

In the High Court of Punjab and Haryana at Chandigarh

**RSA-414 of 2019(O&M)
Date of Decision: 24.5.2019**

Daljit Singh (since deceased) through LRs

---Appellants

versus

Indian Red Cross Society and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Baljinder Singh, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit filed by Daljit Singh son of Sawinder Singh (since deceased) now represented by his LRs to challenge gift deed dated 1.4.2008 executed by Parphool Chand Thakur President of Trust Mandir Shree Balmukand Ji Maharaj, village Rakh Jheeta, Tehsil and District Amritsar (hereinafter referred to as 'the trust") in favour of respondent No. 1-Indian Red Cross Society, District Amritsar through its Secretary by relying upon his ownership on the basis of sale deed dated 29.4.1963 and for possession of suit land with consequential relief of permanent injunction, was dismissed by the trial court vide judgment and decree dated 28.3.2018 that came to be affirmed in appeal by the Additional District Judge, Amritsar on 13.8.2018.

Counsel for the appellant would argue that the sale deed in question became subject matter of criminal proceedings and conviction of

the appellant in the said case with regard to forgery etc. is sub judice before this court in revision filed by the appellant. It is further submitted that possession of the suit land has been forcibly recovered from Daljit Singh in the year 2008 on the basis of gift deed aforesaid in connivance with the administrative authorities of District Amritsar as gift has been made in favour of defendant-Red Cross Society. Further submitted that had it been true that no sale deed was executed by the trust in favour of Sh. Daljit Singh way back in the year 1963, the appellant would not have been permitted to retain possession of suit land until he was dispossessed in the year 2008. In addition, it is argued that sale deed does not require attestation compulsorily and as such non-examination of an attesting witness of the sale deed would not enure to benefit of the respondents-defendants. It is argued that since sale deed dated 29.4.1963 is a document more than 30 years old, presumption under Section 90 of the Indian Evidence Act (in short "the Act") can be applied in the given circumstances. The last submission made by counsel is that till date, sale deed has not been challenged in appropriate proceedings before a competent court of law, therefore, ownership of the appellant qua suit land on the basis of registered sale deed can not be rejected/discarded. It is further argued that no evidence has been adduced by the respondents-defendants to establish that the sale deed is the result of fraud/forgery.

The sale deed dated 29.4.1963 is purported to be executed by Dhara Chand, Secretary, Keshu Baba, President and Hari Chand, treasurer in respect of land measuring 44 kanal 19 marlas. Daljit Singh filed suit for declaration and possession with consequential relief of permanent injunction basing his claim on sale deed dated 29.4.1963 in order to

contend that gift deed dated 1.4.2008 executed by President of the trust in favour of Indian Red Cross Society Amritsar is liable to be set aside and the same has no bearing on rights of the plaintiff-appellant.

Defendant No. 2 represented by its President specifically denied execution of sale deed in question by representatives of the trust much less any authorization in their favour to alienate the property belonging to the trust.

Indisputably, the original sale deed has not seen the light of day and a certified copy thereof was produced by a witness from the office of Deputy Commissioner, Amritsar. The appellant neither examined an attesting witness of the document nor got compared thumb impressions or signatures of said Dhara Chand, Keshu Baba and Hari Chand on a document concerning sale deed in question with their standard signatures. As such, the appellant failed to adduce sufficient evidence to prove that the sale deed in question was executed by the aforesaid persons on behalf of the trust. There is no material available on record to prove that the aforesaid persons were authorized by the trust to alienate its property because all actions of a registered trust can be done only through resolution(s) passed by a competent body.

So far as plea of the appellant qua extending benefit of Section 90 of the Act, presumption thereunder is available to the original document and not a copy thereof. In the given scenario, the appellant cannot derive advantage to his contention by invoking Section 90 of the Act. At the same time, as the appellant failed to prove the disputed sale deed, in accordance with law, he cannot derive strength to his case from weakness of defence even if defendants had not adduced evidence to prove that the sale deed is

the result of fraud/forgery.

So far as loss of original sale deed, both the courts have noticed that in the document produced to prove loss of original sale deed, reference has been made to sale deed dated 19.11.1963 in place of sale deed dated 29.4.1963.

The appellant was convicted in the criminal case in which sale deed in question is also subject matter of controversy but this court has not taken any adverse view against the appellant on the basis of conviction for twin reasons i.e. judgment of criminal court is not binding upon the civil court and the same is sub judice in revision, stated to be pending before this court.

At the same time, the mere fact that the appellant remained in possession of the suit land for quite sometime is not sufficient to uphold plea of the appellant qua the sale deed in dispute which he failed to prove, in accordance with law. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the courts.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

24.5.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No