

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

RSA No.205 of 2019 (O&M)

Reserved on: 06.04.2021

Pronounced on : 07.05.2021

Shabbiran (D) through her L.Rs.

... Appellants

Versus

Nargis Parveen & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Anil Kumar Garg, Advocate for the appellants.

(The proceedings have been conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

The present appeal has been filed by the plaintiff, who is daughter-in-law of Mohd. Balal, now deceased represented through her legal representatives. The respondent in the present case is the daughter of Mohd. Balal who had already expired on 04.01.2009 before the institution of the suit on 07.10.2010.

2. Both the Courts below have dismissed the suit for declaration of the plaintiff regarding the claim of her ownership on the basis of the possession and alleged oral gift by her father-in-law, which pertained to House No.B-2/251 measuring 206.1/4 square yards, the boundaries of which were given in the plaint. Resultantly, the claim for permanent injunction was also dismissed while dismissing the suit by holding that nothing had been brought on record to show that the plaintiff was ever in possession of the suit property.

3. Counsel for the appellants has vehemently argued that the Courts below were in error in dismissing the suit since an oral gift was

permissible under Muslim Law and the condition was only that there had to be declaration of gift by the owner, acceptance by the donee and delivery of possession. It is, thus, submitted that the father-in-law had given oral gift of the said property on 25.01.2006 to the daughter-in-law and the possession had also been handed over at that point of time. The memorandum of oral gift had been put in place on 01.02.2008. After the death of Mohd. Balal, the dispute had arisen as the defendant had wanted to alienate the suit property and was threatening to dispossess the plaintiff.

4. The defence of the respondent-daughter was of denial of the said oral gift and the fact that the property had been gifted to the wife of the deceased, Bashiran on 08.04.2004 and possession had also been delivered to her on account of the said gift. The memorandum of the oral gift was also prepared on 23.02.2005 and on account of that Mohd. Balal had ceased to be owner of the property. Bashiran in April, 2006 had further gifted the property to the daughter, respondent herein and the memorandum of oral gift had been prepared on 17.04.2007.

5. On the basis of the said pleadings, the Trial Court at Malerkotla in its judgment dated 07.09.2017 took into consideration the earlier litigation i.e. a suit filed by Mohd. Sarwar against his father Mohd. Balal, in which defence had been taken that the shop had been gifted to his wife Bashiran and possession had also been delivered. It was noticed that the written statement (Ex.D28) had been filed on 19.03.2005 by the deceased donor at that point of time and, therefore, reliance was placed

upon the memorandum reduced in writing on 23.02.2005 to come to the conclusion that there would be no question of gifting the suit property to the plaintiff on 25.01.2006, thereafter. It was noticed that the defendant had also proved the gift in favour of the wife Bashiran as Ex.DW2/A by examining DW-2 Rafi Mohd., Advocate, who was the Notary and had affixed his stamp on the same. Resultantly, property was given as a gift to the wife at an earlier point of time. The factum of possession was also held not to be with the plaintiff-appellant in the absence of any document in the form of any electricity bill, water bill. Rather in the cross-examination the plaintiff had stated that she could not produce the electricity bill of the house and neither any photograph regarding possession had been placed on record. It was noticed that the respondent-defendant on the other hand had placed on record photographs Ex.D3 to D7 pertaining to the house and, therefore, issue No.1 regarding the declaration of the plaintiff was decided against her and in favour of the defendant. The suit was accordingly dismissed by denying the injunction also under issue No.2. Issues No.3 to 5 were disposed of as not being pressed by the defendant as the onus was upon the defendant regarding the maintainability and cause of action etc.

6. The Appellate Court at Sangrur had also dismissed the appeal on 23.10.2018. The reason which weighed with the Appellate Court was that the stamp paper purchased on 01.02.2008 against Serial No.14759 was for the purpose of execution of agreement, which fact had also been admitted by PW-1 Rashid Ali. Thus, for a memorandum of oral

gift, the necessary endorsement had not been mentioned on the stamp paper as well as on the register. The possession of the plaintiff was also held not be established as no document had been produced to show her possession as neither she had deposited the electricity bill or the property tax and neither a water connection stood in her name. It was further noticed that the plaintiff had refused to identify the photographs of the house in question on the ground that she was having a weak eye sight and could not identify the lady standing in the house. On the other hand she had, however, identified the photographs of her father-in-law and mother-in-law on the memorandum of writing dated 23.02.2005, which had been executed in favour of the defendant. The factum of the other legal heirs not being impleaded was also noticed, since the deceased had four sons and two daughters. While examining the record, the Appellate Court had also noticed that the relevant entry had been made in the register regarding the attestation of memorandum of oral gift (Ex.DW2/B), when the stamp paper had been purchased vide entry No.11219 dated 23.02.2005 and the photographs of both Mohd. Balal and his wife Bashiran were also present. Reliance was also placed upon the earlier suit filed by Mohd. Sarwar against his father instituted on 23.12.2004 and decided on 02.05.2009 for permanent injunction, in which the defence of Mohd. Balal as per the written statement (Ex.D28) was that the property had been gifted in favour of his wife. While examining the said document dated 23.02.2005 (Ex.DW2/A), it was noticed that the property number was also specifically mentioned by giving municipal number.

The plaintiff also had identified the photograph of her in-laws and, therefore, on the basis of the gift in favour of the wife, the Appellate Court came to the conclusion that Mohd. Balal had no right, title or interest further to further alienate or dispose of the same in favour of other person. Thus, the claim of the plaintiff on the basis of the alleged oral gift dated 25.01.2006 and the said memorandum dated 01.02.2008 (Ex.P3) was rejected. The factum of the property having been further transferred in favour of the defendant-daughter on 17.04.2007 (Ex.PW2/C) was another factor and the factum of the sale of stamp paper was proved by Shiv Kumar, the Stamp Vendor-DW1. The factum that her father had given permission by her to live in the house in question and that he would also get the earning for his livelihood as per the said agreement, was the basis for dismissing the appeal. Photographs Ex.D3 to D7 of the defendant being shown in possession of the property having been further admitted by PW-3 Mohd. Salim was kept in mind and the fact that plaintiff herself had admitted that the mother had been residing with the daughter and was being given medical treatment at Chandigarh, also weighed with the Appellate Court for not interfering with the findings recorded by the Civil Judge, Malerkotla.

7. The facts would, thus, enumerate that at an earlier point of time during the lifetime of Mohd. Balal itself while being forced to litigate in a suit for permanent injunction filed by the son Mohd. Sarwar (Ex.D27), the defence had been taken that the property had been gifted to wife Bashiran and possession had also been delivered to her. Thereafter,

the memorandum of oral gift had been written between the husband and wife and the son had no concern with the ownership of the suit property and, therefore, the son who was not serving the father had no right to claim the suit property. The suit was as such dismissed as withdrawn on 02.05.2009 on the ground that the father had died and the plaintiff did not wish to proceed with the case.

8. It is, thus, apparent that even prior to the filing of the present suit on 07.10.2010 and even prior to the oral gift as such, which claimed to have been made on 25.01.2006 and put in writing on 01.02.2008 the property had already been gifted to the mother. She had further alienated the property to her daughter on 17.04.2007. The said alienations were never subject matter of challenge as such in the present suit and it has been found by the Courts below that the stamp paper had been purchased for the purpose of agreement and not for a gift. Even otherwise the property was never in the hands of Mohd. Balal at the time of alleged execution on 01.02.2008 and, therefore, the plaintiff cannot claim any right as such on the basis of the said document. The basis of permanent injunction was possession which had been claimed and the claim was on the basis of oral gift, but possession was not with her, but rather with the daughter as per the photographs Ex.D3 to D7, identification of which was sought to be denied as such, but admitted by the witness of the plaintiff herself namely Mohd. Salim, PW-3.

9. In such circumstances, both the Courts below rightly have come to the conclusion that the property was not available in the hands of

Mohd. Balal and, therefore, the claim on the basis of an oral gift at an subsequent point of time when it had already changed hands twice would thus go on to disprove the case of the plaintiff. The reasoning for transferring the property to the wife and the daughter thereafter is apparently on account of bad relations with four sons and the defendant-daughter as such was looking after her parents and in such circumstances the Courts below have rightly rejected the claim of the plaintiff/daughter-in-law.

10. Resultantly, no case is made out for interference in the concurrent findings recorded by the Courts below. The appeal is, accordingly, dismissed in limine.

07.05.2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No