

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3290 of 2017 (O&M)
Date of Decision: May 22, 2019

Sunder Singh & others

...Appellants

Versus

Vinod Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Ms. Ritu Pathak, Advocate,
for the appellants.

AMIT RAWAL, J.

CM No.8023-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 46 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.3290 of 2017

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby the suit of the respondent-plaintiffs for declaration to be owners in possession of land measuring 44 sq.yards out of total land measuring 1093 sq.yards in respect of plot Nos.76, 283, 78-A and 603 with restraint from forcible interference in the peaceful possession, raising of construction and also from alienating the suit land on the basis of the gift deed dated 30.08.2006, has been decreed by the trial Court and affirmed in appeal.

It was alleged that the aforementioned plots were allotted to their mother Tarawati, her sister Karishna and her mother Khazani in a partition suit No.806 of 1986. The plaintiffs became owners of the plot to the extent of half share on account of the death of Tarawati. They along with their brother Vijay inherited the share to the extent of 1/8th and executed a sale deed dated 06.12.2004 and sold land measuring 366 sq.yards to defendant Nos.2 and 3 and continued to remain owner of 44 sq.yards. However, in August, 2006, defendant No.1 (father of defendant Nos.2 & 3) approached plaintiff No.1 for the remaining land and he agreed to transfer his own share, but very clandestinely obtained a gift deed, which was illegal and plaintiff was not competent to donate the land, therefore, a fraud and misrepresentation was being played upon him.

Defendants resisted the claim by taking various preliminary objections and stated that it was a voluntary act. The contents of the gift deed were read over and explained to plaintiff No.1 and after accepting the same as correct, appended his signatures. Defendant No.1 had already purchased the land measuring 282 sq.yards from plot No.603 and the remaining area was given in family settlement. The gift deed was in respect of the balance parcel of land.

Plaintiffs, in support of the aforementioned pleadings, examined only two witnesses and the defendants also examined two witnesses.

Ms. Ritu Pathak, learned counsel representing the appellant-defendants submitted that both the courts below have ignored the plea that the respondent-plaintiffs did not come to the court with clean hands. In fact, it is the plaintiffs who had taken the plea that defendant No.1 fraudulently

got excess land transferred in his favour, whereas plaintiff No.1 was incapable of executing the gift deed. No complaint in this regard was lodged to the police. No number was allotted to the suit land and this fact was admitted by PW-1 and PW-2. The property is situated in Lal Lakir and, therefore, did not bear any khasra number. Both the parties have been in respective possession. Courts below also ignored the fact that plaintiff No.1 admitted in cross-examination that the gift deed was scribed by the Deed Writer Ramdatt Sharma. In such circumstances, filing of the suit was nothing but an act of greed. There was no fraud and misrepresentation, much less its ingredients have been proved. Even the factum of family settlement was also admitted. Gift deed is a registered document and, therefore, as per the provisions of the Registration Act carries the strong presumption.

I have heard the learned counsel for the appellant-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, PW-1 and PW-2 in cross-examination stated about the execution of the gift deed in favour of defendant No.1 and all other owners had not authorised to execute the gift deed as it was only plaintiff No.1 who was the owner and this fact has been proved through the revenue record. Defendants did not discharge the onus with regard to the fact that there was an intention to execute the gift deed. It was not comprehensive whether it was pertained to the plot or some other property. Appellant-defendants cannot be said to be donee as there is no evidence of making a reasonable enquiry. There was a clog/blot on the title. In fact, plaintiff No.1 remained as owners.

For the reasons mentioned above, I do not find any illegality or

perversity in the concurrent findings. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

May 22, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No