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

**RSA-986-2019 (O&M)
Reserved on : 06.09.2022
Date of decision : 28.09.2022**

Manish Kumar and Another

....Appellants

Versus

Deepak Kumar & Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rishi Pal Singh, Advocate for the appellants.

ALKA SARIN, J.

The present appeal has been preferred against the judgments and decrees passed by both the Courts below dismissing the suit filed by the plaintiff-appellants.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for declaration to the effect that plaintiff-appellant No.1 was owner and in joint possession of land to the extent of half share belonging to Ram Sarup described in detail in the head-note of the plaint. Further, a gift deed bearing No.1124 dated 04.12.2006 registered in the office of Sub-Registrar, Mullana and mutation No.2148 dated 04.01.2007 was also challenged as being illegal, null and void. The plaintiff-appellants filed the suit averring therein that Ram Sarup was the owner of the suit land and constituted a joint Hindu family with his two sons, namely, Ram Kumar and Ravinder Pal. Ram Kumar, the predecessor-in-interest of the plaintiff-

appellants died in 1996. Ram Sarup, the grandfather of plaintiff-appellant No.1 and father-in-law of plaintiff-appellant No.2, was under the influence and pressure of Ravinder Pal, defendant No.3 (since deceased). It was further averred that a Panchayat of Mullana and Jyotisar took place which was attended by Ram Sarup and Ravinder Pal, defendant No.3 (since deceased) and other respectables of the Villages Mullana and Jyotisar wherein it was decided that the suit land would remain in the name of Ram Sarup during his lifetime and that Ram Sarup would neither dispose it off nor transfer or alienate the same during his life time and that the same shall be inherited by the plaintiff-appellants and Ravinder Pal, defendant No.3 (since deceased), to the extent of half share each. It was also agreed that Ram Sarup would execute a Will in favour of the plaintiff-appellant No.1 and his son Ravinder Pal, defendant No.3 (since deceased). The agreement is stated to have been reduced into writing on 01.12.1996 and was duly signed/thumb-marked by the parties. It was further averred that in March/April 2010, the defendant-respondents started disputing the right of the plaintiff-appellants and started interfering in the peaceful joint possession of the plaintiff-appellants and that Ravinder Pal, defendant No.3 (since deceased), gifted the entire land to defendant-respondent Nos.1 and 2 by virtue of gift deed dated 04.12.2006.

The suit was contested by the defendant-respondents on the ground that the plaintiff-appellants had no pre-existing right in the suit land which was a self-acquired property of Ram Sarup and that he gifted the same in favour of the defendant-respondent Nos.1 and 2 in lieu of love, affection and services rendered by them to him. It was further averred that the plaintiff-appellants never constituted a joint Hindu family with Ram Sarup.

It was further the assertion that the plaintiff-appellant No.2 deserted her husband few days after marriage and that she never lived, stayed and cohabited with deceased Ram Kumar. It was further alleged that the agreement dated 01.12.1996 was forged and fabricated.

Rejoinder was filed controverting the averments made in the written statement and reiterating those made in the plaint.

On the basis of the pleadings, the following issues were framed:

1. Whether the plaintiffs are entitled to decree for declaration to the effect that plaintiff No.1 is owner and in joint possession of land to the extent of $\frac{1}{2}$ share belonging to Ram Sarup of the suit land as prayed for ? OPP
2. If issue no.1 is decided in favour of the plaintiffs, then whether they are entitled to relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
4. Whether the plaintiffs have no locus standi to file the present suit ? OPD
5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct ? OPD
6. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of the necessary parties ? OPD
7. Relief.

The Trial Court held that the plaintiff-appellants had failed to prove that the property was joint Hindu family property and that the plaintiff-appellants had also failed to prove that the gift deed dated 04.12.2006 was the outcome of fraud and misrepresentation. The suit was dismissed vide judgment and decree dated 21.12.2015. Aggrieved by the said judgment and decree, an appeal was preferred which also met with the same fate.

Learned counsel for the plaintiff-appellants has contended that an application for additional evidence has been filed with the present appeal being CM-2268-C-2019 and that a perusal of Annexures A-1 to A-3 would reveal that the property was ancestral. It was further the contention of learned counsel that the Courts below have not appreciated the evidence on the record. Learned counsel for the plaintiff-appellants has further contended that written compromise dated 01.12.1996 stood duly proved and hence the gift deed was illegal, null and void.

Heard.

In the present case, though it has been averred in the plaint that Ravinder Pal, defendant No.3 (since deceased), had executed a gift deed in favour of defendant-respondent Nos.1 and 2, however, the gift deed sought to be challenged had been executed by Ram Sarup in favour of his grandsons (defendant-respondent Nos.1 and 2 herein). Ex.P4, which is the gift deed under challenge, also reveals that the same has been executed by Ram Sarup in favour of Deepak Kumar and Rohit Kumar (defendant-respondent Nos.1 and 2 herein). There is not an iota of evidence on the record to prove that the property was ancestral in the hands of Ram Sarup and that he was not competent to execute the gift deed. The onus to prove that the property was

ancestral joint Hindu family property was on the plaintiff-appellants who miserably failed to discharge the said onus. Still further, even if the compromise dated 01.12.1996 (Ex.P1) is taken to have been proved even then the same would not be a bar for Ram Sarup to have executed a gift deed in favour of defendant-respondent Nos.1 and 2. Having failed to show that the suit property was ancestral joint Hindu family property, Ram Sarup being the absolute owner, would have every right to dispose off the property in the manner which he liked. Though it has been averred in the plaint that the gift deed dated 04.12.2006 is an outcome of fraud and misrepresentation, however, no details of the fraud or misrepresentation have either been pleaded or proved. It is well settled that the fraud as alleged in the plaint must state those facts which together taken as a whole, if proved, would show and establish fraud and that the pleading of fraud should be conspicuous and palpable and should not be predicated on mere suspicion and conjecture.

In view of the above, I do not find any merit in the present appeal. No question of law, much less, substantial question of law, arises in the present appeal. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

28.09.2022
Yogesh Sharma

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO