

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.205

RSA No.3297 of 2010 (O&M)
Date of Decision: 24.11.2022

Chhano Devi and others

.... Appellants

Versus

Zila Parishad Hisar through Chairman/Administrator
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. K.S.Malik, Advocate
for the appellants.

Mr. Arvind Rajotia, Advocate
for respondent No.1.

TRIBHUVAN DAHIYA, J. (ORAL)

This is plaintiff's appeal against the judgment of reversal passed by the lower appellate Court.

2. The facts of the case in brief are, the appellants/plaintiffs (hereinafter referred to as the 'plaintiffs') filed a suit for possession alleging that previously the suit land was owned and possessed by Bhagwana (father of the plaintiff-Ram Chander *alias* Mauzi) and one Smt. Sarwan, daughter of Malu. Both of them gifted the suit land by way of oral gift to the then District Board, Hisar (presently known as Zila Parishad, Hisar), i.e., respondent/defendant No.1 (hereinafter referred to as the 'defendant') with the condition that the Board would construct a school over it. In case it failed to do so, the oral gift would stand revoked and ownership with possession of the land would revert to its original owners Bhagwana and Sarwan. Mutation with regard to oral gift in favour of the defendant was

sanctioned on 30.10.1930. Smt. Sarwan expired and after her death, Bhagwana (plaintiff's father) became her legal representative and succeeded to her property. It is further pleaded that after Bhagwana's death, the plaintiff and proforma defendants are his legal representatives. Since the Board was not using the suit land for running the school for a long time, and the land was in possession of respondents/defendants No.2 to 6, their possession became illegal and the plaintiff, along with proforma defendants, were entitled to its possession being owners.

3. The suit was contested by the defendant no.1 stating that the land already stood vested in it, though a few persons have raised unauthorized construction over it. No part of the land was used for school purposes. Defendants No.2 to 6 admitted the plaintiff's claim; however, denied that they were in possession of the land in any manner.

4. On completion of pleadings, the following issues were settled between the parties:

1. Whether the plaintiff is entitled to the relief of possession with respect to the disputed land on the grounds so mentioned in the plaint?OPP
2. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD
3. Whether the suit is not maintainable?OPD
4. Relief.

5. The trial Court decreed the suit vide judgment and decree dated 30.08.2008, which was reversed in appeal by the lower appellate Court vide judgment and decree dated 13.01.2010. The same is under challenge in the instant appeal.

6. While deciding the appeal, the lower appellate Court held that the suit in question was filed after about 75 years of sanctioning of the mutation on the basis of gift deed in question. It was, therefore, barred by limitation.

7. Learned counsel for the appellants is not in a position to dispute the fact that the suit was filed much beyond the period of limitation prescribed, and was barred by law of limitation. He has, however, argued that the gift deed in question was not a registered document, though it was executed after coming into force the Transfer of Property Act, 1882. Therefore, it had no legal sanctity and the suit land on that basis could not have been transferred to the defendant/Zila Parishad. On the other hand, a contradictory plea has been taken by the plaintiff that on account of the condition in the gift deed having not been complied with, it would stand revoked being a conditional document. And ownership with possession of the suit land would be reverted to its original owner. This plea has rightly been rejected by the lower appellate Court by recording the findings as under:

The plea of plaintiff is mutually inconsistent and the plaintiff is estopped from taking the plea to question the legality of oral gift deed. The court below has not considered this aspect and as per section 126 of the Act, oral gift, if any. On the part of donor was unilateral, the Board or Zila Parishad never agreed that in case, on non happening of particular event, the Gift deed will be revoked. The court below has not appreciated the section 126 of the Act in judicious manner and committed illegality on this point. In the oral gift deed, no period was specified for construction of school by the Board. In the absence of any evidence, it was

based on reasonability of the time. During his life time, father of the plaintiff Bhagwana not questioned the oral gift deed. Plaintiff came into the court after 75 years and on this score, the suit of the plaintiff is barred by period of limitation, but court below has not considered this aspect. Consequently, the law cited by the counsel for the respondent- plaintiff referred in AIR 1979 S.C.1144, 1993 (2) LJR 443 (P&H) is not applicable in the present case because there was question of monetary benefits but in the present case, claim over the immovable property is involved. Further more, plaintiff has not brought the true facts before the court. How his father became legal heir of Smt. Sarwan has not been pleaded. There is no document on record, that Smt. Sarwan also owned the suit land at any time. According to the plaintiff, respondent No. 2 to 6, are in un-authorized possession of the suit land.

8. It has also been held that the plaintiff has not been able to establish his lineage or as to how his father became legal representative of Smt. Sarwan. There was no pleading to that effect on record.
9. In view thereof, there is no reason to interfere with the well-reasoned findings of the lower appellate Court. No substantial question arises for consideration.
10. Appeal stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

24.11.2022
Maninder

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No