

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

RSA No.2235 of 2019 (O&M)

Date of Decision: 11.09.2019

Jasbir Kaur alias Babli and Others

.....Appellants

Vs.

Santosh Kumari and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Sushil Bhardwaj, Advocate, for the appellants.

Mr.Ram Krishan-respondent No.2 in person.

DR. RAVI RANJAN, J. (Oral Judgment)

This Regular Second Appeal is directed against the judgment and decree dated 18.02.2019 passed by the District Judge, Ambala in Civil Appeal No.150 of 2017 by which finding recorded by the Civil Judge (Jr.Divn.), Ambala, in the Civil Suit 119/2010 in the judgment and decree dated 21.09.2017, has been set aside and suit filed by the plaintiffs (respondent Nos.1 & 2) was decreed and defendants-respondents-appellants have been directed to hand over the vacant possession of the house in dispute in favour of the respondent-plaintiff Nos.1 and 2. They have also been found liable to pay mesne profit as per the decree drawn.

The brief facts, which would be necessary for consideration of *lis*, stands enumerated as under:

The plaintiffs/respondents filed a suit for mandatory injunction directing the respondents/defendants to hand over the vacant possession of the suit property which is House No.453/4 situate at Mandi Bali Ram, Ambala City and also for a decree for recovery of damages on account of the

use and occupation of the house in dispute @ Rs.5000/- per month w.e.f. 1.12.2010 till the vacation of the same.

Admittedly, the suit property belonged to late Chet Ram, who had two sons, Ram chander and Ram Krishan and two daughters Raj Dulari and Lajwanti. Ram Krishan and his wife Santosh are plaintiffs. Other son of Chet Ram, v.i.z., Ram Chander, who was brother of the plaintiff No.2 Ram Krishan, had two sons Amrit Lal and Lalit. Amrit Lal had two sons Ashwani and Vinay. Ram Chander and Amrit Lal both expired prior to filing of the suit. Amrit Lal was survived by his wife Jasbir Kaur and two sons Ashwani and Vinay. Jasbir Kaur, Ashwani and Vinay are the defendants-respondents-appellants No.1 to 3 respectively.

As stated above, the dispute revolves around the house in dispute, which, according to the plaintiffs, was gifted to them by the father of plaintiff No.2, v.i.z., Chet Ram through a registered deed of gift dated 08.06.2007. It is further case of the plaintiffs that Amrit Lal and thereafter, his family members have been residing in the house in dispute as licensees and the plaintiffs have terminated the licence after the house in dispute was gifted to them. It is further case of the plaintiffs that on earlier occasion also, a Will was executed by Chet Ram in favour of the plaintiffs in the year 1994. However, despite the termination of the licence, the defendants did not vacate the house in dispute. Hence, the civil suit was filed.

The defendants/respondents, by filing written statement, took a stand that the house in dispute was given to them by Chet Ram by unregistered Will dated 10.11.2000. Apart from raising certain preliminary objections regarding maintainability, such as, locus standi, estoppel, cause of

parties, proper court fee not having been paid etc., on merit, it was averred that the suit was based upon a deed of gift which was the result of a misrepresentation and fraud played upon Chet Ram, who was 100 years old and was unable to understand the nature and consequences of his acts and deeds, therefore, the same was not binding upon the defendants. It was further averred that the Chet Ram was living with his grand son-Amrit Lal and daughter-in-law Jasbir Kaur and had great love and affection for Amrit Lal, who had rendered his services to him and due to which he had executed a Will dated 10.11.2000 in favour of Amrit Lal and Jasbir Kaur. Thus, the relationship of licensee was denied.

Replication was also filed by the plaintiffs reiterating the earlier stand. Apart from other statements, it was also averred in the replication that, after the death of his wife Chawali Devi, Chet Ram was a frequent visitor to the house of the plaintiffs at Ludhiana and had, in fact, shifted to Ludhiana in August, 1999 and he lived there with the plaintiffs-appellants for about 13 years till his death. A further stand has been taken that the Will dated 11.10.2000 is a product of forgery and fabrication and has no basis at all. It is stated that Chet Ram, in the alleged Will, has stated that his elder son Ram Chander had already expired, whereas Ram Chander expired on 16.11.2000, thus, it clearly indicates that the alleged Will was a piece of forgery.

On appreciation of the rival pleadings, the trial Court framed following issues:

1. Whether the plaintiffs are entitled to decree for mandatory injunction in respect of the premises in question on the grounds mentioned in the plaint, as prayed for?OPP.

2. Whether the plaintiffs are entitled to recovery of damages for the use and occupation of the premises in question @ Rs.5000/- per month along-with interest w.e.f. 01.12.2010 till its vacation on the grounds mentioned in the plaint, as prayed for?OPP.
3. Whether the suit is not maintainable in the present form?OPD.
4. Whether the plaintiffs have no cause of action to file the present suit? OPD.
5. Whether the plaintiffs have no locus standi to file the present suit? OPD.
6. Whether suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties?OPD.
7. Whether proper court fee has not been affixed on the plaint?OPD.
8. Whether there is no relationship of licensee with the answering defendant exist? OPD.
9. Whether alleged gift deed dated 08.06.2007 is not binding upon the rights of the defendants?OPD.
10. Relief.

To substantiate and prove their case, the plaintiff No.2 stepped into the witness-box as PW1 and also examined, Inspector Ajay Kumar from Food & Supply Department, Ludhiana, Sunehri Devi i.e. mother of the appellant-plaintiff No.2. Apart from above, he has also examined Vinay Sharan-Deed Writer from Ambala Court, Saroj Passi-Computer Operator from Andhra Bank, Ludhiana, Balwant Singh-Sub-Registrar from the office of Birth & Deaths Department, Municipal Corporation, Ludhiana as PW6. The plaintiff No.2- Ram Krishan again stepped into the witness box as PW-5 to lead additional evidence and that apart documents from Ex.P1 to Ex.P40 and Ex.P6/A were also tendered in evidence. It would be pertinent to

evidence for proving deed of gift was allowed by the First Appellate Court vide order dated 05.01.2018 and the matter was remitted back to the trial Court for the purpose of recording of additional evidence. By way of additional evidence, PW-6 Barkha Ram, PW-7 Bhupinder Singh and PW-8 Surinder Singh, Registry Clerk from the office of Sub-Registrar, Ambala City were examined by the plaintiffs.

The defendants examined Stamp Vendor, Kiran Jain from District Courts, Ambala City as DW1, Anil Kumar, Consumr Clerk from the office of SDO (Operation) Sub Division West, Ambala City, as DW2 and several others.

The trial Court, on appreciation of the materials available on record, dismissed the suit of the plaintiffs holding that none of the witnesses of the deed of gift (Ex.P-1) executed on 08.06.2007, v.i.z., Krishna Devi, Nambardar and Barkha Ram, Nambardar, could be examined by the plaintiffs. Thus, the deed of gift (Ex.P-1) could not be proved. So far as Will in favour of the defendants is oncerned, the trial Court held that since no issue with respect to the genuineness of Will was framed, there would be no requirement to give a separate finding upon Ex.D-1. It has further been held that though the plaintiffs claimed that the defendants were their licensee but in the deed of gift (Ex.P-1), it is stated that they were inducted as tenant, thus, the present suit would not be maintainable in view of the provisions of Haryana Urban (Control of Rent & Eviction) Act No.11 of 1973. Thus, the suit for mandatory injunction would also not be maintainable. It has further been held that the Will and power of attorney executed in the year 1994 would also not be of much value for the reason that if there was already a

have been no need for executing the alleged deed of gift (Ex.P-1).

In nut shell, it has been held that since deed of gift could not be proved by the plaintiffs by producing at least one of the attesting witnesses as required under Section 68 of the Evidence Act, the case of the plaintiffs has to fall flat. Eventually the suit was dismissed.

The judgement and decree of the trial Court was put to challenge by the plaintiffs by filing appeal which was allowed vide the impugned judgment passed by the First Appellate Court and the judgment and decree of the trial Court was set aside and the suit filed by the plaintiffs was decreed.

As has been discussed above, the application filed for leading evidence was allowed by the appellate Court and for the limited purpose, the matter was remitted back to the trial Court, which had recorded further evidence of the plaintiff No.2 who stepped into the witness box as PW-5 this time and PW-6-Barkha Ram, PW-7 Bhupender Singh, scribe and PW-8 Surinder Singh, Registry clerk from the office of Sub-Registrar, Ambala City. The First Appellate Court has held that there were sufficient materials and evidence led on behalf of the parties but the trial Court failed to frame issue with regard to Will allegedly executed by Chet Ram in favour of Amrit Lal and Jasbir Kaur. Thus, exercising powers under Order XLI Rule 24 of CPC, an additional issue was framed as under :-

“9A-Whether Chet Ram executed an unregistered Will dated 10.11.2000 in favour of Amrit Lal and Jasbir Kaur ? OPD.”

It has further held been held by the First appellate Court that, since there are sufficient evidence for the purposes of pronouncement of judgment, there would be no requirement to remand back the case to the trial

Court. On issue No.9, it is held that after leading additional evidence, i.e., on examination of the attesting witnesses, the registered deed of gift stands proved. Even, Bhupender Singh, who was scribe of the gift deed also stepped into the witness box as PW-7 as also the Registry Clerk in the office of Sub-Registrar, Ambala City, v.i.z, Surinder Singh as PW-8.

So far defendants are concerned, once the deed of gift is proved, the onus would shift upon them, they have claimed that the deed of gift was result of fraud, to prove it but they have not been able to do the same. Merely the fact that the donor was 100 years old would not mean that he was not in a fit state of mind to execute the deed.

So far the Will dated 10.11.2000 in favour of defendants is concerned, in the recital of the Will, it has been recorded that Ram Chander, i.e., son of Chet Ram, had already died. Ex.P28 is one of the death certificate which mentions the date of Ram Chander as 16.10.2000. However, Ex.P-38, is another another death certificate which mentions date of death of Ram Chander as 16.11.2000. This death certificate bears the hologram of Municipal Corporation, Ludhiana. Ex.P-39 is a letter giving information under the Right to Information Act, on the application moved for obtaining death certificate of Ram Chander. This also mentions the date of death of Ram Chander as 16.11.2000. Balwant Singh, Sub-Registrar in the office of Birth and Deaths, Municipal Corporation, Ludhiana has been examined by the plaintiffs as PW-6, he has proved that the death certificate, i.e, Ex.P-28 in which the date of death of Ram Chander was mentioned as 16.10.2000 is not a correct document because as per their record Ram Chander had expired on 16.11.2000. This completely falsifies the document

13.01.2012, he must be knowing the date of death of his son. Apart from the above, the stamp paper for Will was not purchased by the Chet Ram rather by one of the alleged beneficiary Ashwani Kumar i.e. defendant No.2 but not for the purposes of execution of Will but for the purposes of some agreement. That apart, the original Will could also not be produced by the defendants as they had given a statement before the Court that original Will has been lost and, thus, they sought permission to prove the Will by leading secondary evidence which was allowed on 13.10.2016. However, the First Appellate Court on the basis of aforesaid discussion, has held the Will to be forged and fabricated document and Ex.P28 also a forged death certificate whereas the plaintiffs have been able to prove the deed of gift. So far the maintainability of the suit is concerned, the First appellate court has held that merely, in view of recital in the deed of gift that the defendants were inducted as tenant, it cannot be held that there was a landlord-tenant relationship between them. Thus, the suit was held to be maintainable and the same was decreed and direction was given to the defendants to vacate the premises and also payment of mesne profit @ Rs.3000/- per month was ordered.

In the aforesaid background of factual matrix, I have heard learned counsel for the appellants and respondent No.2 in person and have perused the records of this Case.

Learned counsel for the appellants has vehemently argued that the Will (Ex.D-1) is genuine document and a deed of gift is a result of forgery. However, from the perusal of the records, it appears that the defendants have not questioned or challenged the signatures of the donor Chet Ram on the

the plaintiffs under coercion otherwise they could have easily examined a finger print/handwriting expert to dislodge the plaintiffs claim by questioning the signature put by Chet Ram on the deed of gift. So far the fraud and coercion is concerned, it is well settled that fraud has to be specifically pleaded and proved by leading cogent evidence. However, there is complete lack of any evidence indicating fraud. Thus, in my considered view, the finding of the First Appellate Court, accepting the genuineness of the document, cannot be faulted with or questioned.

So far landlord-tenant relationship is concerned, in my considered view, simply one sentence as recital of the concerned deed would not be enough to confer status of tenancy upon the defendants as it is neither the case of the plaintiffs nor of the defendants that there existed a landlord-tenant relationship between them. In this regard reference is made to a decision of the Hon'ble Apex Court rendered in **Praful Manohar Rele Vs. Smt.Krishnabai Narayan Ghosalkar and Others 2014(11)SCC 316**. It has been held therein that, in the absence of any rent note evidencing payment of rent or any other material or circumstances to suggest that there existed landlord-tenant relationship between the parties, the plea of the defendants that they were in possession as tenants cannot be accepted and it has to be held that they were licensee and their licence has been terminated on demand. In yet another decision rendered in **Sri Shivaji Balaram Haibatti vs. Sri Avinash Maruthi Pawar, 2018(1) Apex Court Judgments 367(SC)**, the Hon'ble Supreme Court has held that a recital in the sale deed showing a person to be tenant would not be sufficient to confer the status of the tenant in the absence of any independent evidence adduced

Thus, on the basis of such recital, the suit cannot be held to be not maintainable.

So far Will in favour of the defendants is concerned, it appears to be shrouded by suspicious circumstances. Otherwise why a father will record in the document that his son is dead when he was still alive? PW-6, Sub-Registrar in the office of Birth and Deaths, Municipal Corporation, Ludhiana, has testified that Ex.P-28 is a incorrect document because it mentions the date of death of Ram Chander as 16.10.2000 whereas, as per record of Municipal Corporation, Ram Chander has died on 16.11.2000 i.e. after the execution of the Will. It indicates that some document was being created for the obvious reason. That apart, surprisingly the original Will could not be brought on record by the defendants. The stamp paper, purchased by one of the beneficiary and not by the testator, also shows that it was purchased for execution of the some agreement but not a Will which stands substantiated by the cross-examination of DW-1 Kanti Kumar Jain, the concerned stamp vender. That apart, no evidence was led to prove the signatures of Chet Ram on the Will. DW-4 Sushant Aggarwal was the Son of Lajja Ram, who is stated to have scribed the Will. His statement has not been found convincing as he has simply stated that his father has told him once that he had signed on Will of Chet Ram. Thus, it can easily be held that execution of the Will Ex.D-1, is shrouded by suspicious circumstances and cannot be accepted. Apart from the above, even if it is assumed for the moments that some Will was executed by Chet Ram in the year 2000, even then, since the Will is a form of testamentary disposition, it was not a vehicle of transfer which would have immediately transferred the property in

become effective after the death of the testator-Chet Ram. Therefore, if Chet Ram, the testator, did not alienate the property before his death then only the property will go to the beneficiary after his death, however, if he, in his lifetime, has disposed of the property in favour of some body, the Will may be genuine but, on his death, would become un-executable.

By way of last resort, it has been urged on behalf of appellants that, while recording the quantum of the mesne profit @ Rs.3000/- per month, it has been stated that it will be calculated w.e.f. the date of termination of tenancy and not licence. This limb of argument is also not tenable as the First Appellate Court has already held that landlord-tenant relationship could not be proved. Therefore, the same has to be taken as a *bona fide* typographical error as in place of licensee, the word tenancy has been printed.

Having held as above, I am of the considered view that, since no cogent ground or substantial question of law could be raised by the appellants, the appeal, being devoid of any merit, has to be dismissed.

Ordered accordingly.

However, there would be no order as to costs.

Before parting with the matter, I must indicate that no other ground was raised by the parties save and except those which have already been considered as above.

(DR. RAVI RANJAN)
JUDGE

11.09.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No