

RSA-3259-2016 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3259-2016 (O&M)

Reserved on:- 17.10.2023

Pronounced on:- 02.12.2023

Surjit Kaur

....Appellant

Versus

**Chint Kaur (since deceased through Legal Heirs Surjit Kaur and
Bhajan Kaur) and another**

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Rahul Sharma, Advocate
for the appellant.

Mr. Sherry K. Singla, Advocate
for respondent/caveator Bhajan Kaur.

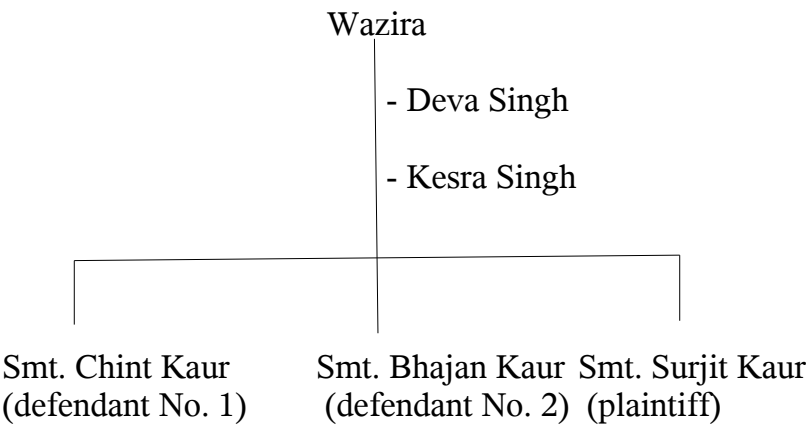
AMARJOT BHATTI, J.

1. The appellant/plaintiff – Surjit Kaur has filed Regular Second Appeal against impugned judgment and decree dated 18.09.2015 passed by learned Additional District Judge, Rupnagar vide which the appeal preferred by Surjit Kaur plaintiff was dismissed and the judgment and decree dated 28.07.2014 passed by learned Civil Judge (Junior Division), Anandpur Sahib dismissing the suit filed by the plaintiff was upheld.

2. The brief facts of the case are that the plaintiff Surjit Kaur had filed suit for declaration that she is joint owner/co-sharer in joint possession of the land measuring 104 kanals – 4 marlas as mentioned in head note of the plaint situated at village Bela Ramgarh, Tehsil Anandpur

Sahib, District Ropar as per jamabandi for the year 2002-03 and five number of gift deeds all dated 30.05.2005 alleged to be executed by defendant No. 1 in favour of defendant No. 2 and the mutation numbers 2756, 2757, 2758, 2760 and 2761 and the revenue record showing defendant No. 2 as owner in possession on the basis of alleged five gift deeds are wrong, illegal, null, incompetent, forged, fabricated, result of fraud, without consideration and are not binding upon the rights of the plaintiff and are liable to be set aside alongwith suit for permanent injunction restraining the defendants from dispossessing the plaintiff forcibly and illegally, changing the nature of suit land, raising any type of construction or structure, selling, alienating the suit land, cutting and removing the trees or creating any type of charge on the suit land in any manner and in the alternative filed suit for possession.

3. The plaintiff submitted that she is the joint owner, co-sharer in joint possession of suit land recorded in the name of Chint Kaur, as detailed in the head note of the plaint. The plaintiff and defendant No. 2 are the members of Joint Hindu Family and they were co-parcenars with their father Kesra Singh. The suit land was ancestral land in the hands of Kesra Singh. The pedigree table showing the relationship of plaintiff and defendants with Kesra Singh is as under :-



It was further submitted that Deva Singh expired in the year about 1922 and after the death of Deva Singh, the suit property was inherited by his sons Mehar Singh and Kesra Singh. That Kesra Singh executed a sale deed dated 27.08.1985 in favour of his wife Chint Kaur, defendant No. 1 regarding the land as mentioned in para No. 5 of the plaint. It was further submitted that Kesra Singh had no right to sell the land measuring 34 kanals – 3 marlas, in favour of defendant No. 1, being their Joint Hindu Family coparcenary and ancestral property. The alleged sale deed is wrong, illegal, null and void. That Kesra Singh died intestate in the year 1989, leaving behind the plaintiff and defendant No. 2 (daughters) as the sole legal heirs under the Hindu Mitakshra Law and after his death the entire property was inherited by plaintiff and defendant No. 2 in equal shares. The plaintiff and defendant No. 2 are also entitled to the share of Chint Kaur in equal shares being the property held by Chint Kaur on the basis of alleged sale deed dated 27.08.1985 was ancestral land. It was further submitted that the five number of gift deeds all dated 30.05.2005 alleged to have been executed by Smt. Chint Kaur in favour of defendant No. 2 are wrong, illegal, null, void, forged, fabricated and undue influence practised by defendant No. 2 upon defendant No. 1. It was further submitted that Chint Kaur was old lady, aged about 90 years and defendant No. 2 in collusion with the attesting witnesses, scribe and the registration agency procured the alleged gift deeds by practising fraud upon defendant No. 2. The plaintiff was looking after and maintaining her parents after her marriage in the year 1972 by staying with her parents in village Bela Ramgarh. She alongwith her children and parents Kesra Singh and Chint Kaur had joint Ration Card and Voter Card in village Bela

Ramgarh, whereas, Smt. Bhajan Kaur, defendant No. 2 had ration card and vote in her in-laws village Nangli. That Chint Kaur was a simple, illiterate and extremely aged lady of 90 years old and she was mentally deficient, who could be won over by anybody. The cause of action arose to the plaintiff against the defendants on 30.05.2005, when five alleged gift deeds were executed by defendant No. 1, in favour of defendant No. 2, wrongly and illegally. Hence, the present suit for declaration, permanent injunction and in alternative suit for possession.

4. Notice of the suit was given to the defendants who appeared in this case and filed joint written statement in which preliminary objections regarding locus standi; maintainability; estoppel; limitation and cause of action were taken.

On merits, it was submitted that the plaintiff had no right, title or interest in the suit land measuring 104 kanal – 14 marlas, as detailed in the head note of the plaint. That defendant No. 1 Chint Kaur being owner in possession of suit land out of the joint khata as reflected in the revenue record had gifted the land-in-suit to defendant No. 2 daughter with her sweet will and consent and accordingly, five different gift deeds all dated 30.05.2005 were duly executed by defendant No. 1 Chint Kaur. It was further submitted that on the day of execution and registration of aforesaid gift deeds, defendant No.1 put defendant No. 2 in actual physical possession of the suit land gifted by her and on the basis of five gift deeds, five mutations were entered and duly sanctioned by Assistant Collector 1st Grade, Anandpur Sahib vide order dated 28.02.2006. The land-in-suit was self-acquired property of Chint Kaur defendant No. 1 and she was competent to execute the said gift deeds. The defendant No. 2 is having

ownership rights and possessory title in the khata in her own capacity as shown in copy of jamabandi for the year 2002-2003. It was admitted that Kesra Singh and Mehar Singh were the sons of Deva Singh. However, it was denied that the suit property came into the hands of Kesra Singh as ancestral property. Rather the estate then acquired by Kesra Singh was his self-acquired property and he was dealing with his property as its exclusive owner in possession. This fact is evident when Kesra Singh executed sale deed dated 27.08.1985 regarding 34 kanal – 3 marlas out of total land in favour of his wife and mutation was also sanctioned. The said sale deed was never questioned nor challenged by the plaintiff though she was aware of said sale since the year 1985. Therefore, the plaintiff was estopped by her act and conduct and long silence from bringing the present suit, which was hopelessly barred. It was further submitted that the five gift deeds all dated 30.05.2005 duly executed by Chint Kaur defendant No.1 are legal and valid documents which stood proved before the Civil Court in CS No. 278/08.08.2005 titled “Bhajan Kaur and another versus Surjit Kaur and Sukhdev Singh”, wherein Chint Kaur made judicial statement dated 16.08.2005 in respect of gifting of the land-in-suit in favour of defendant No. 2 Bhajan Kaur and that suit was ultimately dismissed as withdrawn. The plaintiff has no right to bring the present suit which was utterly false, baseless and vexatious. It was denied that Chint Kaur was mentally deficient. The alleged mutation No. 215 sanctioned on 28.06.1922 was also denied for want of knowledge. By denying the remaining facts stated by the plaintiff, it was alleged that she has no cause of action to file the present suit. The suit filed by her was false, frivolous and just to harass the answering defendants. It was prayed that the suit

filed by the plaintiff may be dismissed.

5. In replication, the plaintiff denied the facts stated in the written statement and reiterated her claim in the plaint.

6. From the pleadings of the parties, following issues were framed by the trial Court on 06.11.2006 :-

(1) Whether the gift deeds dated 30.05.2005 executed by the defendant No. 1 in favour of the defendant No. 2 are illegal, null and void and are liable to be set aside? OPP

(2) If issue No. 1 is proved then whether the plaintiff has become co-owner of the suit land? OPP

(3) If issues No. 1 and 2 are proved, then whether the plaintiff is entitled to perpetual injunction restraining the defendants from dispossessing the plaintiff as well as alienating her share in the suit land? OPP

(4) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD

(5) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

(6) Whether the suit is not maintainable in the present form? OPD

(7) Relief.

7. During the pendency of the civil suit, defendant No. 1 Chint Kaur expired leaving behind her legal heirs i.e. plaintiff Surjit Kaur and defendant No. 2 Bhajan Kaur and accordingly, amended memo of parties was taken on record.

8. In order to prove the suit, the plaintiff Surjit Kaur examined herself as PW-1. The plaintiff also examined Jarnail Singh as PW-2, Param Singh as PW-3, Hardish Kaur as PW-4, Joga Singh as PW-5, Balbir Singh as PW-6 and Uday Singh as PW-7. Thereafter, learned counsel for the plaintiff tendered documents i.e. Ex.P-13 to Ex.P-46, Ex.P16/A and Mark-B to Mark-K and closed the evidence.

9. In order to rebut the case of the plaintiff, the defendant No. 2 Bhajan Kaur herself stepped into the witness box as DW-5. She also examined Om Nath, Deed Writer, Tehsil Complex, Nangal as DW-1, Prem Chand, Deed Writer, Tehsil Complex, Nangal as DW-2, Jaspal Singh as DW-3, Anita Sharma as DW-4 and Balkar Singh as DW-6 and closed the oral evidence. Thereafter, learned counsel for the defendant No. 2 tendered documents i.e. Ex.D-10 to Ex.D-31, Ex.D-10/A, Ex.D-11/A, Ex.D-12/A and Mark-A and Mark-B and closed documentary evidence.

10. In rebuttal evidence, the learned counsel for plaintiff tendered documents Ex.P-38 to Ex.P-46 and Mark-X to Mark-Z and closed the rebuttal evidence.

11. After hearing the arguments advanced by learned counsel for both the parties, the suit filed by the plaintiff was dismissed vide judgment and decree dated 28.07.2014. Feeling aggrieved of this judgment and decree, the plaintiff Surjit Kaur filed Civil Appeal No. 229 dated 06.09.2014 which was also dismissed vide judgment and decree dated 18.09.2015. Feeling aggrieved of this judgment and decree, the present Regular Second Appeal has been filed.

12. I have heard the arguments advanced by learned counsels for both the parties. The learned counsel for the appellant/plaintiff argued that the judgment and decree passed by the Courts below are against the facts proved on record and against the law. The findings on issues No. 1 to 3 are without any justification. The property in the hands of Kesra Singh was ancestral property inherited from his father and forefather. The sale deed executed by Kesra Singh in favour of his wife Smt. Chint Kaur was without consideration or legal necessity. Therefore, Smt. Chint Kaur could

not have become owner of the property on the basis of sale deed dated 27.08.1985 being their ancestral property. The gift deeds all dated 30.05.2005 alleged by the respondent /defendant No. 2 Bhajan Kaur are the result of undue influence, since the donor and the donee are closely related to each other being mother and daughter. In-fact, the appellant/plaintiff Surjit Kaur was looking after her mother while staying with her mother in their parental village at Bela Ramgarh, Tehsil Anandpur Sahib, District Ropar. She had gone out in connection with the delivery of Hardish Kaur, daughter-in-law in relation and during that period, Bhajan Kaur managed to procure the gift deeds dated 30.05.2005 regarding the property standing in the name of Smt. Chint Kaur in her favour. It is pointed out that Smt. Chint Kaur was an old lady of 90 years of age. She was of feeble mind and could not understand her welfare. Under these circumstances, Bhajan Kaur managed to procure the disputed gift deeds in her favour in connivance with the scribe and the marginal witnesses. In order to prove the aforesaid facts, Surjit Kaur herself stepped into the witness box as PW-1 and her version is supported by Jarnail Singh PW-2 and Param Singh PW-3. The appellant/plaintiff had also examined Hardish Kaur PW-4 daughter-in-law of the plaintiff in relation who has proved on record the medical certificate confirming that she delivered a child on 22.05.2005 and during this period, the appellant/plaintiff accompanied her. The appellant/plaintiff has also proved on record the school record of her children to establish that she was staying with her mother and looked after her. After the execution of disputed gift deeds dated 30.05.2005, one suit for permanent injunction was got filed but before the service of defendants in that case, the said civil suit was

withdrawn. The disputed gift deeds as well as the aforesaid civil suit was filed without the knowledge of appellant/plaintiff and when she came to know about these facts, she had filed the present suit. The learned counsel for the appellant/plaintiff also referred to the cross-examination of Bhajan Kaur defendant DW-5 as well as Balkar Singh DW-6 who also stated that Smt. Chint kaur was not mentally alert after the death of her husband Kesra Singh. Therefore, the aforesaid gift deeds dated 30.05.2005 claimed by the respondent/defendant No. 2 Bhajan Kaur are result of fraud, misrepresentation and undue influence and the same are liable to be set aside. It is prayed that the findings given by the Courts below are without merits. Therefore, the impugned judgment and decree dismissing the suit filed by the plaintiff as well as dismissing her appeal may kindly be set aside and the suit filed by the appellant/plaintiff Surjit Kaur may be decreed, as prayed for.

13. On the other hand, the learned counsel for the respondent/defendant No. 2 argued that the facts of the case and the evidence on record were duly considered by the trial Court as well as by the first Appellate Court. There is consistent findings in favour of the respondent/defendant No. 2 and there is no reason to set aside the same. In-fact, the respondent/defendant No. 2 led convincing evidence on record to prove the stand taken by her in the written statement. Bhajan Kaur the defendant had stepped into the witness box to prove her case as DW-5 and her version is also confirmed by her son Balkar Singh DW-6. In order to prove the execution of gift deeds dated 30.05.2005, firstly the defendant No. 2 had examined Deed Writer Om Nath DW-1 who proved four gift deeds, all dated 30.05.2005 Ex.D-1 to Ex.D-4 and also proved the relevant

entry in the register of scribe which are Ex.D1/A to D4/A. The fifth gift deed is proved by Prem Chand Deed Writer as DW-2 which is Ex.D-5 and the relevant entry of the register is Ex.D5/A. One of the marginal witness Jaspal Singh is also examined as DW-3 to prove the execution and registration of aforesaid gift deeds executed by Smt. Chint Kaur, defendant No. 1 and the said gift deeds were duly accepted by Bhajan Kaur, respondent/defendant No. 2. The learned counsel for respondent/defendant No. 2 also referred to the statement of Anita Sharma, Record Clerk DW-4 who has proved on record the copy of plaint in civil suit No. 278 dated 08.08.2005, titled "Bhajan Kaur and another versus Surjit Kaur and another" Ex.D-7. In the said civil suit, Smt. Chint Kaur had appeared before the Court on 16.08.2005 and had withdrawn the said civil suit. The copy of statement is Ex.D-6 and the order of the Court dated 16.08.2005 is Ex.D-8. The aforesaid record was rightly considered and appreciated by the learned trial Court as well as by the first Appellate Court and thereafter, the suit filed by the plaintiff as well as first appeal were dismissed. There is no convincing evidence produced on record to show that Smt. Chint Kaur was not mentally fit to execute the aforesaid gift deeds dated 30.05.2005 challenged by the appellant/plaintiff Surjit Kaur. Therefore, the appeal preferred by the appellant/plaintiff is without merits and deserves dismissal.

14. I have considered the arguments and have gone through the record of trial Court file carefully. It is the case of appellant/plaintiff that she is joint owner/co-sharer in the suit property standing in the name of Smt. Chint Kaur, widow of Kesra Singh firstly by claiming that the property in dispute in the hands of her father Kesra Singh was their Joint

Hindu Family coparcenary ancestral property. Therefore, Kesra Singh was not competent to execute sale deed dated 27.08.1985 in favour of his wife Chint Kaur and she has also challenged the gift deeds all dated 30.05.2005 executed by Chint Kaur regarding the properties in her hands in favour of her daughter Bhajan Kaur by alleging that the said gift deeds are result of fraud, misrepresentation and undue influence since Chint Kaur was of feeble mind. In the grounds of appeal, the appellant/plaintiff has again insisted on her stand that the property in the hands of Kesra Singh was their ancestral property but the perusal of trial Court file shows that the counsel for plaintiff had given up the claim regarding ancestral Joint Hindu Family coparcenary nature of the property by making statement dated 08.07.2014. Therefore, the property in the hands of Kesra Singh is to be considered as his self acquired property.

During the course of arguments, the learned counsel for the appellant/plaintiff did not advance any argument regarding the sale deed dated 27.08.1985 executed by Kesra Singh in favour of his wife, measuring 34 K – 3 M being 1/4th share in 136 K – 11 M of land. The learned counsel for appellant/plaintiff has advanced the arguments only challenging the five registered gift deeds all dated 30.05.2005 executed by Chint Kaur in favour of her daughter Bhajan Kaur respondent/defendant No. 2. Therefore, the matter in controversy is whether Chint Kaur was competent to execute the aforesaid gift deeds or not.

It is the case of appellant/plaintiff that Chint Kaur was 90 years of age and she was of feeble mind. She was not in a position to think about her welfare. Under these circumstances, Bhajan Kaur respondent/defendant No. 2 managed to get the aforesaid five gift deeds

dated 30.05.2005 executed in her favour by way of fraud, misrepresentation and undue influence. The appellant/plaintiff has tried to prove this fact by leading oral evidence. She herself stepped into the witness box as PW-1 and further examined Jarnail Singh as PW-2 and Param Singh, Ex-Sarpanch as PW-3. Firstly, on the basis of oral statements of the aforesaid witnesses, in the absence of any medical record, it cannot be said that Chint Kaur was of feeble mind to the extent that she was not competent to execute the aforesaid gift deeds all dated 30.05.2005. The learned counsel for the appellant/plaintiff referred to the cross-examination of Bhajan Kaur DW-5 where she admitted that Chint Kaur after the death of her husband was badly effected. Similarly, Balkar Singh DW-6 during his cross-examination further stated that for the last about three years his grandmother was not fully well. It cannot be ignored that Chint Kaur was an old lady having grandchildren. At the age of 85-90 years, it cannot be expected that she will be physically fit as compared to a young person or a middle aged person. Chint Kaur lost her husband and the adverse effect on her for losing her husband is quite natural. From the aforesaid facts, it cannot be gathered that Chint Kaur was mentally unstable and not competent to execute the aforesaid gift deeds all dated 30.05.2005. On the contrary, the respondent/defendant No. 2 has examined the scribe Om Nath DW-1, Prem Chand, Deed Writer DW-2 and Jaspal Singh, marginal witness DW-3 who have duly proved on record the disputed five gift deeds dated 30.05.2005 Ex.D-1 to Ex.D-5. The aforesaid gift deeds are registered documents. There is endorsement of Sub-Registrar along with their joint photograph. Under these circumstances, it cannot be said that Chint Kaur was not mentally fit to execute the

aforesaid documents. Apart from this, Bhajan Kaur along with Chint Kaur filed suit for permanent injunction against the present appellant/plaintiff Surjit Kaur and her son Sukhdev Singh. The copy of plaint is Ex.D-7 and in the said civil suit, Chint Kaur appeared in the Court on 16.08.2005 where Chint Kaur and Bhajan Kaur gave their joint statement that the matter was settled with the intervention of Panchayat. Therefore, the said civil suit was withdrawn. The copy of that statement is Ex.D-6 and accordingly, the suit was dismissed as withdrawn vide order dated 16.08.2005, which is Ex.D-8. On the basis of aforesaid gift deeds, during the pendency of present case, mutation was also sanctioned in favour of Bhajan Kaur respondent/defendant No. 2. In the light of aforesaid facts, the appellant/plaintiff has failed to prove the stand taken by her in the plaint. Since, the property was owned by Chint Kaur, she had every right to deal with the same as per her desire. She preferred to execute five registered gift deeds all dated 30.05.2005 in favour of her daughter Bhajan Kaur by leaving aside her another daughter Surjit Kaur i.e. the appellant/plaintiff. The facts of the case and the evidence on record were rightly considered and appreciated by the Courts below.

The facts of the case and the evidence on record were rightly appreciated by both the Courts. In the given facts and circumstances of the case, I do not find any reason to interfere in the verdict given by the Courts below and the same are accordingly, upheld. No substantial question of law arises in this appeal. With this observation, finding no merits in the Regular Second Appeal filed by the appellant/plaintiff Surjit Kaur, the same is accordingly, dismissed.

RSA-3259-2016 (O&M)

-14-

The photocopy of record received from lower Court be sent back to the concerned quarter.

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

02.12.2023

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(AMARJOT BHATTI)
JUDGE

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