

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 11.3.2019

RSA No. 104 of 2016(O&M)

Ram Nath and others

---Appellants

vs.

Tara Rani and another

---Respondents

RSA No. 223 of 2016(O&M)

Ram Nath and others

---Appellants

vs.

Keshar Chand and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. G.P.S. Bal, Advocate
for the appellants

Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderpreet Singh, Advocate
for respondent-Keshar Chand

Ms. Ruchi Gupta, Advocate
for respondent-Tara Rani

Rekha Mittal, J.

This order will dispose of RSA No. 104 and 223 of 2016 as these have emerged out of the same judgment and decree dated 15.9.2015 passed by the Additional District Judge, Faridabad whereby appeal preferred by Tara Rani respondent was allowed, judgment and decree passed by the

trial court dismissing suit of respondent Tara Rani were set aside and Tara Rani was declared to be owner in possession of 1/3rd share of the property in dispute.

The present litigation pertains to House No. 5-H/47 NIT, Faridabad which was previously allotted/transferred to Sh. Sant Ram (since deceased) vide registered Conveyance Deed dated 27.2.1961 (wrongly mentioned in the judgments of the courts below as 27.2.1981) executed by the President of India in lieu of property left behind by Sh. Sant Ram in Pakistan. Sh. Sant Ram died on 19.9.1984 and left behind three class-I heirs namely Tara Rani daughter, Ramesh Chand and Chanan Lal sons. Ramesh Chand and Chanan Lal sons of late Sh. Sant Ram have also passed away. Ramesh Chand is succeeded by Keshar Chand defendant No. 1 and defendants No. 2 to 4 are the sons and daughter of Sh. Chanan Lal. Tara Rani claimed 1/3rd share in the suit house on the basis of natural succession being one of the class-I heirs left behind by Sh. Sant Ram. On the contrary, defendants No. 2 to 4 (appellants herein) claimed exclusive right to the suit house on the basis of registered gift deed dated 2.5.1972 and registered Will dated 15.2.1982 purported to be executed by Sh. Sant Ram in favour of Chanan Lal, predecessor-in-interest of the appellants.

The trial court, on the basis of pleadings of the parties, framed 11 issues, reproduced in para 6 of the judgment of said court. Issue No. 1 was answered against respondent/plaintiff Tara Rani primarily on the ground that suit filed by her is barred by limitation and amended provisions of Section 6 of the Hindu Succession Act are not applicable to disposition of property which has taken place before 20.12.2004. The trial court, in view

of its findings on issue No. 1, answered issue Nos. 2 to 6 in favour of the defendants and against the plaintiff and ultimately suit filed by the plaintiff was dismissed and so also the counter claim preferred by defendant No. 1 Keshar Chand son of Ramesh Chand son of Sant Ram.

The decree passed by the trial court led to filing of two appeals i.e. Civil Appeal No. 185 of 2014 titled “Tara Rani vs. Keshar Chand and others” and No. 2 of 2015 titled “Keshar Chand vs. Tara Rani and others” and both the appeals were decided by way of common judgment and decree dated 15.9.2015, in the terms indicated hereinbefore. The counter claim preferred by defendant No. 1 was disposed of but counter claimant was left at liberty to file a fresh suit for the same cause of action as per law.

Counsel for the appellants would argue that gift deed Ex. D1 dated 2.5.1972 propounded by the appellants is a registered document. Both the attesting witnesses of the gift deed namely Brij Mohan and Ram Parkash have passed away. The appellants examined Ved Ram, Advocate, District Court, Faridabad DW5 and he has proved signatures of Sh. Brij Mohan, Advocate on reply to legal notice dated 13.2.1982 (Ex. D5), gift deed and Will dated 15.2.1982. They also examined Rattan Kumar Tandon son of Kishori Lal, brother of Ram Parkash to prove signatures of Ram Parkash as an attesting witness on the gift deed Ex. D1. It is further argued that the appellants also examined Syed Faisal Huda, Forensic Expert to prove that the standard signatures S1 to S19 taken from various documents available on judicial record and in the Tehsildar room at Deputy Commissioner's Office, Faridabad i.e. Conveyance Deed, Hibbanama, Will, application for allotment dated 20.2.1951, original possession receipt dated

20.2.1951 and original notice dated 13.2.1982 who opined that signatures S1 to S19 have been written/signed by the same person, sufficient to establish that gift deed bears signatures of Sh. Sant Ram. It is further argued that as execution of the gift deed was not specifically denied by its executant, proviso appended to Section 68 of the Evidence Act would be attracted and it was not obligated for the appellants to examine the attesting witnesses who are otherwise no more available in the world. Counsel would point out that findings of the Appellate Court with regard to non-examination of Ram Parkash, second attesting witnesses of the gift deed is the result of its failure to take into consideration testimony of Rattan Kumar Tandon DW8 examined to prove attestation by late Ram Parkash. In addition, it is argued that presumption of due execution and attestation of gift deed is available under Section 90 of the Evidence Act as the gift deed is a document more than 30 years old and was produced from proper custody. It is further argued that the Appellate Court has ignored the provisions of Section 90 of the Evidence Act while holding against the appellants that the gift deed in question has not been proved in accordance with law.

Counsel representing respondent Tara Rani, on the other hand, has supported the judgment and decree passed by the Appellate Court with the submission that as the appellants failed to prove the gift deed and Will propounded by them in accordance with law, the Appellate court has rightly held that suit house previously owned by Sh. Sant Ram would be inherited by his three class-I heirs to the extent of 1/3rd share each and Tara Rani being daughter of Sh. Sant Ram is entitle to 1/3rd share in the suit property.

It has further been argued that even the appellants have failed to adduce any evidence that the gift deed was accepted by Sh. Chanan Lal during the life time of Sant Ram as the appellants failed to prove that the gift deed bears signatures of alleged donee in token of its acceptance when otherwise the property till date stands in the name of Sant Ram and was not transferred in favour of Chanan Lal on the basis of gift deed purported to be executed as back as in the year 1972.

Another submission made by counsel is that plea of the appellants in respect of gift deed becomes doubtful in view of Will dated 15.2.1982 propounded by them. It is argued that if Sant Ram had already gifted away the suit house to Sh. Chanan Lal vide gift deed dated 2.5.1972, there was no reason for him to execute the Will in respect of the same property in favour of Sh. Chanan Lal. It is further argued that the appellants have also failed to prove the Will in consonance with the provisions of Section 68/69 of the Evidence Act.

Counsel for respondent Tara Rani has refuted contention of the appellant that signature of Sant Ram on the gift deed has been proved by the forensic expert by contending that original documents available in the office of Tehsildar/Deputy Commissioner are not part of judicial record nor there is evidence that those documents bear signatures of Sh.Sant Ram, to be used for the purpose of comparison with disputed documents namely gift deed and Will.

Counsel representing Keshar Chand has not made any additional submissions on behalf of defendant No.1.

Counsel for the appellants, in reply, would argue that original

gift deed had been in their custody and they are in possession of suit house being successors of Sh. Chanan Lal donee. These two facts are a strong evidence of acceptance of gift. In this context, reliance has been placed on judgment of Hon'ble the Supreme Court **Ashok vs. Lakshmikutty and others 2008(1) RCR (Civil) 507.**

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the suit house was transferred in the name of Sh. Sant Ram on the basis of Conveyance Deed executed in the year 1961. There is no denial that Sh. Sant Ram died in the year 1984 and left behind three class-I heirs, two sons and one daughter. Two sons of Sh. Sant Ram namely Ramesh Chand and Chanan Lal have since passed away and defendants are the successors-in-interest of Ramesh Chand and Chanan Lal. Smt. Tara Rani plaintiff is the daughter of Sant Ram.

The entire controversy in the present litigation revolves around the gift deed dated 2.5.1972 and Will dated 15.2.1982 propounded by defendants No. 2 to 4, successors-in-interest of Chanan Lal in favour of their predecessor-in-interest.

Before adverting to merits of the case in respect of gift deed and Will set up by the appellants, it is appropriate to note that the trial court decided the question of limitation against the respondent-plaintiff while deciding issue No. 1. Perusal of the judgment of Appellate Court would reveal that the said court in para 26 has taken note of contention of the respondents therein that there is delay in filing the suit and limitation to challenge any instrument is of three years and suit for declaration filed by

the plaintiff (appellant therein) is also time barred. Counsel for the respondents (appellants herein) placed reliance upon certain precedents noticed in para 26 of the judgment passed by the appellate Court.

Counsel for the parties, in response to a pointed query, would fairly concede that the Appellate Court has not adverted to the question of limitation in regard whereof issue No. 6 was framed nor set aside findings of the trial court with regard to suit being barred by limitation. Once the Appellate Court has not set aside findings of the trial court on the question of limitation, there was no occasion for the Appellate Court to accept the appeal, set aside the judgment and decree passed by the trial court and allow claim of the respondent-plaintiff with regard to her entitlement to 1/3rd share in the suit property. That being so, the judgment and decree passed by the Appellate Court is liable to be set aside on this score alone and the matter needs remittance to the Appellate Court for deciding the appeals afresh, in view of various disputed questions of fact and law raised by the parties. As the matter is being remitted to the Appellate court for decision of the appeals afresh, this court would refrain from expressing any opinion qua merits of the case qua gift deed and Will set up by the appellants, lest it may cause prejudice to either of the parties in the appeals to be decided afresh.

In view of what has been discussed hereinbefore, the appeals are allowed. The judgment and decree passed by the Appellate Court is set aside and the matter is remitted to the Appellate Court for decision of the appeals afresh. The Appellate Court is directed to examine if the issues have been properly framed and onus thereof has rightly been placed upon

contesting parties. Parties through their counsel are directed to appear before the successor court of Dr. Pankaj, the then Additional District Judge, Faridabad on 5.4.2019. The Appellate Court shall decide the appeals within a period of six months of the parties putting in appearance.

(Rekha Mittal)
Judge

11.3.2019
paramjit

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