

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

**RSA No.2746 of 2017 (O&M)
Date of decision:08.01.2019**

Umed Singh

... Appellant

Vs.

Ram Bhateri (since deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-defendant no.1 is aggrieved of the concurrent findings of facts and law, whereby, suit of respondent-plaintiffs for declaration granting them 1/3rd share in the suit property i.e. residential house measuring 525 square yard 18 inches, has been decreed by the trial Court and affirmed by the Lower Appellate Court.

The respondent-plaintiffs claimed declaration being the daughters of Sheobax and challenged the sale deed dated 06.08.2004 executed by defendant no.2 in favour of defendant no.1 on the basis of the title derived from the judgment and decree dated 08.03.1991 executed by Marman Devi, third daughter of Sheobax. It was alleged that Sheobax was owner of the suit property and died intestate and propounded the gift deed dated 07.02.1968 executed by Sheobax in favour of Marman Devi (mother

of defendant no.2) and also decree, aforementioned vide which defendant no.2 acquired the title suffered by the beneficiary of the gift deed namely Marman Devi.

Mr. Abhinav Sood, learned counsel appearing on behalf of the appellant-defendant no.1 submitted that gift deed was a registered document and carried presumption of truth. Both the Courts below have erroneously ignored the contents of the gift deed by holding that it was in respect some agricultural land, whereas, the suit property was a residential house. He further submitted that no contrary evidence to belie the signatures of Sheobax on the gift deed had been produced on record, therefore, the suit was liable to be dismissed, much less no challenge was laid to the gift deed.

I am afraid the aforementioned arguments are not sustainable as gift deed has not been proved in accordance with law. Even the provisions of Section 69 of Indian Evidence Act, have not been complied with as it was merely tendered. In the absence of the gift deed, status of three daughters, i.e., plaintiffs and Marman Devi was of co-owner as Sheobax stated to have died intestate. The sale deed, ibid executed by defendant no.2 on the basis of title derived from the decree has rightly been confined to the 1/3rd share and in such circumstances, status of Umed Singh was held valid to the extent of 1/3rd share.

The findings of facts and law arrived at by both the Courts below cannot be said to be suffering from illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

The appeal is also accompanied by an application seeking condonation of delay of 92 days in filing the appeal. The explanation given in the application is not justified.

Resultantly, the appeal is dismissed on merits as well as on limitation.

(AMIT RAWAL)
JUDGE

January 08, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No