

156 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA- 4491-2017(O&M)
Date of decision : 21.11.2018

Lehmber Singh

..... Appellant

versus

Lakhwinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Salathia, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

Appellant-plaintiff has not been successful in laying challenge to the registered gift deed dated 06.12.2001 executed by his father Jagir Singh in favour of defendant in respect of the suit property. Defendant Lakhwinder Singh was born out of the loins with second wife whereas the appellant from his first wife. The defendant had a convincing effect on Jagir Singh resulting into the aforementioned gift deed, therefore, a fraud was played upon Jagir Singh. It was also alleged that Jagir Singh was only custodian of the property and the entire source of money as well as of construction was paid and funded by the plaintiff. The trial Court dismissed the suit so did the Lower Appellate Court.

Mr.Vivek Salathia, learned counsel appearing for the appellant submitted that the Courts below have erroneously non-suited the plaintiff on the ground of limitation. The case would squarely fall within the provisions of Article 59 of the Limitation Act as the knowledge of the aforementioned

registered gift deed was acquired in the year 2009 and the suit was filed promptly. For the sake of brevity Articles 58 and 59 of the Limitation Act read as under:-

Article 58	Article 59
To obtain any other declaration-three years- when the right to sue first accrues."	To cancel or set aside an instrument or decree or for the rescission of a contract. Three years. When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

It is common practice amongst the litigants to bring the case within Article 59 to wriggle out of the rigours of Limitation Act. The registered document carries a presumption of truth. The benami transaction has also not been proved whether property was purchased post 1988 or before that. In such circumstances the property was held to be in exclusive ownership of Jagir Singh and he could deal with it in any manner.

No ground for interference is made out.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

21.11.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No