

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

**RSA No.3585 of 2018 (O&M)
Date of Decision:05.07.2019**

Nanag Ram

.....Appellant

Versus

Vikash and others

..... Respondents

And

RSA No. 3587 of 2018 (O&M)

Nanag Ram

.....Appellant

Versus

Vikash and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Sanjay Mittal, Advocate
for the appellant.

LISA GILL, J.

R.S.A Nos. 3585 and 3587 of 2018, are taken up together for hearing and decision as both the appeals arise out of common judgement and decree dated 24.03.2014, passed by the learned Additional Civil Judge (Sr. Division), Narnaul as well as judgement and decree dated 05.12.2017, passed by the learned Additional District Judge, Narnaul.

Learned trial Court consolidated two Civil Suits No.435-RT of

2007, titled as Nanag Ram Vs. Vikas and others and Civil Suit No. 1775 of 2013, titled as Vikas and another Vs. Nanag Ram and others and decided them vide common judgement dated 24.03.2014.

Brief facts necessary for the adjudication of the case are that Civil Suit No. 435-T of 2007, was filed by the present appellant-Nanag Ram, seeking a declaration to the effect that he is the owner in possession of the suit property i.e., land measuring 2 Marlas as detailed in the plaint. It is further prayed that gift deed dated 06.07.2005, executed by defendant-3-Prabhati in favour of defendant nos. 1 and 2 i.e., Vikas and Veerpal, be declared illegal, null and void qua the plaintiff's rights. Consequential relief of permanent injunction was also sought. It is pleaded that the plaintiff-Nanag Ram had purchased the property in question from the defendant-Prabhati on 22.10.1980 for a sale consideration of ₹1500/-. Writing dated 22.10.1980, was drawn up in this regard. Possession of the suit property was handed over to the plaintiff and a writing in this respect was also executed by Prabhati in the plaintiff's favour. It is further pleaded that due to the cunningness of the mother of defendants no.1 and 2, gift deed dated 06.07.2005, was managed from defendant no.3-Prabhati in an illegal manner. Defendant no.3-Prabhati, furnished his affidavits dated 22.08.2005 and 23.08.2005, admitting execution of writing dated 22.10.1980 in favour of the plaintiff. When, defendants no.1 and 2, did not accede to the plaintiff's request, the present suit was filed.

Suit was resisted by defendants no.1 and 2 namely Vikas and Veerpal. Various preliminary objections were raised in the written statement including the plea that the suit was barred by resjudicata. It is denied that the

land in question was sold by defendant no.3-Prabhathi to the plaintiff on 22.10.1980. It is stated that on the said date, defendant no.3-Prabhathi, was not the owner of the suit property as his father Bhola Ram was alive. Affidavits dated 22.08.2005 and 23.08.2005, have been wrangled out of defendant no.3-Prabhathi in an illegal manner. Civil Suit No. 373 of 2005, titled as Nanag Vs. Vikas, was dismissed in default. It is stated that there was no mention of the gift deed or the affidavits in the previous suit. The present suit is claimed to be barred by the principle of resjudicata and provisions of Order 2 Rule 2 CPC. Defendants no.1 and 2, it is stated served defendant no.3, who had special love and affection for them. Consequently, he executed the impugned gift deed in their favour.

None appeared on behalf of defendant no.3-Prabhathi, despite service and he was proceeded *ex parte*.

Replication to the written statement of defendants no.1 and 2, filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to decree for declaration as well as injunction as prayed for?OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action as well as locus standi for filing the present suit?OPD
4. Whether the suit is barred by limitation under Order 2 Rule 2 CPC?OPD
5. Whether the plaintiff has not come to the Court with clean hands and concealed the material facts from the court?OPD
6. Relief.

Civil suit No. 1775 of 2013, was filed by respondents no.1 and 2 (Vikas and Veerpal, plaintiffs before the learned trial Court) seeking partition of the suit property with the averments that they have 1/ 18th share

in the suit property vide gift deed bearing vasika no. 601 dated 06.07.2005, executed by proforma defendant no.13-Prabhathi, in their favour. It is pleaded that defendant no.1, Nanag (present appellant) inherited 1/ 18th share in the suit property and purchased 1/ 18th share in the suit property from defendant no.14 vide sale deed no. 1244 dated 21.11.2005. Thus, defendant no.1 (appellant) is the owner in possession over the suit land to the extent of 1/ 9th share. It is stated that defendant no.2-Jabhu Ram son of Bhola Ram and defendant no.3-Shakuntla daughter of Bhola Ram, have 1/ 18th share each in the suit property while defendant no.4 has purchased 1/ 6th share from defendants no.15 and 16. Share of the remaining defendants, it is stated, duly recorded in the jamabandi. It is pleaded that the defendants had declined the request of respondents no.1 and 2 (plaintiffs before the learned trial Court) to partition the property by metes and bounds. Hence, the suit for partition was filed.

Suit was resisted by appellant (defendant no.1 before the learned trial Court). Various preliminary objections were raised. It is denied that the plaintiffs (respondents no.1 and 2) have 1/ 18th share in the suit property. It is stated that the gift deed bearing vasika no. 601 dated 06.07.2005, is illegal, null and void as defendants no.13 and 14 had already sold their share in the suit land in favour of defendant no.1(appellant) on 22.10.1980. It is further stated that writing to this effect was duly effected between defendant no.1 (appellant) and defendants no.13 and 14 on 22.10.1980. It is further stated that defendant no.13 has subsequently executed sale deed dated 22.10.1980 and acknowledged the sale of his share in the suit property in favour of defendant no.1 (appellant) vide affidavits

dated 22.08.2005 and 23.08.2005. It is pleaded that the plaintiffs (respondents no.1 and 2) have no right, title or concern with the suit property. It is further pleaded that the suit property was mutually partitioned between all the co-sharers soon after consolidation and they have constructed their respective houses over the respective portions which had fallen to their share. Dismissal of the suit was prayed for.

Defendants no.2 and 3 in the said suit resisted the claim. Various preliminary objections were raised. It is stated that the plaintiffs (respondents no.1 and 2) have no concern with the share of defendant no.13 in the suit property as defendant no.13 had already relinquished his entire share in the suit property in favour of answering defendants in lieu of their share in the land situated within the '*abadi deh*' of about 30 years ago. It is further stated that defendants no.2 and 3 have raised construction over the share of defendant no.13 in the suit property and defendant no.13 was left with no title in the suit property. Therefore, defendant no.13 could not have executed the alleged gift deed in favour of the plaintiffs (respondents no.1 and 2). It is further pleaded that defendants no.2 and 3 are in open, continuous and hostile possession over the suit property and had become owners in possession of the share of defendant no.13 by way of adverse possession. Dismissal of the suit was prayed for.

None appeared on behalf of the remaining defendants in this suit, despite service. Accordingly, they were proceeded *ex parte*.

Separate replications to the written statement of defendants no.1, 2 and 3, were filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for a decree of partition by metes and bounds in favour of plaintiff and against the defendants regarding 2 Kanal 11 Marlas land?OPP
2. If issue no.1 is decided in affirmative, as to what effect?
3. Whether the suit is not maintainable in the present form?
4. Whether the suit property to the relief of partition?
5. Whether the suit is time barred?OPD
6. Relief.

Both the suits were consolidated by the learned trial Court on 09.03.2012.

Parties led evidence in support of their respective claims/stands.

Issues being interconnected were decided together by the learned trial Court. It is held that defendant no.3-Prabhathi, did not have a valid title in the suit property on 22.10.1980 as his father Bhola Ram, was very much alive on the said date and Bhola Ram is recorded as the owner of the property in question. Moreover, the said writing, Ex.PW4/B, is not a registered document. No title could have been conveyed by this innocuous document. Gift deed dated 06.07.2005, was held to be valid. Suit titled 'Nanag Ram Vs. Vikas and others' was dismissed, while suit for partition, titled 'Vikas and another Vs. Nanag Ram and others' was decreed.

Two appeals were preferred by the present appellant, which were dismissed by the learned Additional District Judge, Narnaul, vide judgement and decree dated 05.12.2017.

Aggrieved therefrom, present appeals have been filed by the appellant.

Learned counsel for the appellant in both the appeals submits that both the learned Courts below have grossly erred on facts and in law while decreeing the suit filed by defendant no.1 and dismissing the suit filed by the appellant. It is contended that the writing dated 22.10.1980,

Ex.PW4/D, is duly proved on record. It is proved that sale consideration of Rs. 1500/- was given by the plaintiff to defendant-Parbhati. Possession of the property was given to the plaintiff, therefore Prabhati was not competent to execute the gift deed under challenge. No objection was ever raised regarding possession of the plaintiff over the suit property. Therefore, in any case, the plaintiff had become the owner in possession of the suit property by way of adverse possession. Suit property was stated to be mutually partitioned between the co-sharers after consolidation and they have constructed their houses over their respective portions. Nothing remains to be partitioned. Therefore, the suit filed by Vikas has been wrongly decreed and that of the appellant, wrongly dismissed. It is thus prayed that the present appeals be allowed and judgements and decrees dated 20.03.2014 and 05.12.2017, passed by the learned Courts below be set aside. Consequently, suit filed by the present appellant be allowed and the one filed by Vikas be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Learned trial Court has made exhaustive reference to the evidence led by both the parties. Learned First Appellate Court, culled out two aspects to be considered, which read as under:-

“The first aspect is whether defendant no.3 was competent to sell the property in dispute and the sale worth more than Rs. 100/- requires registration or not? It has to be considered at next state whether trial court passed preliminary decree in civil suit titled as Vikash and others Vs. Nanag for partition to the extent of their respective shares judiciously or not?”

Learned counsel for the appellant is unable to deny that Bhola

Ram, father of the plaintiff, defendant-Prabhati and PW-2-Pat Ram, was the owner in possession of the suit property till his death, which admittedly took place on 02.05.2000. This fact has been admitted by PW-2-Pat Ram as well as PW-3-Raghubir Singh. In this situation, it is rightly held by both the learned Courts below that once Bhola Ram is proved to be the owner in possession of the suit property till 02.05.2000, defendant-Prabhati could not have alienated the suit property on 22.10.1980 in favour of the plaintiff-Nanag. Furthermore, it is a matter of record that the writing dated 22.10.1980, Ex.PW4/D, vide which the plaintiff-appellant claims to have purchased the land, is not registered as per the provisions of Section 17 of the Registration Act, 1908. The plaintiff thus cannot claim any right on the basis of this document, Ex.PW4/D.

It is further not in dispute that Civil Suit No. 373 of 2005, titled as 'Nanag Vs. Vikas', in respect to the same cause of action, was dismissed in default on 18.09.2007 under Order 9 Rule 8 CPC, when, the same was fixed for evidence of the plaintiff, subject to last opportunity. In Civil Suit no. 373 of 2005, plaintiff sought declaration of his rights over the suit property and challenged the impugned gift deed on the basis of an alleged oral family settlement in the year 1990. There is no reference to the writing dated 22.10.1980, Ex.PW4/D or the affidavit Ex.PW4/C. The finding of both the learned Courts below in this respect, is accordingly upheld.

Suit filed by Vikas and another, has been rightly decreed. Execution of the impugned gift deed dated 06.07.2005, is proved by the evidence on record. Defendants no.1 and 2 in the said suit are owners in possession of the suit property to the extent of their share as detailed.

Learned Additional District Judge, Narnaul, has rightly observed that as per jamabandi, Ex.D-9, defendants in the civil suit titled as 'Vikash and others Vs. Nanag and others', are co-sharers in the suit property to the extent of their share as mentioned. Evidence of Ashok Kumar, DW-6 and Smt. Kanta, DW-7, has been rightly referred to.

Learned counsel for the appellant, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in these regular second appeals. Both the learned Courts below have returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record. The said decisions call for no interference in these regular second appeals.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 24.03.2014 and 05.12.2017 passed by the learned Additional Civil Judge (Sr. Division) Narnaul and learned Additional District Judge, Narnaul, respectively, are upheld.

Present appeals are, consequently, dismissed with no order as to cost.

05.07.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.