

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

RSA-1066-2020 (O&M)

Date of decision : 31.10.2022

Isran and another

...Appellants

Vs.

**Ajijudeen (deceased) through LR
and another**

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Satish Chaudhary, Advocate
for the appellants.

MANOJ BAJAJ, J.

CM-3437-C-2020

This application has been filed under Section 151 CPC for condonation of delay of 316 days in re-filing the appeal.

For the reasons mentioned in the application, same is allowed and delay of 316 days in re-filing the appeal is condoned.

Main case

Appellants (plaintiffs) have preferred regular second appeal to challenge the judgment and decree dated 03.08.2018 passed in Civil appeal No.119-2015 by first appellate Court, whereby it has affirmed the judgment and decree dated 27.03.2015 passed by Civil Judge (Junior Division), Jagadhari, dismissing their suit for declaration and permanent injunction.

Learned counsel for the appellants has argued that Ajijudeen-defendant No.1, being grandfather of the plaintiffs, was satisfied with their services, therefore, he had made an oral gift in their favour on 30.06.2008, and by virtue of this, the plaintiffs became owner of the suit land measuring 3 kanals 7 marlas situated at village Tapu Akalgarh, Tehsil Jagadhari, District

Yamuna Nagar. According to him, the plaintiffs brought this suit to challenge the gift deed dated 02.12.2009 (Ex.D-1) executed by defendant No.1 in favour of Jamshed (defendant No.2), who is the cousin of plaintiffs being son of their aunt (bua). Mr. Chaudhary, learned counsel has argued that after the death of the donor, the other brothers of the plaintiffs were impleaded as LR Nos.I to VI and out of those, Jissan and Israel supported the claim of the plaintiff, whereas the remaining LRs had denied the execution of gift deed set up by the defendant No.2-Jamshed and pleaded that the suit property owned by defendant No.1 would devolve upon the LRs in equal shares, but ignoring the said stand, the trial Court as well as the appellate Court have proceeded to dismiss the suit by holding that the oral gift pleaded by the plaintiffs has not been proved.

Mr. Chaudhary, learned counsel for the appellants has argued that Mohd.Sattar (PW-1) appeared as plaintiff's witness and specifically proved the oral gift by Ajijudeen in favour of the plaintiffs. He submits that the impugned judgment and decree is not based upon proper appreciation, therefore, the same warrants interference.

After hearing the learned counsel for the appellants and considering the material on record, this Court finds that the plaintiffs have primarily relied upon the deposition of Mohd.Sattar (PW-1) and during the course of hearing, learned counsel has produced the deposition of this witness, who during his cross examination specifically stated that he is deposing in this case at the instance of plaintiff No.1-Isran. According to this witness, the oral gift by Ajijuden was made in the house of Faiz Mohd., but concededly the said witness was not examined by plaintiffs in support of their case. The plaintiffs

have failed to prove the oral gift by donor-Ajijudeen in their favour by leading any cogent and convincing evidence.

Apart from it, the gift deed (Ex.D-1 and Ex.D-2) relied upon by the defendant No.2 is a registered instrument and the evidence adduced by the defendants has not been rebutted by the plaintiffs.

Thus, this Court has no hesitation in holding that the findings recorded by the trial Court on material issues are based upon proper appreciation of evidence, therefore, the first appellate Court has rightly affirmed the judgment and decree dated 27.03.2015.

No other argument has been raised.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the same is dismissed.

(MANOJ BAJAJ)
JUDGE

31.10.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No