

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.6225 of 2014 (O&M)

Date of Decision: May 17, 2018

Shri Sadhvi Manju Jayoti Ji Maharaj

...Appellant

Versus

Rajiv Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.A.K.Jain, Advocate,
for the appellant.

Mr.S.S.Dinarpur, Advocate &
Ms.Apoorv Sangwan, Advocate,
for respondent Nos.1 to 3.

Mr.Adarsh Jain, Advocate,
for respondent No.4.

AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second appeal against the concurrent findings of fact and law, whereby his suit has been dismissed and the appeal laid before the Lower Appellate Court also met with the same fate.

Appellant-plaintiff instituted the suit for declaration to the effect that the property comprised in Parvesh Dham, Jain Ashram bearing No.C-1/3/CS/59A and land underneath was inalienable and defendant No.4, who was given right of ownership vide gift deed dated 11.8.1992, was not authorised to part with the property and the same was to be used for establishment of a religious place. However, defendant No.4, vide sale deed

3.11.2003, parted with the property, therefore, cause of action arose for the plaintiff to institute the suit.

The defendant No.4 contested the suit and admitted the entire claim of the plaintiff. It was pleaded that the suit property comprised in Ashram was inalienable and she was under influence of defendant Nos.1 to 3, upon which they got the signatures of defendant no.4 on blank papers.

Defendants No.1 to 3 contested the suit by raising various preliminary objections qua collusion between the plaintiff and defendant no.4 and suit being based on falsehood etc. On merits, it was stated that defendant No.4 had sold the part of property to Vishnu Goel son of R.P.Goel vide sale deed dated 3.11.2003, which was further sold to Baldev Singh son of Maan Singh on 3.5.2005, but the same was not challenged.

Since the parties were at variance, the trial Court framed the following issues:-

- 1) *Whether the plaintiff is entitled to a decree for declaration to the effect that the suit property as fully detailed and described on the head note of plaint is inalienable and the defendant no.4 has no right to alienate the same in any manner, whatsoever? OPP*
- 2) *Whether the documents regarding the alienation of said building are forged and plaintiff is not bound by any such document and same are liable to be set aside? OPP*
- 3) *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 4) *Whether the suit of the plaintiff is legally not maintainable? OPD*
- 5) *Whether the plaintiff is legally stopped by his own act and conduct from filing the present suit against the defendant? OPD*
- 6) *Whether the plaintiff has concealed the true and material*

fact? OPD

7) *Whether the plaintiff has no cause of action to file and maintain the present suit against the defendant? OPD*

8) *Whether the plaintiff has got no locus standi to file and maintain the present suit against the defendant? OPD*

9) *Whether the suit is not properly verified as per provisions of CPC? OPD*

10. *Relief.”*

In order to prove his case, appellant-plaintiff, besides appearing herself as PW-2, also examined Jaswant Singh as PW-1 and brought on record documents Ex.P1 to Ex.P29 to establish that the property gifted was to be used for religious purpose, i.e., Jain Mandir. However, sale deed dated 6.5.2004 showed the property to be residential house, but the trial Court dismissed the suit on the ground that the plaintiff had no locus standi, for, defendant No.4 had become absolute owner of the property by virtue of the gift deed dated 11.8.1992. The appeal laid before the Lower Appellate Court without referring to the adjudication of the sale deed, has been dismissed.

Mr.A.K.Jain, learned counsel representing the appellant-plaintiff submitted that both the Courts below have non-suited the appellant on the premise that the witnesses to the gift deed have not been produced, much less defendant No.4 who admitted the claim was proceeded ex-parte. For providing the registered document, there is no need of examination of the witnesses. In support of his contention, relied upon the judgment rendered by the Hon'ble Supreme Court in **Bayanabai Kaware Versus Rajendra**, (2018) 1 Supreme Court Cases 585. The Lower Appellate Court, being the last Court of law and fact, was enjoined upon an obligation to read the contents of each case regarding embargo upon defendant No.4,

for, the property was to be used for religious purpose, but the sale deed dated 6.5.2004 showed it to be a house.

During the course of hearing, Mr.A.K.Jain gave a copy of the order dated 18.4.2018 passed in CRM-M No.15350 of 2018, whereby a direction has been sought against Punjab National Bank to investigate a fraudulent transaction of advancement of loan against the property by virtue of sale deed dated 6.5.2004 and this court had disposed of the petition with direction to respondent No.2 therein to decide the representation dated 28.2.2018 and, thus, urged this Court for setting-aside the findings under challenge.

Mr.S.S.Dinarpur, learned counsel for respondent Nos.1 to 3 and Mr.Adarsh Jain, learned counsel for respondent no.4 submitted that for proving the gift deed, it was incumbent upon the plaintiff to prove the donor and donee. In the absence of the same, suit had rightly been dismissed. If there was an embargo in the sale deed, no explanation has come for not challenging the sale deed dated 3.11.2003, which has been executed by defendant No.4 in favour of Vishnu Goel. Plaintiff cannot be permitted to adopt pick and choose policy, therefore, the concurrent findings cannot be interfered with.

In rebuttal, Mr.A.K.Jain submitted that onus of proving the gift deed had already been discharged, for, there was an admission with regard to the same.

I have heard the learned counsel for the parties, appraised the paper book and of the view that it is a fit case where the matter requires to be re-visited at the level of the Lower Appellate Court being the last Court of fact and law. The appeal without adverting to the gift deed has been even

dismissed in most mechanical manner. Non-advertance or misrepresentation of the document is a perversity. Even the locus-standi of the plaintiff has also not been examined. Non-examination of defendant No.4 would not have been fatal in view of averments in the written statement.

There is no dispute to the ratio decidendi culled out in the judgment cited supra. The import of the judgment was that for the purpose of execution of the sale deed, examination of the witnesses would be irrelevant, for, it is the registered document which carries presumption of truth. In the instant case also, there was no dispute with regard to the ownership of the Donor, who gifted the land in favour of defendant No.4.

In my view, the appellant-plaintiff has been prevented the right of first appeal for examination of the documents.

As an upshot of the aforementioned observations, the impugned judgment and decree of the Lower Appellate Court is set-aside. The matter is remitted to the Lower Appellate Court to decide the appeal afresh as expeditiously as possible in accordance with law.

The parties, through their counsel are directed to appear before the Lower Appellate Court on 5.7.2018.

Appeal stands disposed of.

May 17, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No