

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

RSA No. 1562 of 2013 (O&M)

Date of decision : November 29, 2019

Ram Karan

....Appellant

Versus

Sarti Devi and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. B.S. Bairagi, Advocate
for the appellant.

Mr. Pardeep Singh Poonia, Advocate
for the respondents.

LISA GILL, J.

Appellant - plaintiff is aggrieved of judgment and decree dated 23.05.2011 passed by the learned Civil Judge (Senior Division), Panipat whereby his suit for declaration with consequential relief of permanent injunction has been dismissed as well as judgment and decree dated 17.12.2012 passed by the learned Additional District Judge, Panipat affirming the decision of the learned trial Court.

Brief facts necessary for adjudication of the case are that the appellant - plaintiff filed a suit for declaration with consequential relief of permanent injunction. It is pleaded by the plaintiff that he belongs to the Scheduled Caste community. The Government of Haryana vide notification dated 19.01.1976 decided to allot plots measuring 100 square yards to poor people of the Scheduled Caste community, who did not own any plots. The suit property detailed in the site plan (Ex.PW2/A) was claimed to have been allotted to the plaintiff vide gift deed bearing No. 101 dated 18.10.1983 (Ex.

PW4/B). It is pleaded that in the said gift deed (Ex.PW4/B), the plaintiff's name was not recorded as a recipient of the gift due to an inadvertent mistake and the name of Jai Narain was recorded instead. Defendant – respondent No. 1/Sarti Devi is the wife of Jai Narain, who had since passed away. Name of the father of the deceased Jai Narain and that of the plaintiff, it is claimed, is the same i.e Jhandu Ram though the plaintiff's grandfather was Ram Ji Lal and that of Jai Narain was Shankar. It is further alleged that Jai Narain (deceased) is wrongly reflected to be the owner of the property in the jamabandies though the grandfather's name of the plaintiff has been correctly recorded. Furthermore, the thumb impression on the gift deed (Ex.PW4/B) is claimed to be that of the plaintiff – Ram Karan but it is only due to inadvertence that the name of Jai Narain is mentioned. It is also pleaded that on the basis of thumb impression on the said gift deed, it can be ascertained that Ram Karan and Jai Narain are one and the same person.

It is further pleaded that defendant – respondent/Sarti Devi belonged to the Saini Community whereas the suit property was reserved to be allotted to members of the Scheduled Caste community only. It is stated that the defendants had no right, title or interest over the suit property. The plaintiff sought to be declared as owner in possession of the suit property and the defendants to be permanently restrained from interfering in his peaceful possession. Consequently, rectification in the revenue records was also sought to be carried out.

The suit was resisted by the respondents – defendants while taking various preliminary objections. It is stated that the suit property was allotted by the Government of Haryana to the poor people of the village and the plot in question was allotted in favour of the husband of defendant No.1.

Gift deed (Ex.PW4/B) was claimed to have been executed in favour of Jai

Narain son of Jhandu Ram. It is denied that the plaintiff had any right, title or interest in the suit property. Father's name of the plaintiff is claimed to be Bhundu and it is averred that the plaintiff in collusion with the revenue officials carried out forgery in the jamabandies of the year 1985-86 by fraudulently entering the name of his grandfather Ram Ji Lal, solely with a motive to grab the suit property. It is further stated that the defendants would have no objection to have the thumb impression of the plaintiff compared with that of Jai Narain on the gift deed (Ex. PW4/B).

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled for the relief of declaration as prayed for?OPP.
- ii) Whether the plaintiff is entitled to the relief of permanent injunction as alleged?OPP
- iii) Whether suit is not maintainable in the present form? OPD.
- iv) Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
- v) Whether the plaintiff has not come to the Court with clean hands? OPD
- vi) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record dismissed the plaintiff's suit while holding that there is mis-joinder/non-joinder of necessary parties inasmuch as the Gram Panchayat of village Bhandari was not impleaded. Moreover, the plot bearing Khasra No. 9/23 was allotted to the plaintiff's brother, namely Om Parkash son of Jhandu, and admittedly only one plot could have been allotted to one family.

Reference was made to the statement of PW3 Baja Ram, the grandfather of

the plaintiff as well as PW4 Pale Ram, a Panch of the Gram Panchayat in 1983. It is further observed that the plaintiff was a minor in the year 1983 and the plot could not have been allotted in his favour. Moreover, no evidence was adduced by the plaintiff to prove that the thumb impression on the gift deed was indeed his own. Appeal filed by the present appellant – plaintiff was dismissed by the learned Additional District Judge, Panipat vide judgment dated 17.12.2012. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant submits that the plots in question were meant to be allotted only to the members of the Scheduled Castes and Backward Class category and the allotment could not be made to the husband of respondent No. 1 – Sarti Devi, who belonged to Saini caste, which was subsequently included in the Backward Class category in 1995 only. It is further contended that respondent No. 1- Sarti Devi was allotted another plot and she had filed an affidavit mark PB while wrongly pleading that she had not been allotted any other plot. In fact she now has two plots allotted to her under the scheme which is illegal. It is further contended that the discrepancy has arisen because the father's name of the appellant and that of the husband of Sarti Devi is the same i.e. Jhandu. However, the appellant's grandfather is Ram Ji Lal and that of Jai Narain is Shankar. It is due to this reason that the allotment of the plot in question is mentioned to be in favour of Jai Narain son of Jhandu. Reference is made to Jamabandies of the year 1985-86 to submit that the appellant was in possession. Furthermore, the original allotment letter of the plot in question was in the appellant's possession and in case, the allotment was not in his favour, he could not have been in possession of the same. Learned counsel

for the appellant seeks to raise the following substantial questions of law:-

- i) Whether the impugned judgment and decree passed by both the courts below are manifestly illegal, perverse and a result of misreading of pleading and evidence, hence, the same deserve to be set aside?
- ii) Whether the notification of Haryana Govt. under which allotment is made, is issued for SC category only or for B.C. and General category also i.e. whether the B.C. or General category candidates can take the benefit of notification which is specially for the benefit of SC category?

It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 23.05.2011 passed by the learned Civil Judge (Senior Division), Panipat as well as judgment and decree dated 17.12.2012 passed by the learned Additional District Judge, Panipat be set aside and suit filed by the appellant be decreed throughout.

Learned counsel for the respondents submits that the pleaded case of the appellant – plaintiff is that the plots in question were meant solely for persons under the Scheduled caste category and not the Backward Class category, therefore, allotment could not have been made to Jai Narain as he belonged to the Backward Class category. It is submitted that there is no pleading regarding inclusion of Saini Community at a later stage. The argument now being raised before this Court is, thus, not available to the appellant. Moreover, respondent - Sarti Devi has specifically denied suffering the affidavit Mark PB and it is denied being incorrect that any other plot was ever allotted to respondent No. 1 under the said scheme. No such allotment letter is on record. It is further submitted that the original allotment letter was never produced despite the claim of the appellant being in possession thereof. Furthermore, the witnesses of the plaintiff have admitted that the plot in question was allotted to Jai Narain son of Jhandu –

the husband of respondent No.1. Her possession over the property was also admitted and there is no explanation as to why the appellant – plaintiff kept silent from the date of allotment i.e. 18.10.1983 till the filing of the suit on 01.06.2009 in this respect. It is also submitted that there is misjoinder of parties as the Gram Panchayat, which is a necessary and proper party was not impleaded. It is further submitted that no substantial question of law is involved for the consideration of this Court in this appeal. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the file as well as a photocopy of the record with his able assistance.

Pleaded case of the plaintiff is that as per notification dated 19.08.1976, the plots in question measuring 100 square yards were to be allotted to the poor people of Scheduled Caste community, who do not own any plot. PW4 Pale Ram, who was the Panch of the Gram Panchayat in 1983, and a witness examined by the plaintiff, has stated that the plots in question were to be allotted to the poor people of the village and there was no scheme for the allotment of plots to a particular community or castes though plots were to be allotted to the persons belonging to Harijan community and Backward Class community. Only one plot was to be allotted to one family. The plot could not be allotted to a minor. The plaintiff in the year 1983 was admittedly a minor. PW4 further stated that gift deed (Ex. PW4/B) was executed by the Gram Panchayat in favour of Jai Narain and possession of the suit property was given by the Gram Panchayat to Jai Narain son of Jhandu Ram. This witness further stated that gift deed (Ex. PW4/B) bears his signatures.

Testimony of PW3 Baja Ram, who is none other but the

grandfather of the plaintiff, is extremely relevant. He stated that his affidavit tendered in examination-in-chief was written by an Advocate. The plots measuring 100 square yards were given by the Gram Panchayat to the poor people of the village and as per the scheme, one family was entitled to one plot only. Brother of the plaintiff namely Om Parkash was allotted a plot of 100 square yards by the Gram Panchayat at that time. PW3 stated that the suit property was allotted to Jai Narain son of Jhandu Ram and he remained in possession thereof during his life time and after his death the suit property is in possession of Sarti Devi. There could indeed be nothing more telling than the testimony of PW3 in this regard and one would not need to go any further. However, by way of abundant caution, the other arguments raised are also dealt with.

It is pertinent to note that the plaintiff made no effort whatsoever to prove that the thumb impression on gift deed (Ex. PW4/B) did not belong to Jai Narain and had been appended by the plaintiff himself. The plaintiff claimed to have the original gift deed with him but the same was admittedly never produced on record. Moreover, there is no evidence on record which would offer any explanation much less a reasonable one, as to why the plaintiff kept silent for such long years till the institution of the civil suit on 01.06.2009 when he had the original gift deed dated 18.10.1983 with him. The plaintiff's own grandfather Baja Ram has admitted the possession of Jai Narain over the suit property and after his demise that of defendant No. 1 – Sarti Devi. It is further rightly held by both the learned courts below that Gram Panchayat of village Bhandari was a necessary party and the suit is indeed bad for non-joinder of the necessary party. The plea regarding entry of the name of the grandfather of the plaintiff in the

jamabandi for the year 1985-86 has been discussed in detail in para 14 by the learned Additional District Judge in a correct perspective.

Learned counsel for the appellant submits that Jai Narain belonged to the Saini community and this was included in the B.C. category subsequently, therefore, allotment in any case is illegal and should set aside. This argument is untenable and hence rejected for the reason that apart from the fact of the notification not being brought on record coupled with the Gram Panchayat not being made a party as well as the statement of PW4 Pale Ram, a Panch in 1983, it is categorically stated in para 3 of the plaint that as the suit property was reserved for members of the Scheduled Caste community, defendant No. 1 (her husband) belonging to the Saini Community could not have been allotted the said plot. The plaintiff has set up a case that it is due to a clerical mistake in the gift deed that the name of the allottee is mentioned as Jai Narain son of Jhandu whereas it should have read as Ram Karan son of Jhandu. The discrepancy, it is stated, has arisen because of the father's name of the plaintiff and Jai Narain being the same. It is further pleaded that it is thumb impression of the plaintiff - Ram Karan which is present on the gift deed dated 18.10.1983 where the name of the allottee has been wrongly mentioned as Jai Narain. Learned counsel for the appellant is unable to deny that notification dated 19.01.1976 has not even been placed on record much less proved. Despite the defendant pleading and categorically stating that she had no objection to the comparison of the thumb impression of Jai Narain on the allotment letter, no steps in this regard were taken by the appellant. Said argument is clearly beyond and opposed to the pleadings.

Last but not least, an argument was raised by learned

counsel for the appellant that the defendant – respondent No. 1/Sarti Devi's

husband's name is Jewan Singh. Furthermore, she has submitted an affidavit mark PB wherein she wrongly pleaded that she had not been allotted any other plot. Another plot was allotted to Sarti Devi pursuant to submission of such affidavit, therefore, necessary correction be carried out in the gift deed (Ex.PW4/B). This argument is also devoid of any merit as admittedly Sarti Devi has categorically denied suffering of the affidavit mark PB. She has outrightly denied being incorrect that any other plot was allotted to her under the said scheme. Learned counsel for the appellant is unable to point out any evidence on record to indicate much less prove that a second plot was ever allotted in favour of Sarti Devi. A perusal of affidavit 'mark PB' reveals that the deponent is mentioned to be Sarti Devi wife of Jinna. There is no evidence on record that the defendant Sarti Devi is wife of Jinna or that she suffered the said affidavit which is a marked document.

The substantial questions of law are, thus, answered against the appellant and in favour of the defendants-respondents. .

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 23.05.2011 passed by the learned Civil Judge (Senior Division), Panipat as well as judgment and decree dated 17.12.2012 passed by the learned Additional District Judge, Panipat, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

November 29, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No