

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

RSA No.924 of 2008 (O&M)

Date of decision: 31.08.2021

Baj Singh and ors.

... Appellants

Versus

Nikko @ Jasvir Kaur (deceased) thr lrs

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. KB Raheja, Advocate for the appellants.

Ms. Aashna Gill, Advocate for the respondents.

ANIL KSHETARPAL, J.

1. The appellants (defendants in the suit) assail the correctness of the judgment and decree passed by the learned First Appellate Court on 03.03.2008 while reversing the judgment and decree passed by the trial Court. The trial Court had dismissed the suit filed by the plaintiff (respondent) whereas the learned First Appellate Court has decreed the suit.

In the considered view of this Court, the following issues require adjudication:-

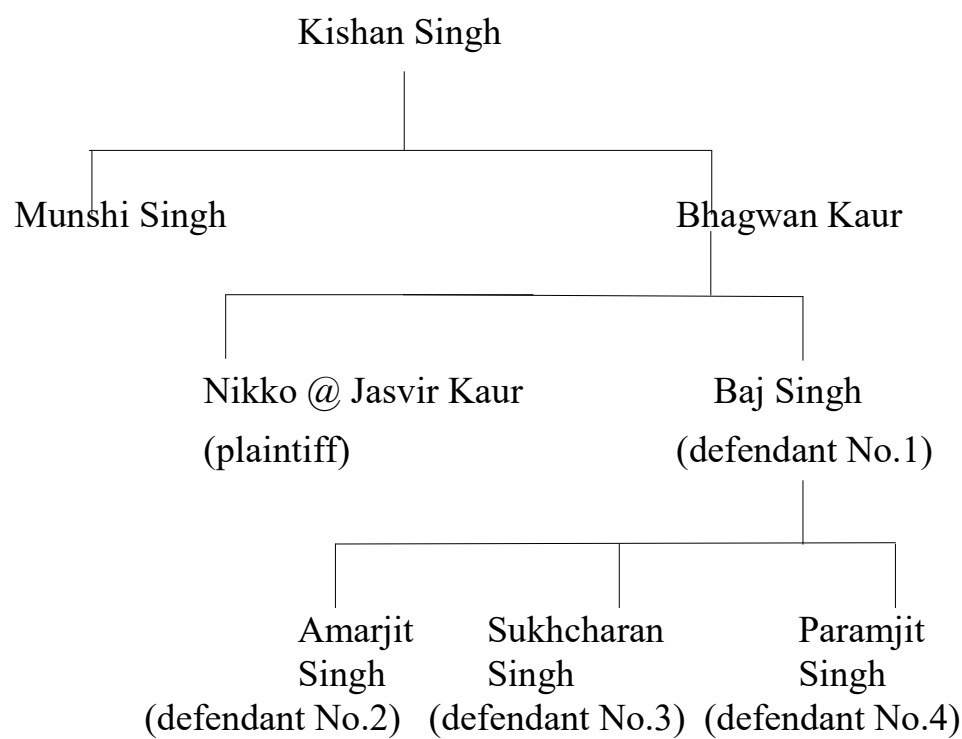
1. Whether it is appropriate for a Court to permit a party to press devolution by natural succession; disregarding the Will which is duly proved and established, merely on the basis of suspicious circumstances, in the absence of any such pleadings and consequential failure to lead

evidence to prove this assertion?

2. Whether a recital with respect to the delivery of possession in the registered gift deeds along with the signatures/thumb impressions of the donor and the donee are sufficient to prove acceptance of the gift?

FACTS

It would be appropriate to draw a genealogical tree of the family to understand inter se relationship.



2. The parties shall be referred to by their status/name in the civil suit. Nikko @ Jasvir Kaur (the daughter of Smt. Bhagwan Kaur) wife of Joginder Singh filed a suit claiming a decree of declaration to the effect that the plaintiff and defendant No.1 are joint owners in possession to equal extent in the property left behind by late Sh. Munshi Singh (who died on 23.06.1999). Late Sh. Munshi Singh was the maternal uncle of Smt. Nikko

(the plaintiff) and Baj Singh (defendant No.1). Defendant No.2 to 4 are the children of Baj Singh. The plaintiff claims that Baj Singh has forged and fabricated a Will (dated 13.08.1998) of late Sh. Munshi Singh in order to deprive her of the property. It has further been asserted that three gift deeds executed by Munshi Singh in favour of defendants No.2 to 4, are also forged and fabricated. While contesting the suit, the defendants asserted that late Sh. Munshi Singh did not have any brother or sister living at the time of his death and he being an issueless widower started living with the family of Baj Singh. (His nephew being his pre-deceased sister's son). Sh. Munshi Singh, during his life time, executed a registered Will dated 13.08.1998 in favour of defendant No.1 bequeathing his entire estate in the villages of Dod and Bharhouli Bhan. Late Sh. Munshi Singh also gifted some part of the bequeathed property in favour of the three sons of Baj Singh through three separate registered gift deeds. Thus, it was claimed that the plaintiff has no right, title or interest in the property left behind by Munshi Singh. The plaintiff filed a replication by reiterating the assertions made in the plaint. Learned trial Court, on analyzing the pleadings, framed the following issues:-

1. Whether the plaintiff and defendant no.1 are owners in joint possession in equal shares of suit land has legal heirs of Munshi Singh deceased?OPP
2. Whether Munshi Singh has executed registered Will on dated 13.8.98 in favour of defendant no.1?OPD

3. Whether the Will dated 13.8.98 executed by Munshi Singh is a forged and fabricated document?IPP
4. Whether the gift deeds dated 25.05.99 executed by Munshi Singh in favour of defendants no.2 to 4 are false and fabricated documents?OPP
5. Whether the mutation no.701 dated 27.10.98 in favour of Munshi Singh is illegal, null and void?OPP
6. Whether the suit is not maintainable in the present form?OPD
7. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?OPD
8. Whether the plaintiff has no cause of action?OPD
9. Relief.

3. In order to prove her case, the plaintiff appeared as PW1. Apart therefrom, she examined PW2 Iqbal Singh, PW3 Farjand, PW4 Joginder Singh, PW5 Harbans Singh. On the other hand, defendants examined DW1 Ashok Kumar (scribe of the Will), DW2 Vikas Jindal, Clerk, District Election Office, DW3 Surjit Singh, attesting witness of the Will, DW 4 Baj Singh (defendant No.1), DW5 Gurcharan Singh, attesting witness of the gift deeds, DW6 Pardeep Kumar Arora (scribe of the gift deeds) and DW7 Sukhcharan Singh (defendant No.3).

4. The defendant produced various documents including the registered Will as Ex.D1 and registered gift deeds as Ex.D11 to D13,

respectively.

5. The learned trial Court, on appreciation of the evidence, dismissed the suit after recording a finding that the defendants have successfully proved the execution of the registered Will dated 13.08.1998 and registered gift deeds executed on 25.5.1999. The Court further observed that undisputedly late Sh. Munshi Singh was residing with the family of Baj Singh for quite some time and he voluntarily, at the initial stage, bequeathed his entire property in favour of Baj Singh and subsequently, gifted some part of the bequeathed property to defendants No.2 to 4 (children of Baj Singh).

6. In appeal, the learned First Appellate Court has reversed the judgment and decree passed by the trial Court on the following grounds:

1. No reason has been disclosed to dis-inherit Smt Nikko (the plaintiff)

2. Once late Sh. Munshi Singh had executed a Will bequeathing his property in favour of Baj Singh, then in the absence of any explanation as to what was the necessity to execute separate gift deeds, the registered Will and gift deeds become suspicious.

3. In the gift deeds, there is no reference of the Will.

4. Thumb impressions of Munshi Singh on the Will are a result of impersonation or fraud.

5. The Will was executed and registered at Faridkot whereas the property is located in the jurisdiction of

Ferozepur.

6. Baj Singh wanted the Will to clandestinely dis-inherit Nikko.

7. Three registered gift deeds are also suspicious because they were executed on 25.05.1999 but registered on 26.05.1999, 27.05.1999 and 28.05.1999 respectively.

There is no explanation as to what was the hitch in getting all the three registered on 25.05.1999.

8. There is no evidence of delivery of possession by Baj Singh to defendants No.2 to 4 (his own children).

7. At this stage, it is important to take a brief note of the oral evidence. Smt. Nikko, who appeared as PW1, stated that Munshi's wife had died issueless and late Sh. Munshi Singh did not re-marry. Therefore, the plaintiff along with Baj Singh, is entitled to the property of late Sh. Munshi Singh who neither executed any Will nor any of the gift deeds. Late Sh. Munshi Singh had been residing in village Dod and thereafter, he has been residing in village Pakki Khurd. In her cross examination, she admitted that after her marriage with Joginder Singh which took place 40 years ago, she has continued to reside in village Sappanwali. She also admitted that late Sh. Munshi Singh died in village Pakki Khurd where Baj Singh resides. Munshi Singh remained quite hale and hearty during his life and he fell ill only a month before his death. The defendants are in possession of the property left behind by Munshi Singh and she and the defendants used to

take care of late Sh. Munshi Singh. PW2 Iqbal Singh admitted that the property in dispute is in the possession of Baj Singh and that Munshi Singh's wife died 40 years back. He further admitted that Baj Singh had been looking after Munshi Singh till his death and the last rites of Munshi Singh were performed by Baj Singh. PW3 Farjand admitted that when Munshi Singh fell ill, Baj Singh started cultivating his land. He also admitted that Baj Singh is in the possession of land left behind by late Sh. Munshi Singh. PW4 Joginder Singh stated that Munshi Singh's wife died 10-12 years back and when Munshi Singh fell ill 4-5 years back, then Baj Singh took him to his village at Pakki khurd. Harbans Singh, one of the attesting witnesses of the Will, was examined as PW5. He stated that Gurcharan Singh, Lambardar, had required him to sign some documents and therefore, he signed the documents of the land in dispute in the presence of a scribe. However, he did not appear before the Sub Registrar along with Munshi Singh, Paramjit Singh, Amarjit Singh and Sukhcharan Singh and no gift deed was ever executed by Munshi Singh. In his cross examination, he stated that he did not know Joginder Singh-husband of Nikko but in the next sentence, he admitted that Joginder Singh has brought him to the Court. He further stated that he has never attested or signed any other document at the instance of Gurcharan Singh, Lambardar. After looking at the gift deeds (Ex.D11 to D13) in the trial Court, he admitted his signatures on the gift deeds. When his attention was drawn to a particular signature, he admitted his signature (mark B) on Ex.D12, signature (mark C) on Ex.D11 which

were marked at the time of registration of the document in the presence of the Sub Registrar but denied his signature (mark D) on Ex.D11. He also admitted his signatures on mark E and F on Ex.D13. He further stated that all the above said signatures were put on the same day. However, he denied that he was present before the Sub Registrar on the day these documents were registered. He admitted that Gurcharan Singh was also present at the time of registration of the gift deeds.

8. As noticed above, the defendants examined the scribes of the Will as well as the gift deeds. The attesting witness of the Will, Surjit Singh son of Harkishan Bhagwan Singh was examined as PW3 who proved the execution and registration of the Will in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. The defendants also examined Gurcharan Singh as DW5 who was an attesting witness to all the three gift deeds.

9. Heard learned counsel for the parties at length and with their able assistance perused the paper book and the record of the Courts below which has been requisitioned. Learned counsels have also forwarded their written synopsis with the gist of their submissions on the official e-mail of the Court.

10. Learned counsel for the appellant contends that the learned First Appellate Court has erred in recording the finding that the Will is surrounded by suspicious circumstances. Late Sh. Munshi Singh used to reside with Baj Singh at village Pakki Khurd which is at equidistance (15

kms.) from Faridkot and Ferozepur. The village of Baj Singh falls in District Faridkot and since late Sh. Munshi Singh was residing with Baj Singh hence, late Sh. Munshi Singh executed the registered Will at Faridkot. While explaining further, he submitted that the gift deeds were executed and registered at Ferozepur because the property of late Sh. Munshi Singh is located in Ferozepur. The plaintiff has herself admitted that before death, late Sh. Munshi Singh was residing with the family of Baj Singh. While reading the gift deeds, he drew the attention of the Court to the recital of delivery of possession of the land to the donee. The donor and donee both had put their thumb impressions/signatures on the gift deeds as a token of execution and acceptance. No doubt, the plaintiff had won over one of the attesting witnesses of the gift deeds, however, even that witness admitted his signature on the registered gift deeds. The acceptance of the gift is proved by the recital of delivery of possession as well as by the signatures of the donor and donee. Consequently, he prays for acceptance of the appeal.

11. Per contra, Ms. Aashna Gill, Advocate, has defended the judgment by asserting that the Will is surrounded by suspicious circumstances which remain unexplained. Once the Will had been executed bequeathing the entire property in favour of Baj Singh, there was no reason to execute the gift deeds, subsequently. Late Sh. Munshi Singh used to put his thumb impression whereas the photograph of late Sh. Munshi Singh pasted on the Will bears his signature. It is further asserted that a perusal of

the order, sanctioning the mutations in accordance with the various gift deeds, reflects cuttings and interpolations in it. Further, it is contended that in the absence of delivery of actual physical possession, the gift was not complete and therefore, rightly ignored by the First Appellate Court. She further submitted that while sanctioning the mutations according to the gift deeds, the value of the land has been mentioned and therefore, these are sale deeds and not gift deeds in their nature.

12. After having heard the learned counsel for the parties at length, let us now analyse the reasons given by the learned First Appellate Court for decreeing the suit. As regards the first reason, it may be noted that late Sh. Munshi Singh has recited in the registered Will that he has a niece having children but he does not wish to bequeath any property in their favour. The plaintiff is not a class-I heir of late Sh. Munshi Singh. It has come in evidence that late Sh. Munshi Singh became a widower at quite an early age and was issueless. Thereafter, he started residing with the family of Baj Singh. The plaintiff after having married, 40 years prior to the filing of the suit, started residing with her husband in a different village. In such circumstances, it was not necessary for late Sh. Munshi Singh to recite any specific reasons for not bequeathing the property in favour of the plaintiff. The second reason assigned by the learned First Appellate Court is equally erroneous. No doubt, late Sh. Munshi Singh had executed the Will bequeathing his property in favour of Baj Singh, however, the Will operates only after the death of the testator. Late Sh. Munshi Singh intended to

transfer some property as a gift to the children of Baj Singh with immediate effect. Therefore, he executed three registered gift deeds, one each in favour of defendants No.2 to 4 bequeathing 10 kanal 9 marlas, 17 kanal 10 marlas and 17 kanal 10 marlas, respectively, in their favour. Hence, there was nothing unusual about the execution of the registered gift deeds. The next reason assigned by the Court to doubt the correctness of the Will is to the effect that in the gift deeds, there is no reference to the Will. In the considered view of this Bench, it is not necessary for the executant to recite about the Will in the gift deeds. The two documents are independent of each other. Hence, late Sh. Munshi Singh was competent to execute the gift deeds and there was no necessity of making a reference about the Will in the gift deeds.

13. The next reason assigned by the Court is with regard to the thumb impression of late Sh. Munshi Singh. It may be noted that the plaintiff has led no evidence whatsoever to prove that the thumb impressions on the registered Will are not of late Sh. Munshi Singh. She, as already noticed, did not even assert in her deposition that the thumb impressions on the Will were not affixed by late Sh. Munshi Singh. She simply stated that late Sh. Munshi Singh did not execute any Will or gift deeds. She, also, did not examine any handwriting or finger print expert to create a doubt regarding the correctness of the thumb impression of late Sh. Munshi Singh. Her bald assertion in her own deposition is not sufficient to prove that the thumb impressions present on the registered Will do not

pertain to late Sh. Munshi Singh. On the other hand, the defendants have examined the scribe as well as the attesting witness, of the Will and the gift deeds, respectively, to prove the thumb impression of late Sh. Munshi Singh. It may be noted here that the scribe and the attesting witness of the Will have stated that late Sh. Munshi Singh had put his thumb impressions on the Will in their presence and thereafter, late Sh. Munshi Singh had also put his thumb impressions before the Registrar, in their presence, at the time of the registration of the Will. In the considered view of this Court, in the absence of any evidence to prove that late Sh. Munshi Singh had not put the said thumb impressions, the First Appellate Court has erred in recording the finding that the Will was created by impersonation or fraud. Hence, this Bench has no hesitation to set aside the aforesaid finding.

14. The next reason assigned by the court is that the Will was executed in Faridkot whereas the suit property falls in the jurisdiction of Ferozepur. As already noticed, late Sh. Munshi Singh used to reside in village Pakki Khurd with the family of Baj Singh at the time of the execution of the Will. The aforesaid village falls in District Faridkot. Furthermore, Ferozepur and Faridkot are at an equidistance from village Pakki Khurd where late Sh. Munshi Singh used to reside with the family of Baj Singh. In such circumstances, the correctness of the registered Will could not be doubted only on the ground that the Will was executed at Faridkot and not at Ferozepur where the property is situated. In the facts and circumstances of the present case, the reason for execution and registration

of Will at Faridkot has been sufficiently explained by the defendants.

15. The next reason assigned by the Court is again without any substance. The First Appellate Court had stated that Baj Singh wanted the Will to be executed clandestinely in order to dis-inherit Nikko. It is not comprehensible as to how and on what basis such a finding has been arrived at. Late Sh. Munshi Singh had executed a Will in favour of Baj Singh. A Will is executed with a view to deviate from the inheritance of property through natural succession and to transfer it as per the wishes of the testator. Late Sh. Munshi Singh used to reside along with the family of Baj Singh, for quite some time and as a result would naturally intend to bequeath his property in their favour being issueless otherwise. The aforesaid intention was reaffirmed on the execution of three registered gift deeds. Thus, the reason assigned by the First Appellate Court is erroneous.

16. The next reason given by the First Appellate Court that the registration of gift deeds suffer from suspicious circumstances because they were executed on 25.05.1999, whereas were registered on 26th, 27th and 28th May, 1999 respectively. In the considered view of this Court, both the attesting witnesses accompanied by the donor and donee were present not only on the day of the execution of the three gift deeds i.e. 25.05.1999 but were also present in the office of the concerned Registrar, consistently, on the following three dates i.e. 26th, 27th and 28th May, 1999. On reading of the cross examination of the attesting witness of the gift deed DW5 Gurcharan Singh, it is clearly visible that the counsel representing the plaintiff did not

question the witness on this aspect or disapproved the same. In the absence thereof, the First Appellate Court clearly erred in coining the reason without any foundation.

17. The last reason assigned by the First Appellate Court is equally erroneous. Both the Courts have concurrently found that Baj Singh is in possession of the property left behind by late Sh. Munshi Singh. In all the registered gift deeds, there is a recital of delivery of possession to the donee. The plaintiff admits the possession of Baj Singh. The donees are his children. They are residing together. Therefore, the family of Baj Singh is in clear and admitted possession of the property. Hence, separate delivery of possession by Baj Singh to his children was not required to be proved. Still further, it has been held that there may be various means to prove the acceptance of a gift. It has further been held that the actual physical delivery of possession of the property gifted is not necessary to complete the acceptance. Reliance in this regard can be placed on a larger bench judgment in **Renikuntla Rajamma Vs. K Sarwanamma, (2014) 9 SCC 445**. The aforesaid view has recently been reaffirmed and reiterated in **Daulat Singh (dead) thr lrs VS State of Rajasthan and others, (2021) 3 SCC 459**.

18. In the written arguments, learned counsel representing the respondents has additionally contended that Baj Singh failed to explain the reasons for his estranged relations with his sister and therefore, the Will becomes doubtful. It is further submitted that permanent address of late Sh.

Munshi Singh continued to be village Dod and therefore, merely because late Sh. Munshi Singh used to exercise his voting right in village Pakki Khurd cannot be taken as an evidence to prove that late Sh. Munshi Singh was residing with Baj Singh. It has further been pointed out that the scribe of the Will did not get the signatures of the attesting witnesses on his notebook (register) which becomes suspicious because it was against the well established practice. It is further contended that once late Sh. Munshi Singh had handed over the copy of the registered Will to Baj Singh after about a week of its execution, there was no occasion to execute the gift deeds. It is further contended that the registration of the various gift deeds on 26th, 27th and 28th May, 1999, respectively, after these were executed on 25.05.1999 itself show that the gift deeds are surrounded by suspicious circumstances.

19. On perusal of the deposition of Baj Singh, it is apparent that he has stated that he stopped dealing with his sister prior to the death of Munshi Singh but he could not recall the reasons for the same. In the considered view of this Court, the failure to give reasons does not adversely impact the correctness of the registered documents which are proved otherwise. There can be multiple reasons for a close relationship to become estranged. In such circumstances, it was not necessary for Baj Singh to put forth the exact reason for their estranged relationship. The next argument of the learned counsel that in the registered documents, the permanent address of late Sh. Munshi Singh is that of village Dod also does not lead to any

adverse affect on the case of the defendants particularly when from the voter's list, it is proved that late Sh. Munshi Singh used to reside at Pakki Khurd with Baj Singh and the plaintiff does not dispute this fact.

20. The next argument of the learned counsel is with regard to the failure of the scribe to get signatures of the attesting witnesses on the register while scribing the Will. It may be noted here that ordinarily, the scribe does get the signatures of the attesting witnesses on a separate register, however, the failure on the part of the scribe does not adversely affect the validity of a document particularly when its attesting witnesses not only signed at the time of execution but also remained present and signed in the presence of the Sub Registrar, at the time of registration. The next argument is that the registered gift deeds do not refer to the execution of the Will, it may be noted that this aspect has already been examined and therefore, need no further deliberation. As regards the argument of the learned counsel with regard to the registration of the gift deeds on different dates, this matter has also been examined before and requires no more discussion.

21. The next argument of the learned counsel for the appellant is with regard to interpolations in the order of mutation. It may be noted here that an order of mutation is an independent act of the revenue official(s) and does not impact the validity of a registered document.

22. Keeping in view the aforesaid discussion, this Bench is of the considered opinion that it would not be appropriate for the Court to address

the argument with regard to suspicious circumstances of the registered Will particularly when the pleadings and the evidence are totally lacking to prove the same. The party who wishes to assail the correctness of the registered Will on the ground of suspicious circumstances is required to lay a foundation in the pleadings itself and thereafter, lead material evidence to prove the same. The other party who has propounded the Will cannot be taken by surprise at a later stage. No doubt, the Code of Civil Procedure, 1908 requires the pleadings to be in a concise form, however, the party who wants to assert a positive fact, is required to allege it in the pleadings itself to enable the defendant to prepare his defence accordingly. The plaintiff is further required to prove the assertion by leading relevant evidence. The other party is allowed to cross examine the witnesses produced by the propounder of the Will, on this aspect, so that the propounder gets an opportunity to explain the alleged suspicious circumstances. It is well settled that no one can be permitted to take up a point at the time of arguments unless a proper foundation thereof has been laid in the pleadings itself and proper evidence has been led regarding the same. It is only when the Court finds an apparently visible and shockingly suspicious circumstance, for which no foundation has been laid, then the Court will confront the propounder with the aforesaid suspicious circumstance(s) in order to give him an opportunity to explain. If the aforesaid procedure is not adopted, it will seriously prejudice the case of the propounder.

23. The next argument of the learned counsel is with regard to the

alleged signatures of Munshi Singh on the photograph. Learned counsel representing the respondents contends that late Sh. Munshi Singh used to thumb mark and therefore, the Will is forged. A perusal of the the registered Will proves that late Sh. Munshi Singh had thumb marked the Will at two different places. His first thumb impression appears at a place where his name has been typed after the recitals in the Will have come to an end. Thereafter, the thumb impression of the executant appears. The Sub Registrar while registering the Will puts his endorsement and gets the thumb impression and signatures of the executant as well as the witnesses. On that page, the executant has thumb marked the Will at two different places. It is not the case of the defendants that Munshi Singh had signed on the photograph which had been pasted on the registered Will. When the attesting witnesses of the Will appeared in evidence, learned counsel for the plaintiff did not solicit any explanation from the attesting witnesses with regard to the aforesaid fact. A perusal of the Will shows that only the name of the person whose photograph is pasted has been mentioned. Whenever, a party wishes to create a doubt with regard to the genuineness of a written document, it is the duty of the party or his counsel to draw the attention of the concerned witnesses on the same and solicit their explanation. In the absence thereof, it would not be appropriate to doubt the genuineness of the written document as it will prejudice the case of the propounder of the document.

24. As regards the second issue, a Larger Bench of the Supreme

Court has already explained that there are various modes to prove the acceptance of a gift including the mode of proving the signatures/thumb impressions of the donee and it is not necessary to prove the delivery of actual physical possession of the property to complete acceptance. Accordingly, the judgment passed by the First Appellate Court is clearly unsustainable and therefore, set aside. The judgment and decree passed by the trial Court is restored.

Appeal allowed.

All the pending miscellaneous applications, if any, are also disposed of.

31.08.2021

ashok

Whether speaking/reasoned:
Whether reportable:

(ANIL KSHETARPAL)
JUDGE

Yes / No
Yes / No