

RSA-5506-2017 (O&M)

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

**RSA-5506-2017 (O&M)
Date of decision : 02.04.2019**

Zora Singh (deceased) through LRs

... Appellant

Versus

Swaran Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Preet Kawal Singh Gill, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the appellant-plaintiff, laying challenge to the registered gift deed dated 05.03.2007, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff-Zora Singh, during his lifetime, instituted the suit by alleging that he never executed the gift deed, in respect of land measuring 0-2¼ biswas i.e. 115 sq. yds., in favour of the defendants. He was aged 85 years and wanted to execute the sale deed and in this process, gave the power of attorney of said plot to the defendant, who by playing fraud and misrepresentation, got the gift deed registered in his favour. The said gift deed was illegal, result of fraud and based upon misrepresentation. When the threat of interference was extended by the defendants, a cause of action accrued to file the suit on 09.05.09.

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The defendants opposed the suit and stated to be volunteer act of the plaintiff and after his death, the legal heirs had no concern with the property.

In order to prove the case of plaintiff, his legal heir Amrik Kaur w/o Zora Singh examined herself as PW-1, Amarjit Singh, Lambardar as PW2, who in cross-examination, opposed against the plaintiff, Nirmaljit Singh as PW3, Ram Singh as PW4, Dushyat Pal Singh as PW5, Dr. Mannu Sharma as PW6, Rajdeep Kaur as PW7 and brought on record various documents Ex.P1 to Ex.P28. On the other hand, the defendants examined three witnesses and tendered in evidence numerous documents.

Learned counsel for the appellant-plaintiff submitted that Lambardar, the alleged witness of the gift deed, in examination-in-chief, deposed in favour of the plaintiff, but in cross-examination volte-face. The defendants had not been able to belie the allegation of fraud and misrepresentation as DW3-Rajesh Sohal, Advocate, attesting witness of the gift deed, did not appear for cross-examination. The evidence in the previous suit filed by the wife of Zora Singh cannot be looked into, thus,, there is gross illegality and perversity, particularly when Zora Singh himself filed the suit, though during the pendency of the suit, unfortunately expired.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gill, for, concededly Chetan Kaur widow of Zora Singh filed the Civil Suit, in which, PW3 and PW4, admitted that Zora Singh was quite hale and hearty and did not suffer from any disease. In Ex.P20/Ex.D3, statement of Ujjagar Singh, attesting witness as DW4, in a case titled as **Chetan Kaur V/s Zora Singh**, admitted that Zora Singh

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executed the gift deed, regarding house, in question, in favour of Swaran Singh/defendant, in his presence and in presence of another witness, Amarjit Singh, Lambardar, PW2, which was read over to Zora Singh and he had appended the thumb-impressions in his presence and of Lambardar. This aforementioned piece of evidence was enough for the Courts below to belie the case as even if, Rajesh Sohal, Advocate, attesting witness of the gift deed, had not appeared for cross-examination, for, Amarjit Singh, Lambardar, also did not support the case of the plaintiff.

Keeping in view the aforementioned facts, the judgments and decrees of the Courts below cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the present second appeal is dismissed.

02.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**