

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****136****RSA No.167 of 1989 (O&M)****Reserved on : 08.05.2024****Date of Decision : 13.05.2024**

Narain Singh (deceased) through LR's

....Appellants

VERSUS

Smt. Dhan Kaur (deceased) through LR's and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.S. Yadav, Advocate for the appellants.

Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Mukesh Rao, Advocate and
Mr. Shubham Aneja, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the defendant No.1 - Narain Singh - challenging the judgments and decrees dated 31.07.1986 and 03.11.1988 passed by the Trial Court and the First Appellate Court respectively.

2. The brief facts relevant to the present case that the plaintiff-respondent No.1 - Dhan Kaur - filed a suit seeking a declaration that lease deed dated 19.09.1980 executed in favour of the defendant No.1-appellant was illegal, null and void and not binding on the rights of the plaintiff-respondent No.1 and for seeking possession of land measuring 84 Kanals 16 Marlas situated in the revenue estate of village Kharkhari Bhiwan fully described in the plaint and total land measuring 57 Kanals situated in the revenue estate of village Bharawas, Tehsil Rewari, District Mohindergarh.

The case set up by the plaintiff-respondent No.1 was that she was owner in



possession of land measuring 84 Kanals 16 Marlas situated in the revenue estate of village Kharkhari and land measuring 57 Kanals situated in the revenue estate of village Bharawas vide Jamabandi for the year 1978-79. It was further the pleaded case of the plaintiff-respondent No.1 that she was an old *Pardanashin* lady and resided at Jaipur with her son Koshal Singh and that Narain Singh (defendant No.1-appellant) was also her son. Defendant No.2 is the son of Narain Singh. It was further the case set up that the plaintiff-respondent No.1 executed a general power of attorney in favour of defendant No.1-appellant for looking after the land and it was not the intention that the defendant No.1-appellant should dispose off the land. However, to deprive her of her right in the land he got his name entered in the revenue record as in possession and executed a lease deed for 99 years on 19.09.1980 in favour of his son Hamir Singh i.e. defendant-respondent No. 2 herein at the rate of ₹ 350/- per annum. The lease deed itself was challenged as being null and void. The suit was contested by the defendant No.1-appellant on the ground of *locus standi* and the suit being bad for non-joinder of necessary parties. It was further averred in the written statement that Koshal Singh, general power of attorney holder of the plaintiff-respondent No.1, had filed the suit for ulterior motives. It was further the case set up that plaintiff-respondent No.1 was not the owner of the land and that the land had been inherited by defendant No.1-appellant and Koshal Singh from their father in the year 1942 prior to the passing of the Hindu Succession Act, 1956 and that the land in dispute had been orally gifted by Koshal Singh and defendant No.1-appellant to the plaintiff-respondent No.1 to save their land from surplus pool. It was further the pleaded case that possession was never delivered and that there was no acceptance of the oral



gift. Replication was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is owner of the land in dispute as alleged ? OPP
2. Whether the land in dispute was given to the plaintiff by way of oral and fictitious gift by defendant No.1 and Koshal Singh as alleged, if so to what effect ? OPD
3. Whether 'Patanama' dated 19.09.1980 is null and void on the grounds alleged ? OPD
4. Whether the defendant No.1 is in possession of the land in dispute as licensee under plaintiff ? OPP
5. If issue No.4 proved whether the licence has been validly terminated ? OPP
6. Whether the suit is within time ? OPD
7. Whether the suit has not been properly valued for purpose of court fee and jurisdiction ? OPD
8. Whether the suit is collusive between the plaintiff and Koshal Singh, if so to what effect ? OPD
9. Whether the suit is not maintainable in the present form ? OPD
10. Whether the parties were governed by custom of agriculture in the matter of succession and inheritance, if so what that custom ? OPD



11. Whether the defendants are estopped by their act and conduct from challenging the ownership of the plaintiff over the land in dispute as alleged ? OPP

12. Relief.

3. The Trial Court vide judgment and decree dated 31.07.1986 decreed the suit. Aggrieved by the same an appeal was preferred by defendant No.1-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 03.11.1988. Hence, the present regular second appeal by the defendant No.1-appellant.

4. The only argument raised by learned counsel for the defendant No.1-appellant is that the land was never owned by the plaintiff-respondent No.1 and rather the same was gifted by the defendant No.1-appellant and Koshal Singh to their mother vide an oral gift in order to save the land from surplus pooling. It is further the contention that the oral gift was never accepted and hence she never became owner of the suit land.

5. *Per contra* learned counsel for the plaintiff-respondent No.1 would contend that after the oral gift, mutation dated 19.02.1952 (Ex.PQ and Ex.PR) were entered in favour of the plaintiff-respondent No.1 on the basis of the oral gift. Once the mutation was entered, that itself would show that the gift stood accepted by the plaintiff-respondent No.1. Thereafter, the revenue record clearly reflects the plaintiff-respondent No.1 as owner in possession of the suit land.

6. I have heard learned counsel for the parties.

7. In the present case both the Courts have concurrently held that the oral gift had been made by the sons of the plaintiff-respondent No.1 in her favour which stood accepted and the mutation was also entered qua the



same on 19.02.1952 (Ex.PQ and Ex.PR). The gift was not only accepted by the plaintiff-respondent No.1 but was also recognized as such by the defendant No.1-appellant herein inasmuch as on the basis of the attorney given to him by the plaintiff-respondent No.1 for looking after the land he leased the same out for a period of 99 years on 19.09.1980 in favour of his own son i.e. defendant-respondent No.2. Both the parties clearly understood that the property had been gifted by way of an oral gift which was duly accepted by the plaintiff-respondent No.1 and was subsequently acted upon by both the parties. That being so, no fault can be found with the judgments and decrees passed by both the Courts. No other point was argued.

8. In view of the above, no question of law muchless substantial question of law arises for determination in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.05.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES.NO