.

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned and copies of documents i.e. statement of Kulwant Bir Singh – appellant no.1 as a witness and that of Tejinder Singh, contesting respondent/defendant.

Counsel for the appellants has not made any submissions qua the documents purported to be executed by defendant No.1 relinquishing his right in the suit property. There cannot be any dispute about the settled position in law that relinquishment of right in immovable property valuing more than Rs.100/- requires compulsory registration. Equally settled is that there is no estoppel against law. In this view of the matter, the Courts have rightly rejected claim of the appellants based upon documents pertaining to alleged relinquishment by defendant No.1.

Indisputably, Shangara Singh was the absolute owner of the suit house. He executed transfer deed in favour of appellant No.1 with regard to 50% of the property comprising first and second floors. Shangara Singh with his wife had been residing on the ground floor of the suit house. One of the pleas raised by the appellants is that defendants No.1 and 3 were disowned by their father and a publication to this effect was made in Amar Ujala newspaper in the year 2003. Defendant No.1 has not disputed that he moved out of the house in question and remained away till April 2006. Perusal of the facts elicited in cross examination of Kulwant Bir

Singh makes it evident that defendant No.1 along with his wife started residing with Shangara Singh in April, 2006 and continued to reside there till death of Shangara Singh in November, 2009. This fact demolishes plea of the appellants that there was no reason for Shangara Singh to execute a transfer deed in favour of defendant No.1 in the face of his earlier act of disowning him by way of publication in newspaper. The very fact that defendant No.1 shifted to the house in question and had been residing with his parents since April 2006 goes a long way to show that Shangara Singh had forgotten the past and accepted to live with defendant No.1 and his family.

The main plank of challenge to transfer deed dated 14.10.2009 is that Shangara Singh had serious health problem and was not in a fit state of mind to make rational disposition of suit property. Counsel for the appellants has fairly conceded that they did not adduce any medical evidence to substantiate their plea that Shangara Singh had physical much less mental disability to transfer his property.

The appellants have sought to rely upon testimony of Kuldip Singh – defendant No.2. It is categorical plea of the appellants that Kuldip Singh proclaimed that he did not want any share in the suit house. Kuldip Singh filed the written statement and raised a plea that he did not want any share in the suit house. In the given circumstances, any such statement made by Kuldip Singh favourable to the appellants is not a statement against his own interest, therefore, not relevant in the present context. It further appears that as Kuldip Singh had been siding with the appellants, they cannot derive advantage to their contention from the facts elicited in his testimony with regard to mental disability of Shangara Singh.

The appellants have alleged that Shangara Singh remained admitted in Government Medical College and Hospital, Sector 32, Chandigarh and was discharged few days before the transfer deed was registered. They neither filed an application before the trial Court calling upon defendant No.1 to produce medical records of Shangara Singh nor summoned a witness much less a doctor of the hospital to prove the documentary evidence qua medical condition of Sh. Shangara Singh. The very fact that the appellants did not summon a witness from the hospital to prove their case leads to an irresistible conclusion that story propounded by the appellants with regard to physical or mental state of Shangara Singh being bad has no legs to stand and is unfounded.

The appellants have placed on record a copy of application dated 21.10.2015 filed under Order 41 Rule 27 CPC for permission to lead additional evidence. In para 3 of the application, it is stated that records of hospitalization of the deceased at GMCH Sector 32, Chandigarh is available with the respondent who despite admission has not placed the same on record. In para 4, it is averred that Tejinder Singh either be made to put the said documents on record to present the true facts or the same are required to be summoned from the Government Medical College and Hospital, Sector 32, Chandigarh. In the concluding para, it has been stated that respondent be directed to bring the relevant documents relating to hospitalization of the deceased and further to summon the record from the hospital with all prescriptions and treatment history of the deceased.

The plea of the appellants that Tejinder Singh despite undertaking has not produced the records of hospitalization is not borne out from any materials on record. On the contrary, perusal of cross

examination of Tejinder Singh would reveal that he had admitted that treatment record of his father was in his possession but in the same breath, would state that he cannot say whether the same is traceable or not due to his shifting from the house. He has denied the suggestion that he has refused to produce the treatment history of his father as he was not physically and mentally fit when discharged from the hospital. The cross examination of Tejinder Singh was completed in a single sitting on 11.02.2014, recorded by the commissioner appointed for the purpose. Counsel for the appellants, admittedly, did not pray for deferring cross examination of Tejinder Singh in order to enable him to search for the records and produce the same before the Court. This omission on the part of appellants falsifies and belies their plea raised in the application that Tejinder Singh had agreed to produce the record but later failed to do so or an adverse inference is liable to be drawn against him in this regard.

Counsel for the appellants has failed to point out that after cross examination of Tejinder Singh was concluded, the appellants moved an application before the trial Court calling upon Sh. Tejinder Singh to produce the relevant documents. As the appellants knew fully well that Tejinder Singh has not produced medical documents, they could well file an application before the trial Court for producing additional evidence by summoning a witness from the hospital Sector 32, Chandigarh along with relevant documents. As the appellants did not make any effort to produce medical records of Shangara Singh, the Courts have rightly negated their plea that Shangara Singh was not in a fit state of health rendering him incompetent to execute the transfer deed.

Perusal of the averments raised in the application for additional evidence particularly the averments noticed hereinbefore leaves no manner of doubt that the application filed by the appellants, by no stretch of imagination, falls within the purview and ambit of Rule 27 of Order 41 CPC. There is not even a whisper in the application that either the evidence of appellants was closed by order of the trial Court or they could not adduce evidence qua medical records of Shangara Singh available with the hospital at Sector 32, Chandigarh despite exercise of due diligence. That being so, the appellants cannot derive any advantage to their contention that since the Court in appeal has not disposed of application for additional evidence, the judgment and decree passed by the Appellate Court are liable to be set aside and the matter needs to be remitted to the Appellate Court for decision of the appeal afresh by disposing of the application for additional evidence. The matter would have been different had application for additional evidence been meritorious, therefore, non-disposal of application cannot be construed as a ground to set aside the judgment and decree passed by the Appellate Court. In this context, reference can be made to judgments of this Court in **Bhag Singh Malik @ Bhal Singh Malik Vs. Chinmay Tapovan Trust Yol. Camp Dharamshala (H.P.) and another, CR NO.4453 of 2018, decided on 01.08.2018** and **Prabhu Dayal Vs. Hardevi, 1994(1) PLR 398.**

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

OCTOBER 1, 2018

‘D. Gulati’

Whether speaking/reasoned :

(REKHA MITTAL)

JUDGE

yes/no

Whether reportable : yes/no