

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

**RSA-246-2020 (O&M)
Decided on:-16.08.2023**

Joginder Pal Singh

....Appellant..

vs.

Anju

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vikas Lochab, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 07.08.2015 and 25.07.2019 passed by the Courts below, whereby, a suit for possession by way of partition and permanent injunction filed at the instance of respondent-plaintiff, has been decreed.

2. Very briefly, the respondent-plaintiff claiming herself to be co-owner and in joint possession to the extent of half share in the suit property based on registered gift deed dated 05.03.2009, filed suit for possession by way of partition and permanent injunction stating therein that the appellant-defendant being her uncle was in possession of the entire suit property, though, being owner to the extent of half share. On the other hand, written statement was filed by appellant-defendant while submitting that the property in question was jointly owned by him along-with his brother-Inder

Pal Singh i.e. the father of the respondent-plaintiff and by virtue of a family settlement having been arrived at between the two brothers, the entire property had fallen to the share of appellant/defendant, against which, a sum of Rs.2 lacs was paid to Inder Pal Singh, who thus, had no authority to execute the gift deed dated 05.03.2009 in favour of her daughter.

3. The trial court vide its judgment and decree dated 07.08.2015, decreed the suit filed at the instance of plaintiff. Aggrieved thereof, the appellant-defendant filed first appeal, however, the same was dismissed by the court of learned Additional District Judge, Gurugram vide judgment and decree dated 25.07.2019.

4. Assailing the aforementioned two judgments, learned counsel for the appellant submits that the Courts below while discarding the plea raised by the appellant-defendant as regards family settlement between the two brothers ignored the statement made by DW-2/Kamla Devi, who happens to be their sister. He further places reliance upon Ex.DX i.e. bank records pertaining to withdrawal of around Rs.2 lacs by appellant-defendant in the year 1987 for being paid to Inder Pal Singh. No other argument has been addressed.

5. I have heard learned counsel for the appellant and gone through the paper-book, I am unable to find substance in the submissions made on behalf of the appellant.

6. A perusal of statement of DW-2-Kamla Devi shows that her deposition is wholly in contradiction with the stand taken by the appellant-defendant in his written statement. The case pleaded in the written statement by the appellant-defendant has been that a family settlement took place

between the two brothers and by virtue thereof, the entire property in question vested with him against which, a sum of Rs.2 lacs was paid to Inder Pal Singh towards all his claims, whereas, DW-2 in her deposition has tried to build a new case while submitting that half share in the property in question was transferred in favour of appellant-defendant in exchange of some 60 Sq. yard of land, which was given to Inder Pal Singh in lieu of the property in question, but no such case was ever pleaded or set up in the written statement by appellant-defendant. Thus, the statement made by DW-2 was of no help to the appellant-defendant. Besides it, document Ex.DX which relates to bank records regarding withdrawal of around Rs.2 lacs by the appellant-defendant in the year 1987 has been duly considered by the Courts below but not found favour. In the absence of any proof of the said amount having been handed over or received by Inder Pal Singh, it was of no consequence.

7. Moreover, vesting of right based on the alleged settlement was never got incorporated in the revenue record for long without their being any explanation in this regard, which also goes against the case set-up by the appellant-defendant in the written statement. On the other hand, respondent-plaintiff has duly proved her case of being co-sharer to the extent of half share in the suit property based on registered gift deed dated 25.03.2009, executed by her father Inder Pal Singh, which has been duly proved on record as Ex.P-2, followed by its entry of mutation Ex. P-7 in the revenue record.

8. Accordingly, in view of the discussion made hereinabove, finding no illegality and perversity in the judgments passed by the Courts below, the

present appeal is hereby dismissed.

Pending application(s), if any, shall stand(s) disposed of.

16.08.2023

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(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/ No