

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

RSA NO.676 of 2012 (O&M)

Reserved On: 22.09.2023

Date of Order:09.10.2023

Swaran Kaur**.Appellant****Versus****Hardial Kaur and others****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. S.S.Sandhu, Advocate
for the appellant.****Mr. Saurabh Bajaj, Advocate
for respondent no.1 and 2.****Mr. Amit Arora, Advocate
for respondent no.3 to 6.****ANIL KSHETARPAL, J**

1. In this regular second appeal, the correctness of the concurrent findings of fact arrived at by the courts below is assailed by the plaintiff.
2. Her suit for grant of decree of declaration that she is the owner of the property and the sale and gift deeds executed on 03.07.1995, which were registered on 06.07.1995, are a result of misrepresentation, coercion and fraud has been dismissed by both the courts below.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
4. Smt. Bishamber Kaur widow of Sh. Labh Singh had two sons, namely, Hardial Singh and Rashpal Singh and two daughters, namely, Smt. Avtar Kaur and another. It is her case that on 21.06.1995, Sh. Hardial Singh, defendant no.1, her son and defendant nos. 2 and 3 created a fear in

her mind that the bank officials may get her arrested on account of default in repayment of the loan amount. All this while, the defendants constantly kept creating fear and on 27.07.1995, she was asked to accompany them to Tehsil Office, Tarn Taran where a Sikh Gentleman, who posed himself as a bank official got her signatures/thumb impression on the various documents. She signed the said documents under the impression that the bank liability will be taken care of by defendant no.2, who has agreed to save her through this trouble. On 04.07.1995, her other son Sh. Rashpal Singh, who was in Chandigarh, came back and she narrated these facts to him and he after hearing to the facts immediately went to Tarn Taran and on enquiring he came to know that the sale deed and the gift deeds have been executed fraudulently.

5. While denying any coercion or fraud, the Defendants contested the aforesaid suit. The suit has been dismissed by both the courts below.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record and the written note of submissions filed by the learned counsel representing the parties in support of their submissions.

7. The learned counsel representing the appellant has summarized his submissions in his written note which reads as under:-

“1. By taking undue/wrongful advantage of fiduciary relationship 90-year-old widowed plaintiff (Now Deceased) was defrauded by her elder son defendant No.1 (Deceased) and defendant no.2 (Deceased) and No.3 (whom she treated as her sons -as they had take her land on batai for the last more than a decade) by exercising undue influence, coercion, threat, intimidation, fraud etc, and made the plaintiff sign

documents claiming and making her believe that the documents that she was signing were bank documents.

2. Motive of Defendant no.1 to get the gift deed executed by fraud and sale deed by def. no.2 and 3. All the ancestral property which was with defendant no.1 had been sold by him for consuming intoxicating materials, so the remaining share which he had in the property was transferred by the plaintiff in the names of grandsons of defendant no.1 in order to save the property from being further sold. Since having no property in his hand defendant no.1 was on the look out for an opportunity to grab some property to continue living a lavish life. So defendant no. 1 to 3 conspired with each other and intentionally put the petitioner in deep fear by making her believe that the loan amount has not been paid by her younger son of whom the plaintiff stood surety so the bank officials are coming to arrest her younger son and since he is away the bank officials will arrest the plaintiff. All the 3 defendants kept terrifying this old lady for 3-4 days and when they found her to be in ideal position which suited them, they suggested her that the best way out as of now is to move an application before the bank requesting the bank not take any action etc. The plaintiff gripped in immense fear and stress believing the assurances and suggestion of the defendants to be true went along with them on 27-6-1995 to Tarn Taran where she was made to sit in a small tea stall and while she was feeling drowsy (which could have been the outcome of the laced cold drink which they had offered her before that) they made her sign on paper which they claimed were bank documents and the person who was getting the signatures of the plaintiff on these documents also told her that the documents which she was signing are bank documents and that he has come from the bank and the

plaintiff also signed these documents believing them to be bank documents. In the first week of July 1995 plaintiff came to know that defendants have fraudulently got the alleged gift deed and sale deed executed from her in their favour. The petitioner on coming to know of the fraud played on her, filed an application dated 10.7.1995 Ex.P-2 before the village Sarpanch and sought their help. Defendant no.1 admitted before the Sarpanch that he has done whatever he wanted to be got done from the plaintiff and now she can do whatever she wants. The panchayat expressed their inability to help as the matter was beyond their jurisdiction and suggested her to approach the court. After this incident due to fear of defendant no.1 the plaintiff shifted to Chandigarh and started living with her eldest daughter Avtar Kaur. Defendant no.1 on saying that even though he has got the alleged gift deed of the land executed in his favour but the same is still in the name of the plaintiff and even the possession of the same is still with the plaintiff. So when he was confronted by the relatives he and the plaintiff agreed to appoint Avtar Kaur elder sister of defendant no.1 as arbitrators to hear and adjudicate upon their dispute. During the arbitration proceedings conducted by Arbitrator Avtar Kaur the statement of defendant no.1 was recorded by Arbitrator Avtar Kaur in which he admitted before the arbitrator that deceased plaintive had signed the documents believing them to be bank documents and they had got the signatures of the plaintiff of the documents which are the subject matter of the alleged gift deed and sale deed by making the plaintiff believe that they are bank documents. This statement was signed by defendant no.1 while deposing before Arbitrator Avtar Kaur Ex. PW3/B.

Since the plaintiff was of advanced age and was

not possessor of good health and after the shock which she had suffered at the hands of the defendants, her health and physical condition further deteriorated and was not in position to actually travel and depose so she gave her power of attorney dated December 1996 to her daughter-in-law who had lived this entire ordeal with her to depose on behalf of the plaintiff. The plaintive deposed through her power of attorney who gave a detailed account which is the same as given by the plaintiff in the suit filed under the signatures of the plaintiff. (The plaintiff had detailed the entire apathy that she had lived in para No.2 to 8 of the plaint - page 97 to 107 of lower court record). In February 1997 the plaintiff died.

Evidence that will prove that fraud has been played on her by exercising undue influence, coercion, threat, intimidation, deceit etc.

1. PW-1 who has lived the entire apathy with the deceased plaintiff has given a detailed account as detailed in the suit.

2. PW-3 Avtar Kaur has proved the proceedings conducted by her as arbitrator and the statements recorded by her as arbitrator as Ex.PW-3 /A, PW3/B and PW3/C. The statement of Def. No.1 recorded by arbitrator where he admits the fraud is at (unnumbered page between Page no.393 to 395 of LCR).

3. PW 6 Gurmukh Singh Bank Official of the bank where property which is subject matter of alleged gift deed dt.3-7-1995 already stood mortgaged with bank on 06-02-1995 by the plaintiff and which was still with the bank till date of this deposition in July 2002. This property cannot be alienated in any manner whatsoever without payment of loan amount. There is no mention of this mortgage in the alleged gift deed.

4. PW-7 Kundan Singh Sarpanch Proves that defendant

no.1 had admitted his guilt before the village panchayat, that the application dated.10-07-1995 Ex.P2 moved by the deceased plaintiff regarding fraud played on her, Arbitration agreement Ex.P3 executed by defendant no.1 and plaintiff appointing Avtar Kaur as arbitrator, and the mortgage deed dated 6.2.1995 Ex.P6 of property which is the subject matter of alleged gift deed dated 03.07.1995.

5. DW-2 Mukhtar Singh Lambardar one of the attesting witness of the alleged Gift And Sale Deed had tendered into evidence his affidavit as Ex.DW2/A as his examination in chief in which he claimed that he and another attesting witness namely Gurdev Singh had witnessed the alleged gift and sale deed

Relevant extracts of cross examination which shatter the case of the defendants and prove the case of the deceased plaintiff His admission in cross prove that sale or gift deed were not executed in his presence and his signatures if any were procured later) (Page No.323-325 of LCR). The following paras will substantiate as follows:-

i. He admitted that he is not a resident of village Jalalabad (where the plaintiff resides).

ii. He admitted that he is a resident of village Sohlan Dera for the last 20 years. (This village Solan Dera is at a distance of about 3-4 Kms from Jalalabad where the 90 year old deceased plaintiff resided).

iii. He further admitted that he is not the Lambardar of the Patti where the land of deceased plaintiff is situated. He further said that there are 12 other Lambardars of Jalalabad. (That when there were 12 other lombardars of village Jalalabad who reside in the village then why did the deceased plaintiff not contact them. Why did she prefer him who stay 3-4 kms from the village Except for he alleged Gift Deed and Sale Deed Mukhtiar Singh

DW2 has not witnessed any other document ever executed by the deceased plaintiff)

iv. He admitted that he cannot tell that in which year the Gift Deed was executed by deceased plaintiff He admitted that he has not mentioned about any sale or gift deed in his affidavit Ex DW2/A and does not know their dates (Whereas a detailed account of alleged Gift & sole Deed along with dotes is given in the affidavit got prepared by the defendants).

v. He further stated that for execution of the Gift Deed money was paid to deceased plaintiff (That by paying consideration for getting Gift Deed executed changes the very nature of the deed/document itself and it no longer remains gift deed).

vi. He further admitted that the other attesting witness of the deeds is Tara Singh, who also came along with them from the village. (Whereas on the alleged gift & Sole deed Tara vi. vil. Singh is not a witness).

Vii. He further stated that the THUMB IMPRESSIONS of the witnesses and executants were taken on the alleged documents by the clerk. (whereas the fact as evident from the gift and sale deeds the Executants, and Mukhtiar Singh DW2 have signed and not thumb marked the alleged gift deed. Apart from this he stated that the Registrar signature the gift deed and the thumb impressions were put in front of the clerk who sits 5/6 rooms away from the office of Sub Registrar, which shows that the mandatory requirement of registration of signing in front of the Sub Registrar after he reads and explains the contents of the document to the executant has not been followed hence this is no valid registration at all).

Viii. He further stated that the said deeds were not taken back the same day. (This shows that the document was

executed and registered on the same day and he allegedly went only once along with the deceased plaintiff).

ix. He further states that defendant No.2 is in possession of the suit property, which is the subject matter of the gift deed whereas defendant no.1 claims otherwise.

x. He denies mentioning anything about the sale deed in his affidavit ExDW2/A.

xi. Does not know about the date of execution of the gift deed but it was 2 years back. Alleged gift deed is dt.1995 and the DW 2 was examined in 2003 (in chief Ex DW2/A he gives a detailed account which proves that the affidavit is not got prepared by him and has o knowledge of its contents).

6. Gurdev Singh DW4. He tendered into evidence his affidavit as Ex. D. DW4/A as his examination in chief in which he gave details along with dates of alleged gift deed and sale deed (Page No.335 to 343 of LCR)In this affidavit he stated the following details:-

i. He admits that his house is adjoining the dera of Defendant no.2 and 3 which is at a distance of about 2 km from the village.

ii. He stated that apart from the sale deed he did not attested any other document executed by deceased plaintiff. (Whereas he is one of the attesting witness of the alleged gift deed also).

iii. He states that he was not called by the plaintiff but was present at Khadoor Sahib.

iv. He further stated that the sale deed could not be got registered on the same day as the Registrar had left office by the time the execution of the sale deed was completed so on the next day the sale deed was presented for registration and tall 5 of them including Mukhtiar Singh, Lambardar came on the next day for registration

(Whereas he stated in his affidavit that the sale deed was executed on 3.7.1995 and was presented for registration on 6.7.1995 and on the other hand the other attesting witness Mukhtiar Singh Lambardar DW2 stated that the document was executed and registered on the same day.

V. During the cross examination he said that except for the sale deed he has not witnesses any other document executed by the deceased plaintiff but in the later portion of the cross examination he said that he had witnessed a Gift deed also executed by deceased plaintiff and the consideration for the Gift Deed was given by Hardial Singh, defendant No.1 to Bishambar Kaur deceased plaintiff before the Sub Registrar. (That the passing of consideration for execution of Gift charges the nature of the deed and it ceases to be a gift deed).

vi. Admits that this except for Sale deed he didnot execute any other document executed by plaintiff (in affidavit Ex. DW4/A he states otherwise).

Vii. Denies knowledge of possession of gifted land. (In Chief Affidavit he says otherwise.

7. Hardial Kaur DW3 That during the pendency of the suit defendant No. 1 died and his LRS were brought on record and Hardial kaur wife of defendant No.1 was examined as DW3 and she tendered her affidavit Ex. DW3/A as her examination in chief. Via Ex DW3/A she denied execution of Arbitration agreement. (page no.327 to 333 of LCR). The relevant extract of the cross examination are as follows:

i. She admitted that she has been living in Village Thamanwal for the last 35 years and that her husband (defendant No.1) has been living with her at village Thamanwal till his death. (Whereas defendant No. 1 claimed that he use to live with his mother deceased plaintiff and use to serve her and in lieu of this she gift

him her property)

ii. She admitted that during the life time of deceased plaintiff she remained in possession of the property which is the subject matter of the gift deed and she further said that she does not know that in whose possession the property is now. (Whereas defendant No. 1 had been claiming that he is in possession of the property where the revenue records says that the deceased plaintiff is in possession of the suit property and even DW3 has proved this).

iii. In examination in chief affidavit she denies that there was any arbitration between defendant no 1 and the plaintiff and in Cross examination she denies any knowledge about the arbitration and also that she has not mentioned anything regarding it in her chief.

iv. She admits that the deceased was in possession.”

8. The learned counsel representing the respondents have also filed a written synopsis and the appellant has also filed a rejoinder which are not being reproduced.

9. With respect to the first argument of the learned counsel representing the appellant, it may be noted that though she was hale and hearty as per the statement of Smt. Swaran Kaur, her daughter-in-law, the plaintiff has failed to enter into the witness box. The allegation that she has been duped on account of fiduciary relationship is required to be examined in the facts and circumstances of the present case. She has executed the gift deed dated 03.07.1995, in favour of the her elder son, whereas the sale deed has been executed in favour of defendant no.2 and 3. She was the best person who could prove undue influence, coercion, threat and intimidation, however, she failed to appear in evidence. Moreover, her son also did not enter the witness box, though it is her allegation that when Sh. Rashpal

Singh, her other son, came back on 04.07.1995, and went to the office of the Registrar on 05.07. 1995. Moreover, the sale deed and the gift deed have been registered on 06.07.1995. She appeared before the Registrar. Hence, she failed to prove her case.

10. With respect to argument no.2, it may be noted that the plaintiff failed to prove that the gift deed and the sale deed were a result of fraud. The plaintiff could not establish that she was served a cold drink spiked with an intoxicant as she failed to enter the witness box to face the cross-examination from the defendants.

11. With respect to the next argument based on the appreciation of evidence of PW1, PW3, PW6 and PW7, it may be noted that the scope of interference in the concurrent findings of fact under Section 41 of the Punjab Courts Act, 1918 has been delineated in a recent judgment passed by the Supreme Court in **Randhir Kaur vs. Prithvi Pal Singh and others, (2019) 17 SCC 71**. Paragraph 15 of the said judgment is extracted as under:-

“A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

12. The same view has been reiterated by the Supreme Court in **Avtar Singh and others vs. Bimla Devi and others, (2021) 13 SCC 816**.

13. Moreover, as already noticed, Smt. Swaran Kaur was not a pardanashin lady. She first suffered a court decree in favour of her grand

children. Thereafter, she executed a Will on 19.06.1965. Thereafter, she mortgaged her property against the bank loan borrowed by her younger son Sh. Rashpal Singh, who was staying in Chandigarh. It has also come on record that Sh. Hardial Singh was staying in the village, whereas Sh. Rashpal Singh was staying separately. Moreover, the case set up by the plaintiff stands belied because she went to the office of the Registrar on 06.07.1995, to get the sale deed as well as the gift deed registered. There is no explanation as to why she went to the office of the Registrar on 06.07.1995, particularly when she came to know of the fraud on 05.07.1995, because it is her case that on 04.07.1995, her younger son Sh. Rashpal came back and after visiting the office of Registrar he disclosed all these facts to the plaintiff.

14. The learned counsel representing the appellant has also referred to the alleged statement of DW1 recorded by the Arbitrator. The alleged Arbitrator is no one else but the daughter of the plaintiff. No copy of the award has been produced. Moreover, the signatures of DW1 on the statement are not made at a proper place. Further, both the courts have already appreciated this particular fact.

15. With respect to the argument of the learned counsel that there is admission of defendant no.1 in Ex.PW3/B, a bare perusal of the aforesaid document proves that defendant no.1 has not signed the aforesaid statement. Moreover, such statement in itself would not be sufficient to hold that a fraud was played and the gift deed was a result of misrepresentation.

16. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

17. Dismissed.

18. All the pending miscellaneous applications, if any, are also disposed of.

09th October, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO