

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 1465 of 2018

Date of Decision: May 14 , 2019.

Swaran Singh and another APPELLANT (s)

Versus

Parveen Kumar and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajesh Sethi, Advocate and
Mr. Arun Biriwal, Advocate
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellants/plaintiffs are aggrieved of judgments and decrees dated 13.03.2015 and 21.07.2017 passed by the learned Civil Judge(Senior Division), Panchkula and the learned Additional District Judge, Panchkula, respectively, whereby suit filed by the plaintiffs has been dismissed.

Present appellants-plaintiffs alongwith two others i.e., Kasturi Devi and Satya Devi who are not arrayed as parties in this appeal, filed a suit for declaration and permanent injunction to the effect that plaintiff/appellant No.1 – Swaran Singh alongwith defendants No.9 to 11 in the suit (again not arrayed as

parties to this appeal) are joint owners-in-possession of the suit property as detailed in the plaint to extent of 136th share each and that the other three plaintiffs including appellant No.1 are co-owners in possession of the suit property to the extent of 1/9th share each as per Jamabandi for the year 1997-98. It is pleaded that registered gift-deed No.407/1 dated 18.11.2003 alleged to be executed by Ram Sarup son of Albela in favour of defendant No.1-Parveen Kumar, is illegal, null and void and not binding on the rights of the plaintiffs and proforma respondents. Mutation sanctioned pursuant to the gift-deed was also challenged. Consequential relief of permanent injunction restraining defendant No.1 from alienating the suit property was sought.

As per the pleadings, property in question belonged to one Ram Sarup, who was the maternal grandfather of plaintiff No.1 and proforma defendants No.9 to 11. Plaintiffs No.2 to 4 and defendants No.2 to 5 are his daughters. It is pleaded that property in the hands of Ram Sarup was ancestral in nature. He was blessed with nine daughters. It is averred that Ram Sarup died intestate on 17.03.2008 and his property devolved upon the parties as per law of succession. Agricultural land of Ram Sarup was claimed to be inherited by the plaintiffs alongwith defendants vide mutation Nos.1384 and 504 dated 17.09.2010 and 29.05.2010, respectively. When the plaintiffs approached the Halqa Patwari of village Toda regarding sanctioning of mutation of agricultural land of village Toda in their favour, it came to light that mutation regarding the said property has already been sanctioned in favour of Parveen Kumar, defendant No.1, on the basis of a gift-deed. Certified copy of the said gift-deed dated 18.11.2013 was thereafter obtained by the plaintiffs. It is specifically pleaded that

the impugned gift-deed was never executed by Ram Sarup as he never disclosed the same to anyone. The said document is claimed to be a fraudulent one, procured by defendant No.1-Parveen Kumar by playing a fraud with Ram Sarup in connivance with the witnesses. When defendant No.1 refused to accede to the claim of the plaintiffs, suit was filed.

Defendants No.1 to 8 contested the suit, while proforma defendants No.9 to 11 were proceeded against ex-parte. Various preliminary objections were raised and averments on merits were controverted. Defendants No.1 and 3 filed separate written statements with identical pleas, which was adopted by defendant No.2. It is stated that the plaintiffs and proforma respondents were fully aware of the gift-deed executed by Ram Sarup. Furthermore, as per the provisions of the Hindu Succession (Amendment) Act, 2005, alienation of the coparcenary property effected upto 20.12.2004 cannot be challenged. Claim set up by the plaintiffs was denied while relationship between the parties is admitted. It is further contended that some of the properties of Ram Sarup were self-acquired in his hands. Defendant No.1-Parveen Kumar is stated to have resided with Ram Sarup since the very beginning and the property in the hands of defendant No.1-Parveen Kumar was validly conveyed by virtue of the gift deed. Joint written statement was filed by defendants No.4 and 5 admitting the plaint. Said written statement of defendants No.4 and 5 was adopted by defendants No.6 to 8.

Following issues were framed on the basis of the pleadings of the parties:-

1. Whether plaintiffs alongwith the proforma defendants No.9 to 11 are the joint owner in possession of the land as detailed in the

head note of the plaint? OPP

2. Whether the Gift Deed no.407/1 dated 18.11.2003 executed by Ram Sarup in favour of defendant no.1 regarding the suit land is illegal, null and void and is a result of fraud and misrepresentation as alleged? OPP
3. Whether the defendant No.1 is liable to be restrained from alienating the suit property on the basis of impugned gift deed to any other person as alleged in the plaint? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiffs have no locus standi and no cause of action to file this suit? OPD
6. Whether the plaintiffs have concealed the true and material facts from the court, if so, its effect? OPD
7. Whether the suit is bad for mis-joinder of the parties and non-joinder of necessary parties? OPD
8. Whether the suit is barred by the law of limitation? OPD
9. Whether the suit is bad for want of ad-valorem Court fees? OPD
10. Relief.

Both the parties led evidence to substantiate their respective claims/stands.

Learned trial court on considering the evidence on record, facts and circumstances, dismissed the suit filed by the plaintiffs while concluding that defendant No.1 has successfully proved execution of the gift-deed (Ex.D1). Moreover, transfer of the property prior to 20.12.2004, even if ancestral, could not be challenged in view of the specific provision of the Hindu Succession (Amendment) Act, 2005. It is further observed that the plaintiffs were aware of the gift deed and the suit filed by them in the year 2010 was time barred. Ram Sarup during his life time had not challenged this gift-deed. Moreover, the

plaintiffs, it is observed, were not able to prove the gift-deed (Ex.D1) to be a fraudulent or fabricated document/instrument.

Appeal was preferred by the present appellants i.e., Swaran Singh and Gurmeeto, which was dismissed by the learned Additional District Judge, Panchkula vide judgment and decree dated 21.07.2017.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues at the very outset that the gift-deed (Ex.D1) is inadmissible in evidence. An objection was raised regarding its admissibility when a certified copy thereof was filed by the defendants. Furthermore, a proper issue in this regard was not framed by the learned trial court, which has caused great prejudice to the appellants. It is vehemently contended that this fact in itself led to improper judgments. There being a fundamental flaw, the impugned judgments should be set aside on this count itself. Moreover, there is no proper discussion regarding Issues No.6, 7 and 9. It is further urged that the gift-deed, in question, is a fraudulent document. There is no evidence on record to show that Ram Sarup was of sound mind at the time of execution of the gift-deed. There is no reason as to why he would divest his other successors of the property and execute a gift-deed regarding suit property in favour of defendant No.1-Parveen Kumar alone.

Learned counsel for the appellants further argues that ancestral nature of the property is proved on record. Therefore, the plaintiffs are entitled to the share as claimed and Ram Sarup was not entitled to execute the gift-deed, even if it is accepted to be genuine. Learned counsel further argues that stand of defendant No.1-Parveen Kumar regarding adoption by Ram Sarup has been

disbelieved by the learned courts below. Once defendant No.1 has been disbelieved on one count, his entire testimony should have been discarded and suit filed by the plaintiffs should be allowed. It is thus prayed that both the impugned judgments and decrees dated 13.03.2015 and 21.07.2017 passed by the learned Civil Judge(Senior Division), Panchkula and the learned Additional District Judge, Panchkula, respectively, be set aside. Consequently, suit filed by the plaintiffs/appellants be decreed throughout.

I have heard Learned counsel for the appellants at great length and have gone through the file with his assistance.

Plaintiffs/appellants claim their share in the property of Ram Sarup being the maternal grandson (appellant No.1) and daughter (appellant No.2) of Ram Sarup. Respondent/defendant No.1 – Parveen Kumar claims his right on the basis of gift-deed dated 18.11.2003 (Ex.D1) executed by Ram Sarup in his favour. In order to prove gift-deed (Ex.D1), defendant No.1 examined the scribe of gift-deed, namely, Parveen Kumar as DW1. Naseerudin, one of the marginal witnesses to the gift-deed is examined as DW2. Both the witnesses have duly proved execution of the gift-deed by Ram Sarup in favour of defendant No.1- Parveen Kumar. It is a matter of record that the other marginal witness to the gift-deed, namely, Karam Singh has passed away. His death certificate is on record as Ex.D22. It is further a matter of record that photograph of Ram Sarup appearing on the said gift-deed is a computerized print and not a photograph which is affixed later upon the document. Ram Sarup has described Parveen Kumar as his grandson in the gift-deed, which is duly registered. As per endorsement of the Sub-Registrar, Ram Sarup appeared before the Sub-Registrar and had executed

gift-deed(Ex.D1) in favour of defendant No.1-Parveen Kumar regarding his agricultural land situated at village Toda.

Gift-deed (Ex.D1) was executed on 18.11.2003 by Ram Sarup, who admittedly died on 17.03.2008. However, the present suit was filed on 13.10.2010. Fact that the plaintiffs were aware of the gift-deed much prior to death of Ram Sarup is apparent from the record. PW1 Swaran Singh, in his cross-examination clearly revealed that factum of gift-deed was brought to his notice by his maternal aunt (Massi) Gurmeeto and at that time his maternal grandfather was alive. Factum of their knowledge of the gift-deed prior to death of Ram Sarup is also reflected in the testimony of PW1 Swaran Singh, regarding Civil Suit No.116 of 30.05.2012 proved on record as Ex.D21. This witness further admitted that it was Parveen Kumar who had gone to Haridwar to immerse Ram Sarup's ashes and PW1 Swaran Singh was not present at the time of performance of last rites of Ram Sarup at village Toda. PW1 Swaran Singh has admitted the photographs of his grandfather on gift-deed (Ex.D1).

It is further not in dispute that defendant No.1-Parveen Kumar was residing with Ram Sarup at village Toda since the very beginning of his childhood. PW1 Swaran Singh has admitted as such. PW2 Devi Chand has also admitted that Parveen Kumar was living with Ram Sarup as his grandson and he had also done his studies at village Toda.

Argument raised by learned counsel for the appellants that Ex.D1 is inadmissible in evidence, is devoid of any merit in the factual matrix of the case. There is indeed no evidence on record to prove that the said document is a fraudulent document, as claimed by the plaintiffs. No such evidence has been led

by the plaintiffs. Genuineness of the document cannot be doubted merely because some of the successors have been ousted. It is pertinent to note at this stage that the house and Baara owned by Ram Sarup was not included in the gift-deed. This fact also points to the genuineness of the document as in case the same was a procured instrument, there was nothing to prevent defendant No.1 to have ensured inclusion of the entire property of Ram Sarup.

As per proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005, it is categorically mentioned that nothing contained in sub-section (1) shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. In this respect, reference can gainfully be made to the judgment of the Hon'ble Supreme Court in **Danamma @ Suman Surpur and another v. Amar and others, 2018(3) SCC 343**. There is indeed no infirmity in the finding returned by both the courts below on this issue.

Similarly, I do not find any merit in the argument raised by learned counsel for the appellants that proper issues have not been framed in this matter by the learned trial court, which has led to great prejudice to the plaintiffs. It is apparent that the parties to the lis, were very much alive to the controversy in hand and it cannot be said that any prejudice whatsoever has been caused to the appellants which would justify setting aside of the impugned judgments.

An attempt has been made to suggest that Ram Sarup was not of sound disposing state of mind, therefore, the impugned judgments be set aside on this ground. However, there is not an iota of evidence on record to indicate the same. Reference of cross-examination of DW4 Parveen Kumar is of no avail to the appellants. There is no merit in the argument raised by learned counsel that

the learned Additional District Judge, Panchkula has grossly erred in dismissing the application under Order 41 Rule 27 CPC filed by the appellants and the impugned judgments should be set aside on this ground itself. Perusal of the file reveals that an application under Order 41 Rule 27 CPC was moved by the appellants to produce a copy of the Will dated 20.05.1997 and its cancellation thereof dated 25.11.1997 and a sale-deed dated 23.04.2004 and its cancellation allegedly procured by cousin of appellant No.2 from Ram Sarup. Said application was rightly dismissed by the learned Additional District Judge, Panchkula by a separate order dated 21.07.2017 while observing that apart from the fact that it would amount to permitting a party to fill-up a lacunae, the documents sought to be produced are not a clinching piece of evidence inasmuch as suit filed by the plaintiffs/appellants revolves around the genuineness of the gift-deed, Ex.D1 and documents sought to be produced, do not reflect upon the genuineness or otherwise of document, Ex.D1.

Though, it was sought to be urged that questions of law as delineated in para 30 of the Grounds of Appeal arise in this appeal, in my considered opinion, there is no question of law much less substantial questions of law which may be involved for consideration in this Regular Second Appeal.

Both the learned courts below have rightly dismissed the suit filed by the plaintiffs and have rendered concurrent findings of fact on the basis of proper appreciation of the evidence on record which do not call for any interference by this Court.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I

do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 13.03.2015 and 21.07.2017 passed by the learned Civil Judge (Senior Division), Panchkula and the learned Additional District Judge, Panchkula, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to costs.

May 14 , 2019.
'om'

(LISA GILL)
JUDGE

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