

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

Date of decision: 13.2.2019

1.

RSA No.307 of 2016(O&M)

Raghubir Singh and another

....Appellants

VERSUS

Bishan Singh and others

.....Respondents

2.

RSA No.308 of 2016(O&M)

Raghubir Singh and another

....Appellants

VERSUS

Bishan Singh and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Vikas Bahl, Senior Advocate with
 Mr. Akshay Rawal, Advocate for the appellants.

REKHA MITTAL, J.

This order will dispose of RSA No.307 and 308 of 2016 as these have emerged out of common judgments and decrees passed by the Courts whereby civil suit No.158/99 Bishan Singh and others Vs. Jagat Ram and civil suit No.242/99 were decided together as civil suit No.242/99 was consolidated with civil suit No.158/99, vide judgment and decree dated 04.12.2010 passed by the Additional Civil Judge (Senior Division), Garhshankar (hereinafter referred to as 'the trial Court') and appeal

preferred by Jagat Ram, Civil Appeal No.6 of 05.01.2011 and Civil Appeal No.5 of 05.01.2011 titled Raghbir Singh and another Vs. Bishan Singh were decided by the Additional District Judge (Ad hoc) Fast Track Court, Hoshiarpur vide judgment and decree dated 22.01.2015. The Courts below accepted claim of Bishan Singh and others that they are the owners in possession of land measuring 8 kanal 8 marlas bearing khata Nos.170/889-890-891, khasra Nos.1446 (1-18), 4419/2975 (0-17), 2538 (2-6) and 2907 (3-7) out of 1/3rd share of Smt. Parwati wife of Chuhru in land measuring 47 kanal 2 marlas, detailed in headnote of the plaint on the basis of gift deed dated 19.03.1962 executed by Smt. Parwati in favour of Wattan Singh son of Hako, predecessor in interest of plaintiffs No.3 and 4 and Jeewa son of Rama, predecessor in interest of plaintiffs No.1 and 2 and the defendants in civil suit No.242/99 including the appellants herein were restrained from taking forcible possession of specific portions of suit land measuring 47 kanal 2 marlas and raising construction over any specific portion of the suit land illegally and forcibly.

RSA No.307 has been filed by Raghbir Singh and Ram Lok defendants No.5 and 2, respectively in civil suit No.242/99 along with application Civil Miscellaneous No.950-C of 2016 for permitting them to file appeal against judgment and decree dated 22.01.2015 in Civil Appeal No.6 of 05.01.2011 in which they were not party on the premise that observations and findings recorded by the first Appellate Court in Civil Appeal No.6 substantially and materially effected the observations and findings arrived at in Civil Appeal No.5 of 05.01.2011 decided by a common judgment dated 22.01.2015 by the first Appellate Court.

Counsel for the appellants has made submissions primarily to assail the judgment and decree passed in Civil Suit No.158/99 titled Bishan Singh and others Vs. Jagat Singh wherein Bishan Singh and others have staked their claim of ownership qua land measuring 8 kanal 8 marlas comprised in khasra numbers detailed hereinbefore on the basis of gift deed dated 19.03.1962. It is argued that Jagat Ram – defendant therein had alienated the entire land to the extent of 1/3rd share of Smt. Parwati out of land measuring 47 kanal 2 marlas in favour of defendants in civil suit No.242/99 but purchasers of land from Sh. Jagat Ram were not impleaded as party in the said civil suit nor the sale deeds executed in their favour were assailed much less set aside by the Court, therefore, the judgment and decree passed in Civil Suit No.158/99 (hereinafter referred to as ‘the main suit’) and affirmed in appeal cannot be allowed to sustain. In addition, it is argued that in the second suit (suit for injunction) a specific plea was raised by the appellants that they are bona fide purchasers for valuable consideration and without notice but no specific findings have been recorded in respect of this plea raised by the appellants.

Counsel has also assailed findings of the Courts accepting plea of respondents with regard to gift deed dated 19.03.1962, purported to be executed by Smt. Parwati widow of Chuhru. It is argued that respondents (plaintiffs in civil suit No.158/99) examined one of the attesting witnesses of the gift deed but the said witness did not support cause of the respondents that either the gift deed bears his attestation or the same was executed by Smt. Parwati. It is argued with vehemence that as the respondents failed to prove gift deed in accordance with law, findings recorded by the Courts in respect of ownership of the respondents on the

basis of gift deed dated 19.03.1962 cannot be allowed to sustain. According to counsel, there is no clear much less cogent evidence on record that gift in respect of land subject matter of gift deed was accepted by the second donee namely Jeewa son of Rama.

Be that as it may, it is undisputed position of the case that civil suit No.158/99 (main suit) was filed by Bishan Singh and others against Jagat Ram on 07.06.1999. The sale deed(s) in favour of the appellants was executed by Sh. Jagat Ram subsequent to filing of the suit on 07.06.1999, therefore, sale in favour of the appellants is hit by the principle of *lis pendens*. In the given circumstances, it was none of the obligation of Bishan Singh and others to implead the purchasers of suit land pendente lite to be impleaded as a party nor the sale deed(s) in their favour was required to be challenged in the suit pertaining to ownership on the basis of gift deed propounded by Bishan Singh and others. Similarly, no such plea of bona fide purchaser for consideration is available to a transferee pendente lite irrespective of whether factum of pendency of suit was to the knowledge of transferee or otherwise. In this view of the matter, contentions raised by counsel for the appellants in this regard are patently misconceived and liable to be rejected. I would hasten to add that the appellants despite knowing fully well that Bishan Singh and others have staked their claim to ownership of land measuring 8 kanal 8 marlas out of land measuring 15 kanals and some odd marlas owned by Smt. Parwati in respect whereof mutation No.2294 qua inheritance to Smt. Parwati has been sanctioned in favour of Jagat Ram on the basis of which Jagat Ram had alienated land measuring 15 kanal 14 marlas to the extent of 1/3rd share in land measuring 47 kanal 2 marlas did not chose to file an

application to be impleaded as a party in the main suit to watch their interest in case Jagat Ram fails to defend the suit in right earnestness. The judgment and decree passed in the main suit became subject matter of challenge only at the instance of Sh. Jagat Ram and the appellants did not file an application for permitting them to be arrayed as a party in Civil Appeal No.6 preferred by Sh. Jagat Ram wherein the question of ownership of land was involved. It is none of the plea of appellants that Sh. Jagat Ram sided with the respondents/plaintiffs, therefore, it is difficult to accept contention of the appellants that they can maintain second appeal to assail findings recorded by the Courts in the main suit primarily raising controversy qua ownership of land measuring 8 kanal 8 marlas on the basis of gift deed dated 19.03.1962.

Though the appellants may not be competent to maintain an appeal to challenge findings of the Courts on the basis of aforesaid gift deed but still this Court would deal with this contention for decision of this issue on merits. The respondents produced certified copy of the gift deed maintained in the office of registering authority by seeking permission to adduce secondary evidence on the premise that original gift deed has been lost. Indeed, the respondents examined one of the attesting witnesses of the gift deed namely Bakshi Ram son of Ami Chand aged about 95 years. A gift deed requires attestation by two witnesses as provided in Section 123 of the Transfer of Property Act, 1882. Section 68 of the Indian Evidence Act, 1872 deals with proof of execution of document required by law to be attested. A relevant extract therefrom reads as follows:-

“68. Proof of execution of document required by law to be attested

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

The proviso appended to Section 68 makes it evident that it shall not be necessary to call attesting witness in proof of execution of any such document (not being a Will) that has been registered in accordance with the provisions of the Indian Registration Act, 1908 unless its execution is specifically denied by the person by whom it purports to have been executed. In the case at hand, the gift deed has been registered way back in the year 1962 in accordance with the provisions of Indian Registration Act, 1908. The execution of gift deed has not been denied by Smt. Parwati by whom it purports to have been executed. Parwati remained alive for quite some time after execution of the gift deed dated 19.03.1962 but she never raised an issue to deny execution of the gift deed. In the given circumstances, the respondents were not required to examine

one of the attesting witness of the gift deed in order to prove the same in accordance with law.

Though the respondents were not under obligation in law to examine an attesting witness of the gift deed but still either in view of legal advice by their counsel before the trial Court or in their own wisdom, they examined the only person found alive at the time of leading evidence in the context of gift in question. No doubt, Bakshi Ram did not support version of the respondents and denied that he was an attesting witness to gift deed dated 19.03.1962 executed by Parwati. However, in his cross examination, he admitted that he is illiterate and only thumb marked the documents. He was Sarpanch of village Bhawanipur in the year 1962. During his tenure as Sarpanch, he used to come to the Court complex Garhshankar to attest the documents. He further admitted that none of the documents attested by him was questioned being the result of fraud. The sample thumb impressions of Bakshi Ram were obtained in the Court and were got compared from Sh. Arvind Sood, Handwriting and Fingerprint Expert, Hoshiarpur. He submitted the report Ex.PW4/A and opined that the questioned thumb impressions of Bakshi Ram on gift deed dated 19.03.1962 match with his sample thumb impressions taken in the Court. The science of fingerprints comparison is fairly accurate. Counsel for the appellants has not made any submissions in order to assail testimony and report of Sh. Arvind Sood nor there is evidence of an expert adduced by Jagat Ram to counter the report prepared by Sh. Arvind Sood. In the given circumstances, the Courts have rightly taken a view that Bakshi Ram cannot be allowed to ransack the gift deed registered way back in the year 1962 and execution thereof has not been denied by its executant. In this

view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts accepting the gift deed having been executed by Smt. Parwati in regard to land measuring 8 kanal 8 marlas out of her $1/3^{\text{rd}}$ share in land measuring 47 kanal 2 marlas. No sooner, the gift deed set up by the respondents/plaintiffs is accepted, they become co-owners of joint land measuring 47 kanal 3 marlas. Counsel for the appellants has not made any submissions to assail findings of the Courts with regard to grant of injunction in the main suit as well as in the consolidated suit. He has failed to point out any materials on record in order to prove that the appellants are in exclusive possession of the joint land, thus, entitle to use the same in any manner they like even by way of raising construction till the joint land is partitioned through process of law or with consent of the co-owners. In this view of the matter, I do not find an error much less perversity in the consistent findings recorded by the Courts, warranting intervention in the second appeal.

In view of what has been discussed hereinbefore, the appeals fail and are accordingly dismissed in limine. All miscellaneous applications filed by the appellants shall be deemed to be disposed of.

FEBRUARY 13, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no