

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4722 of 2018 (O&M)
Date of decision: 14.01.2020

Ram Sarup

... Appellant

versus

Bhajan Lal

... Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Aman Bansal, Advocate,
for the appellant.

ARUN MONGA, J.

1. Having been non-suited by the trial Court as well as first Appellate Court below, the plaintiff has approached this Court by filing the instant regular second appeal questioning the legality and propriety of judgments dated 25.09.2014 and 13.03.2018 respectively.

2. Plaintiff filed a suit seeking declaration that gift-deed as well as general power of attorney dated 21.11.2005 in respect of land measuring 18 *kanal* 16 *marlas* are null and void and consequent mutation No. 1917 registered on the basis thereof is liable to be set aside. It is also claimed that plaintiff is entitled to recover the amount of Rs.4,78,872/- along with interest accrued thereupon, taking the total to Rs.7,08,800/-, awarded as compensation by the Government in lieu of acquisition of 2 *kanals* 11 *marlas* of land out of the aforesaid total land, which was fraudulently withdrawn by the defendant.

3. The defendant-respondent, who is none-else but brother of plaintiff, filed the written statement denying the case of the plaintiff. It is

the stand of the defendant that the plaintiff voluntarily executed and registered the gift-deed in respect of land measuring 18 *kanal* 16 *marlas*. The plaintiff never questioned the competency of the defendant to file the claim petition under Section 18 of the Land Acquisition Act in respect of 2 *kanals* 11 *marlas* of land, in the year 2005 and he is estopped by his own act and conduct from raising such a plea. The defendant admitted the withdrawal of Rs.1,67,693/- on 20.12.2005 on the basis of power of attorney, but claimed that it was returned to the plaintiff the next day.

4. On the basis of oral as well as documentary evidence led by the parties, the trial Court came to the conclusion that the plaintiff had failed to establish his case that the gift-deed as well as general power of attorney are result of fraud and misrepresentation, as claimed. Consequent mutation entered on the basis of gift-deed was also found to be a legal and valid document. It was also held that plaintiff was well aware of the reference proceedings where defendant had claimed compensation in respect of land measuring 2 *kanals* 11 *marlas*, acquired by the government, which was part of the total land measuring 18 *kanals* 16 *marlas*. The plaintiff challenged the gift-deed as well as consequent mutation belatedly, barring the suit under law of limitation. The suit was dismissed vide judgment dated 25.09.2014.

5. The plaintiff challenged the judgment of trial Court before first Appellate Court and his appeal came to be dismissed vide judgment dated 13.03.2018. Hence the instant regular second appeal.

6. I have heard learned counsel for the appellant and have gone through the paper-book carefully.

7. It is settled that plaintiff has to stand on his own legs. It has

come on record that no evidence, worthy of any credence, has been adduced by the plaintiff in support of plea of gift-deed and consequent mutation being result of fraud and misrepresentation. Rather, it was found that impugned gift-deed is a registered document carrying presumption of correctness. The defendant proved the due execution of gift-deed and general power of attorney by producing cogent and convincing evidence in the shape of scribe and attesting witnesses coupled with testimony of Registering Authority who stepped into the witness-box as DW6. The plaintiff also questioned his own competency to gift the suit land to defendant, being ancestral property, but failed to substantiate the same by producing any evidence to show that property was ancestral in his hands. The trial Court rightly held that plaintiff was estopped by his own act and conduct to raise such a sham plea.

8. Record reveals that the plaintiff was aware of the proceedings under Land Acquisition Act, initiated by the defendant in respect of 2 *kanals* 11 *marlas* of land, which had come to the latter by virtue of gift deed and the plaintiff also filed a petition for compensation for his land, after excluding aforesaid 2 *kanals* 11 *marlas* of land. To my mind it was, thus, rightly held that plaintiff had executed the gift-deed as well as general power of attorney in favour of the defendant and the same are binding upon the plaintiff and the suit filed in 2010, beyond the period of limitation, is not maintainable.

9. So far as plea of plaintiff for recovery of Rs.7,08,800/- is concerned, Rs.3,11,179 were withdrawn by the defendant on 07.11.2005, which was awarded by the government as compensation in respect of 2 *kanals* 11 *marlas* of land, which had fallen to his share pursuant to the gift-

deed. It was held that defendant was well within his right to withdraw the same. Adverting to the amount of Rs.1,67,693/- admittedly withdrawn by the defendant, it was held that mere denial by the plaintiff of having received the amount is not sufficient, particularly in the light of documentary evidence adduced by the defendant in this regard. In my opinion, both the Courts below rightly non-suited the plaintiff.

10. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

11. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

13. Pending applications stand disposed of.

14. No order as to costs.

(ARUN MONGA)
JUDGE

January 14, 2020

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Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No