

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

**RSA No. 1069 of 2018**

**Date of decision : 21.03.2018**

Udham Singh (deceased) through LR's & ors.

...Appellants

versus

Surinder Singh and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Jaideep Verma, Advocate  
for the appellant

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**RITU BAHRI, J.**

**C.M. No. 2656-57-C-2018**

For the reasons mentioned in the applications, delay of 12 days in filing and 97 days in refiling of the appeal is hereby condoned.

The applications stand disposed of accordingly.

**R.S.A. No. 1069-2018**

This regular second appeal is directed against the judgment and decree dated 01.04.2017 passed by the learned Addl. District Judge, Ludhiana whereby the judgment of the trial Court dated 02.09.2011 passed by learned Civil Judge (Jr. Divn.) Ludhiana was set aside and the appeal of the respondents/defendants was partly allowed to the extent that defendant No. 1/respondent is owner of 235 sq yards.

Brief facts of the case are that the plaintiffs/appellants claimed that Ujjagar Singh was owner in possession of the house in suit. He died intestate at Ludhiana on 11.05.1977. His wife expired thereafter in the year 1978. Ujagar Singh was survived by the parties. He had left behind house

No. B-XVIII-3772 Kundan Nagar, Model Town Ludhiana. After his death, appellants and defendants (being sons and daughters) became joint owners in possession of the said house in equal shares. Defendant No. 1/Surinder Singh was in joint possession of the house left by Ujagar Singh. The appellants asked defendant No. 1 to give separate possession to the extent of 1/6<sup>th</sup> share to each of the plaintiffs by way of partition from the joint property left by Ujagar Singh but he refused. Hence the suit.

On notice, defendant/respondent No 1 filed separate written statement admitting that the parties are joint owners but stated that he had been making improvements and raising construction. Two rooms in the beginning of the year 1967 were constructed and later on, other construction was raised. The two rooms were converted into one room, which was got sanctioned from M.C, Ludhiana and the compounding fee was also paid. He spent more than Rs.50,000/-. He further pleaded that Ujagar Singh executed a gift deed dated 21.09.1966 regarding the plot of this house measuring 235 sq yards in his favour., which was duly attested by two witnesses and got registered on 22.09.1966. Respondent No. 1 was delivered possession and mutation stands duly sanctioned in his favour.

On the other hand, respondent Nos. 2 to 4/defendants filed their separate written statement admitting the averments made in the plaint. It has been averred that the parties to the suit are joint owners in joint possession of the property in dispute in equal shares and they have never disclaimed their right, title or interest in the property in dispute. They cannot be ousted on wholly irrelevant considerations. Defendant No. 1 is not in exclusive possession of the property in dispute. He cannot raise this

plea. Ujaggar Singh had never executed gift deed dated 21.09.1996 in favour of defendant No. 1.

The learned trial Court after going through the evidence led by the parties, decreed the suit of the plaintiffs-appellants and passed a preliminary decree for separate possession of 1/3<sup>rd</sup> share of plaintiff No. 1 Udham Singh, 1/6<sup>th</sup> share of plaintiff No. 3 Rur Singh, 1/6<sup>th</sup> share of plaintiff No. 4 Gurbachan Kaur i.e 1/18<sup>th</sup> share each of LR's of Gurbachan Kaur by way of partition of the house.

Aggrieved against the above said judgment and decree, defendant No. 1 preferred the appeal and the lower Appellate Court remanded the matter back vide order dated 02.03.2009 by holding that the application for impleading the LR's of plaintiff No. 2 remained pending and the trial Court was directed to decide the case afresh as judgment and decree dated 04.10.2002 were set aside. The learned trial Court decided the application for impleading LRs of plaintiff No. 2 and thereafter, passed judgment and decree dated 02.09.2011. Dissatisfied with the above said judgment, defendant No. 1 again preferred the appeal

The learned trial Court discarded the gift deed on the ground that the expert examined by the plaintiffs-appellants proved that the signatures of Ujaggar Singh over the gift deed were forged and secondly, no possession was ever delivered to respondent No. 1 in pursuance of gift deed and the gift deed was never acted upon.

However, the learned Appellate reversed the findings of the trial Court on the ground that gift deed dated 21.09.1966 is a registered document and its registration has been duly proved by D.W.5 Sohan Singh

Clerk. The benefit of presumption of genuineness under Section 90 of the Indian Evidence Act was to be given to gift deed dated 21.09.1966, in view of the judgments cited by learned counsel for defendant No. 1 in the Court below. Further there is a direct evidence of D.W.9 Mohan Singh attesting witness, DW2 Harnam Singh deed writer who scribed gift deed dated 21.09.1966 but the learned trial Court has not taken into consideration the said evidence and has not assigned any reason to discard the same to give weightage to the report of document expert P.W.7. In order to show their hostile possession, the respondents/defendants have even examined D.W.1 Bikramjit Singh, DW3 Surinder Singh, DW4 Bant Singh Inspectore Food and Supplies Department, DW7 Teja Singh, DW8 Jagwinder Singh and DW6 Surinder Singh, who proved the possession of the respondents over the suit property.

Ujaggar Singh had remained alive for 11years after execution of the gift deed in the year 1966 as he had died in the month of May, 1977. He never challenged the execution of the gift deed. The appellants have filed the suit after a period of 11 years of the death of Ujaggar Singh. Even in the suit after filing of the written statement, there was no challenge to the gift deed by the appellants. Thus, the lower Appellate Court had rightly allowed the appeal of the respondents by holding that they are owners of 235 sq yards on the basis of gift deed out of the suit property measuring 356 sq yards and all the appellants and respondents who are legal heirs of deceased Ujaggar Singh were held entitled to the following shares in remaining 121 sq yards situated on the southern side of site plan.

The respondents have however not been able to prove their

adverse possession over the suit property measuring 121 sq yards which was not part of the gift deed. After Ujaggar Singh died on 11.05.1977, the suit was filed on 22.03.1988 before expiry of 11 years. The appellants could not establish the period of 11 years by making their possession hostile to the remaining owners and in the above background, the legal heirs of Ujaggar Singh were held entitled to the remaining 121 sq yards situated on the southern side of the site plan.

Once respondent No. 1 had executed the gift deed and put his signatures at Mark C1, the possession was accepted by him, after accepting the gift deed. He has led sufficient evidence to prove that he had made construction after execution of the gift deed on the plot measuring 235 sq yards as he had paid compounding fee.

Learned counsel for the appellants has not been able to show that any evidence was led that the gift deed was a result of fraud and misrepresentation.

Accordingly, the impugned judgment of the lower Appellate Court setting aside the judgment of the trial Court does not require any interference by this Court

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

**21.03.2018**  
**G Arora**

**(RITU BAHRI)**  
**JUDGE**

***Whether speaking/reasoned***  
***Whether reportable***

***Yes***  
***No***