

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

RSA No.6367 of 2017 (O&M)
Date of decision: 06.09.2018

Bhiku Ram (deceased) through L.R. Maichand .. Petitioner
vs.
Mahabir Singh (deceased) through his LRs and others .. Respondents

RSA No.6417 of 2017 (O&M)

Bhiku Ram (deceased) through his L.R. .. Petitioner
vs.
Rishal (deceased) through his LRs .. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Sudhir Aggarwal, Advocate for the appellants.

Mr. Mahavir Singh, Advocate for the respondent.

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Harinder Singh Sidhu, J.

This order shall dispose of above noted two Regular Second Appeals as these are directed against the common order. However, the facts are being taken from RSA No.6417 of 2017.

The defendants have filed this appeal impugning the judgments of the Courts below whereby the suit of the plaintiff for possession by way of ejectment of the defendant-appellants has been decreed.

The plaintiff filed a suit claiming himself to be owner of the land comprised in Khewat/Khata No.181/223 Rect. No.42 Killa No.42/7/2/2 (0-4) situated within the revenue estate of village Babra Bakipur, Tehsil Farrukh Nagar, District Gurgaon. The claim for ownership was based on a registered gift deed bearing vasika No.2791 dated 24.02.1976. It was the case of the plaintiff that after obtaining possession thereof, he constructed a room thereon. About nine years before filing of the suit the plaintiff rented out the suit property to the defendant on a monthly rent of Rs.200/-. Initially defendant paid the rent but he

~~stopped~~ stopped paying the rent about one year before filing of the present suit. The

plaintiff requested the defendant to vacate the suit property but he refused to do so. The plaintiff also sent a notice under Section 106 of the Transfer of Property Act, 1887. Despite issuance of the said notice, the defendant did not vacate the property.

The case of the defendant was that in fact he was the absolute owner in possession of the suit property for the last 35 years. He had constructed some rooms covered with a tin shed over it. He had also obtained an electricity connection for the said property. It was also the case of the defendant that the suit property belongs to Harijan caste and the name of the said community was duly incorporated in the revenue record i.e. 'Makbooja Harijan Gair Mumkin Abadi'.

In order to prove his ownership, the plaintiff has relied on the original gift deed bearing vasika No.2791 dated 24.2.1976 (Ex. P-1). He also examined PW-2 Dinesh Kumar, Record Keeper, D.C. Office, Gurgaon, who brought the office record to prove the registration of the gift deed. On the basis of the aforesaid learned trial court concluded that the plaintiff had duly proved his ownership by placing on record the original gift deed. The Court further held that the gift deed being more than 30 years old, presumption was attached to it in terms of Section 90 of the Evidence Act. Also no objection was raised regarding mode of proof of the gift deed at the time of its tendering into evidence by the defendant.

The Court also noted that though the mutation dated 19.11.1977 pertaining to the suit property was sanctioned on the basis of registered gift deed bearing vasika No.2238 of 01.12.1976 but that was not sufficient to discard the evidence of the plaintiff as the plaintiff's name was duly incorporated in the

column of ownership of the said mutation (Ex. R-12). It was also noticed that the defendant had merely claimed to be in possession over the suit property for the last 35 years from the date of filing of the present suit, which was reflected in the revenue record but he had not raised a plea of adverse possession over the suit property. It was noticed that mere occupation over the suit property was not sufficient to declare him as owner of the suit property. Further more the fact that the property belonged to the Gram Panchayat and it had gifted the same to the plaintiff vide registered gift deed dated 1.12.1976 ExP1 had been established. The Court however, concluded that tenancy of the defendant was not proved. But as the plaintiff had duly proved his ownership, the suit was decreed.

Learned Lower Appellate Court has affirmed the finding of the trial Court.

Learned counsel for the appellant contended that the learned Trial Court has wrongly noted that Section 123 of the Transfer of Property Act was not applicable to the State of Haryana and that a registered gift was not necessary. He further contended that the very fact that the plaintiff relied upon two documents, namely, Vasika No.2791 dated 24.02.1976 and vasika No.2238 dated 01.12.1976 itself goes to show that there was in fact no gift deed. Recital at the back of vasika No.2791 dated 24.02.1976 is that land has been gifted whereas in vasika No.2238 recital is that it is agreement to sell. This itself creates a doubt about the validity of the two documents.

No doubt contrary to what the Ld. Trial Court has held Section 123 of the Transfer of Property Act is applicable in Haryana and hence registration of a gift deed is necessary. But that finding is not relevant as the gift deed was registered. The original thereof was exhibited. The record keeper

from the office of Deputy Commissioner (PW-2) brought the office record to prove its registration. Hence, it was rightly held to be proved. The contention of the learned counsel regarding the two gift deeds has also been dealt with by the learned Lower Appellate Court by noting that they are not contrary and in both the deeds the name of the plaintiff is recorded as beneficiary. The title of the plaintiff cannot be doubted merely because two gift deeds were executed.

No substantial question of law arises for decision in this appeal.

Dismissed

06.09.2018
Atul

(Harinder Singh Sidhu)
Judge

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