



RSA-501-1993 (O&M)

-1-

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

(101)

RSA-501-1993 (O&M)

Date of decision:- 03.12.2024

Bahadur Singh and another**...Appellants****Versus****Harjinder Kaur and others****...Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Sumit Sinha, Advocate, for the appellants.

Mr. J.S.Virk, Advocate, for respondents No.1 to 5.

None for respondent No.6.

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SUVIR SEHGAL, J. (Oral)

1. Appellants-defendants No.1 and 2, are in second appeal before this Court, challenging the concurrent findings recorded by the Courts below.

2. Respondents No.1 to 5-plaintiffs filed a suit for separate possession of their 1/5th share in the suit property by way of partition. Pleaded case of the plaintiffs is that Kishan Singh was the exclusive owner of land measuring 2 kanals, 16 marlas, in village Madhopur, Tehsil Phagwara, District Kapurthala, situated within the abadi of the village. Kishan Singh's wife pre-deceased him and after his death, his legal heirs comprising four sons and five daughters became the owners in joint possession of the suit property to the extent of their respective shares. Lachhman Singh, one of the sons, expired and his legal heirs became the owners of the suit property to the extent of the 1/9th share, which

they sold to Tirath Ram, respondent No.6-defendant No.3. Another legal heir,

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Mohan Singh, sold his 1/9th share in favour of Tirath Ram, who became the owner of 2/9th share in the suit property. Claiming that the plaintiffs are owners to the extent of 5/9th share and the defendants own the remaining 4/9th share, plaintiff filed a suit for possession.

3. Upon notice, suit was contested by defendants No.1 and 2 and defendant No.3, by filing written statements. In their response, defendants No.1 and 2, averred that Kishan Singh had given the suit property by way of an oral gift to defendant No.1, who made some construction as well as spent on the improvements in the property. In its separate written statement, defendant No.3, took a stand that he had purchased 2/9th share in the suit property from Lachhman Singh and Mohan Singh, sons of Kishan Singh, and had constructed a building and is residing there. Plaintiffs filed a replication controverting the stand taken by the defendants in their written statement and re-asserted the claim. On the basis of the pleadings of the parties, Trial Court framed issues. After trial, by judgment dated 09.06.1990, Trial Court passed a preliminary decree for separate possession of 5/9th share in favour of the plaintiffs by way of partition. Defendants No.1 and 2, were held to be entitled to 1/9th share each, whereas, defendant No.3, was found to be entitled to 2/9th share in the suit property. Appeal preferred by appellants-defendants No.1 and 2, was rejected by the learned Additional District Judge, vide judgment dated 13.01.1993, and the findings recorded by the Trial Court were affirmed. Defendants No.1 and 2, have filed the present appeal in the above background.

4. I have heard counsel for the parties and examined the record with their able assistance.



5. The admitted case of the parties is that Kishan Singh, who is the predecessor of the appellants and respondents No.1 to 5, was the owner of the suit property. The appellants claim to have become the owners of the property by virtue of an oral gift deed executed by the deceased in their favour. However, they failed to establish the gift. In their written statement, they have not given the details of date or place where the property was verbally gifted to the appellants. In their evidence, the appellants have given different details of the verbal gift by the deceased. Section 123 of the Transfer of Property Act, 1977, provides that a gift of an immovable property can only be affected by a registered instrument signed by or on behalf of the donor and has to be attested by two witnesses, or by delivery of its possession. Concededly, there is no written instrument to establish the transfer of suit property by way of gift. Therefore, the plea seems to have been taken by the appellants simply to defeat the right of the plaintiffs and it cannot be accepted. The appellants could not even prove their claim that they have made any improvement in the suit property. They have not led any evidence to establish expenses incurred by them or show any alteration made in the suit property. Therefore, the second plea taken by the appellant is also rejected.

6. During the pendency of the instant appeal, an application (CM-1080-C-1993) was filed by Smt. Sampuran Kaur—respondent No.2, which is supported with her affidavit, whereby, she has relinquished her share in the suit property in favour of Bahadur Singh—appellant No.1. Counsel representing respondents No.1 to 5, could not dispute this development.



7. In view of above discussion, there is no merit in the appeal and the findings recorded by the Courts below do not call for any interference. Noticing the affidavit filed by respondent No.2, the judgments and decrees passed by both the Courts, deserve to be modified. Accordingly, appellant No.1 is held to be entitled to 2/9th share in the suit property, whereas, respondent No.2 would not be entitled to any share. The share of the other parties in the suit property as determined by the Courts below, would remain as it is.

8. With the above modification, appeal is disposed of.

9. As the main case has been decided, pending applications are also disposed of.

(SUVIR SEHGAL)
JUDGE

03.12.2024
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes