

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212

**RSA No.3649 of 1987 (O&M)
Date of Decision : 06.09.2022**

Bir Sen

....Appellant

VERSUS

Jai Devi

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.P. Singh Ahluwalia, Advocate for the appellant.

Mr. Manohar Lall, Advocate for respondent no.4 (ii).

ALKA SARIN, J. (Oral)

The present appeal has been preferred against the judgment and decree dated 15.09.1987 passed by the lower Appellate Court reversing the judgment and decree dated 25.10.1986 passed by the Trial Court.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration as well as consequential relief of permanent injunction and possession on the ground that he is owner in possession of land measuring 14 *kanals* and 2 *marlas*. It is averred in the plaint that the plaintiff-appellant has become owner in possession of 14 *kanals* and 2 *marlas* of land on the basis of Gift Deed dated 11.10.1972 (Ex.PW1/1) executed by Jai Devi (defendant-respondent).

Learned counsel for the plaintiff-appellant would contend that it has specifically been stated in the Gift Deed that besides 131 *kanals* 15 *marlas* of the land as described in the Gift Deed, Jai Devi (defendant-respondent) was also co-owner of the *Shamlat Patti* and *Shamlat Deh* land

and hence, it is the contention that vide the said Gift Deed her entire immovable property had been gifted to the plaintiff-appellant.

Per contra, learned counsel for the defendant-respondent no.4(ii) has contended that there is no mention of the details of land measuring 14 *kanals* and 2 *marlas* in the Gift Deed. However, details of land measuring 131 *kanals* and 15 *marlas* have been given in the Gift Deed. It is further the contention that partition regarding the *Shamlat Patti* land took place on 24.03.1971 and Jai Devi was an absolute owner on the date of execution of the Gift Deed dated 11.10.1972 and the said land had not been included in the said Gift Deed and, hence, it cannot be inferred that the said parcel of land measuring 14 *kanals* and 2 *marlas* (suit land) had also been gifted vide Gift Deed dated 11.10.1972. It is further the contention that earlier Jai Devi had filed a civil suit on 31.03.1977 for declaration that she is owner in possession of 131 *kanals* and 15 *marlas* of land situated in village Dahina and challenged the Gift Deed dated 11.10.1972 alleged to have been executed by her in favour of the plaintiff-appellant herein as being null and void and having been obtained fraudulently and by mis-representation and under undue influence. The said suit was filed by Jai Devi (defendant-respondent herein) as an indigent person. In reply to the application for suing as an indigent person, the present plaintiff-appellant took a stand that Jai Devi was owner of 14 *kanals* and 2 *marlas* of land and, hence, she could not file the suit as an indigent person. Vide order dated 15.12.1979 (Ex.D8) the application of Jai Devi (defendant-respondent herein) to sue as an indigent person was dismissed. Learned counsel would further contend that though

the application stood dismissed vide order dated 15.12.1979, however, from a perusal of Ex.D8 it was apparent that firstly, the Gift Deed was only qua 131 *kanals* and 15 *marlas* of land and secondly, even as per the plaintiff-appellant, 14 *kanals* and 2 *marlas* of land qua which the present suit has been filed was owned by Jai Devi.

I have heard learned counsel for the parties.

As per the law laid down by a Constitution Bench of the Hon'ble Supreme Court in case of **Pankajakshi (dead) through LR's & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial question of law.

In the present case, the Gift Deed dated 11.10.1972 (Ex.PW1/1) gives the details of the land measuring 131 *kanals* and 15 *marlas* besides stating that the executant of the Gift Deed is owner of other lands including some share in *Shamlat Patti* and *Shamlat Deh*. The argument of learned counsel that the land measuring 14 *kanals* and 2 *marlas* i.e. the suit land herein was also part of the Gift Deed cannot be accepted. The land measuring 14 *kanals* and 2 *marlas* comprised in *khasra* no.82/10/2 (1-0) 11/1 (6-0) 126/6/1 (7-2) does not find mentioned anywhere in the Gift Deed. Further, it has come in the evidence of PW-1, Lal Singh Patwari, who stated that there had been a partition of the co-sharers with respect to *Shamlat Patti* and *Shamlat Deh* and the land measuring 14 *kanals* and 2 *marlas* fell to the share of the defendant-respondent and mutation *qua* partition was sanctioned as far back as on 24.03.1971 i.e. prior to execution of the Gift Deed. Though, the mutation stood sanctioned on 24.03.1971, the same was not

incorporated in the *jamabandi* till the year 1980-81. Hence, once it has come on the record that partition had already taken place on 24.03.1971, it cannot be held that the defendant-respondent was a co-sharer in the *Shamlat Patti*. In any case, once the details of the suit land do not find mention in the Gift Deed, it cannot be said that the said land was gifted vide Gift Deed dated 11.10.1972. Further, the defendant-respondent herein filed a suit challenging the said Gift Deed as having been got executed fraudulently. In the said suit she had filed an application for being permitted to sue as an indigent person and a specific stand was taken by the plaintiff-appellant herein that Jai Devi (defendant-respondent herein) was owner of 14 *kanals* and 2 *marlas* of land and hence she could not sue as an indigent person. Vide order dated 15.12.1979 the application filed by defendant-respondent herein to sue as an indigent person was dismissed holding that she had concealed the fact that she was owner of 14 *kanals* and 2 *marlas* of land. It has been noticed in the order dated 15.12.1979 that it is a stand of the plaintiff-appellant herein that the defendant-respondent herein was owner of 14 *kanals* and 2 *marlas* of land in *Shamlat Patti* in village Dahina which would necessarily mean that the plaintiff-appellant himself understood that the said land was not included in the Gift Deed. Had it been the case that the said land measuring 14 *kanals* and 2 *marlas* i.e. the suit land was included in the Gift Deed even as per the understanding of the plaintiff-appellant, such a stand would not have been taken.

In view of above, I do not find any illegality or infirmity in the judgment and decree passed by the lower Appellate Court. No question of

law, much less substantial question of law, arises in the present case. The appeal, which is wholly devoid of any merits, is dismissed. Pending applications, if any, also stand disposed off.

06.09.2022
jk

(ALKA SARIN)
JUDGE

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