



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

107+241

**CM-1026-LPA-2024 &
CM-2272-LPA-2024 &
CM-876-LPA-2021 &
CM-2112-LPA-2021 &
CM-3800-LPA-2023 &
LPA-330-2021**

**Reserved on: 28.08.2024
Date of decision: 10.09.2024**

DALBARA SINGH

.....APPELLANT

V/S

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Dalbara Singh, appellant in person.

Ms. Arundhati Kulshreshta, Assistant Advocate General, Punjab.

**Mr. Ram Bilas Gupta, Advocate,
for respondents No. 5 to 7.**

RITU TAGORE, J.

CM-1026-LPA-2024

Prayer in this application is for placing on record Affidavit of respondent No. 5 and letter dated 30.11.2017 as Annexures R-1 and R-2.

For the reasons mentioned in the application, the same is allowed subject to just exceptions. Affidavit of respondent No. 5 and letter dated 30.11.2017 are taken on record as Annexures R-1 and R-2.

CM-2272-LPA-2024

Prayer in this application is for permission to place on record the counter reply of petitioner to the affidavit of respondent No. 5 as Annexures A-1 to A-7.

For the reasons mentioned in the application, the same is allowed subject to just exceptions. Counter reply of petitioner to the affidavit of respondent No. 5 is taken on record as Annexures A-1 to A-7.

LPA-330-2021 (O&M)

1. Challenge in the present Letters Patent Appeal is to the order of the learned Single Judge dated 12.02.2020 passed in **CWP No. 14420 of 2019**, whereby petitioner's prayer for a share in the property of his father, has been rejected by observing that no relief can be granted to the petitioner/appellant unless and until the registered gift deed dated 27.05.2016 is set aside. However, the petitioner has been afforded the liberty to challenge the gift deed dated 27.05.2016 in accordance with the applicable legal provisions, if so advised and permitted by law.

2. Brief facts of the case are that a registered gift deed dated 27.05.2016 was executed by the father of the petitioner, namely, Bachan Singh in favour of his daughter-in-law Amarjit Kaur wife of Ranjit Singh and mutation No. 8934 was entered on 13.06.2016 on the basis of the said gift deed. The said gift deed was disputed by the appellant, claiming his share out of the ancestral property held by his father Bachan Singh. Consequently, the mutation was declared a contested mutation. On 14.09.2016, the said mutation was sanctioned after hearing the parties, as the said gift deed was found to be legal and valid. According to the appellant, a mercy appeal was filed by him, on which *ex-parte* order was passed by the Tehsildar, Payal, without hearing him. The appellant also filed a mercy appeal before the Deputy Commissioner, Ludhiana and Tehsildar-cum-Sub-Divisional Magistrate, Payal but no action was taken on the said appeals.

3. The appellant made complaints against the aforesaid mutation before various authorities. In compliance with the order dated 28.05.2019 passed by this

Court in CWP No. 14420 of 2019, the Deputy Commissioner, Ludhiana was directed to get an enquiry conducted. Consequently, Tehsildar, Payal conducted the enquiry after verification of the revenue record of the Sub-Registrar, Payal and submitted affidavit dated 27.08.2019 in the Court, wherein he affirmed the factum of execution of gift deed by Bachan Singh in favor of his daughter-in-law Smt. Amarjit Kaur.

4. Appellant, who appears in person, submits that he is legally entitled to his share from ancestral property being son of the owner of the property, namely, Bachan Singh. He submits that he has no place to live and great injustice has been done to him. He is entitled to a share in the ancestral house and land measuring 11 Bigha 13 Biswa, owned by his father Bachan Singh. The revenue authorities wrongly mutated the ancestral property in the name of respondent No. 5-Amarjit Kaur based on the registered gift deed dated 27.05.2016. It is urged by the appellant that learned Single Judge did not decide the matter on merits.

5. Per contra, learned counsel for the State and learned counsel for respondents No. 5 to 7, contend that the writ petition has been rightly dismissed by the learned Single Judge as the appropriate remedy for the appellant is to file a civil suit challenging the gift deed and the mutation sanctioned thereon. It is argued that Writ petition is not maintainable when other efficacious remedy is available. The instant appeal has also been challenged on the ground of delay and laches, with the claim that gift deed was registered on 27.05.2016 and same was challenged in the year 2019. The learned Counsel for respondents No. 5 to 7 submits that the appellant has a residential house in Dhamot Kalan, District Ludhiana, as admitted by him in his application Annexure R-2. A prayer is made for dismissal of the present Letters Patent Appeal as it lacks merits.

6. We have heard the appellant, who appeared in person, the learned counsel for the State as well as the learned counsel for respondents No. 5 to 7 and with their able assistance, have gone through the records of the case.

7. From the record, it is explicit that the appellant is seeking a share of the property recorded in the name of his father Bachan Singh, claiming it to be the ancestral property. The appellant disputes the validity of the registered gift deed dated 27.05.2016, allegedly executed by his deceased father regarding the said property, in favour of his daughter-in-law Amarjit Kaur wife of Ranjit Singh and also challenges the sanctioning of Mutation No. 8934 entered on 13.06.2016 pursuant to the aforementioned gift deed.

8. Further from the record, it transpires that the appellant, contested the mutation of the gift deed, and the revenue authorities after hearing the appellant and other affected parties, sanctioned the mutation on 14.09.2016, finding the registered gift deed dated 27.05.2016 as a legal and valid document. The appellant, dissatisfied with the proceedings conducted by the revenue authorities regarding the sanctioning of mutation, challenged the same through CWP No. 14420 of 2019 titled as 'Dalbara Singh vs. State of Punjab and others'.

9. Learned Single Judge, after hearing the appellant, the State, and further considering the record, the enquiry report dated 26.08.2019 prepared by Tehsildar, Payal, Ludhiana pursuant to the orders passed by this Court in the above-mentioned writ petition, vide order dated 12.02.2020, dismissed the writ by observing as under:-

“The petitioner seeks a share in the property of his father through this writ petition.

The father of the petitioner, namely, Bachan Singh executed a registered gift deed dated 27.5.2016 in favour of his daughter-in-law

Amarjit Kaur wife of Ranjit Singh. On the basis of said gift deed, mutation no. 8934 was entered on 13.6.2016. The petitioner disputed the gift deed and, thus, the mutation was declared a contested mutation. After hearing the parties, the said mutation was sanctioned on 14.9.2016 by finding that the registered gift deed dated 27.5.2016 was a legal and valid document.

The petitioner made a complaint against the aforesaid mutation to various authorities whereupon this Court directed the Deputy Commissioner, Ludhiana, to get an enquiry conducted. Consequently, an enquiry was conducted by the Tehsildar, Payal and report dated 26.8.2019 has been placed on record. According to this enquiry report, the mutation has been sanctioned on the basis of the registered gift deed and if the petitioner is aggrieved by the gift deed, his only remedy is to file a civil suit challenging the same. Unless and until the gift deed is set aside, mutation has to be sanctioned on its basis.

The petitioner who is appearing in person submits that a counter to the aforementioned report and affidavit, under which the report was placed on record, has been filed through C.M.No.17407 of 2019 and no reply thereto has been filed till date.

No reply is required to be filed to the said application as the same is only for placing on record a counter to the affidavit aforementioned along with annexures. The annexures are nothing but the affidavit aforementioned along with the enquiry report as well as a complaint dated 3.5.2016.

The petitioner insists that he has a share in the property of his father and he must be granted the same.

Unless and until gift deed dated 27.5.2016 is set aside, no relief can be granted to the petitioner.

Thus, the writ petition is dismissed being meritless. The petitioner shall, however, be at liberty to challenge the gift deed dated 27.5.2016 in accordance with law, if so advised and if permissible under the law.”

10. On 30.09.2022, respondent No. 5-Amarjit Kaur along with her son Hakam Singh appeared in this appeal and submitted that the appellant has a separate house in Village Dhamot, District Ludhiana. Thereafter, a report was sought from the State. As per the status report filed by way of affidavit dated 05.12.2022 of Sub-Divisional Magistrate, District Ludhiana, the appellant is not residing in Village Dhamot and does not own any land or residential house in the village.

11. In light of the factual matrix, wherein the appellant has raised significant disputed questions of fact, the sole remedy available to the appellant is to file a civil suit, which is a proper and efficacious remedy to contest both the validity of the registered gift deed and the mutation entered and sanctioned pursuant to the gift deed, as permitted under the law.

12. It is settled position of law that the writ petition is not maintainable when disputed questions of fact are involved and require detailed and elaborate evidence to adjudicate upon the issues, which can only be possible in a case, a civil suit is filed. The existence of an effective alternate remedy is a good ground for the Court to decline to exercise the jurisdiction under Article 226 of the Constitution of India.

13. As noted, the appellant has raised the disputed questions of fact by challenging the gift deed, nature of the property the subject matter of the gift deed, his entitlement to a share in the property. All these issues are dependent on the facts and the evidence, and cannot be decided or dealt in the writ petition. Such serious and disputed rival claims of the parties that the property was ancestral are required to be investigated and determined on the basis of the evidence which may be led by the parties in a properly instituted civil suit rather than by a Court exercising the prerogative power of a writ jurisdiction.

14. Therefore, an existence of an alternate remedy is undoubtedly is a matter to be borne in mind in deciding the relief in a writ jurisdiction. In plethora of judicial decisions, it has been held that though there are no fetters in entertaining the writ petition under Article 226 of the Constitution of India. However, the High Court will not entertain a petition under Article 226 if an effective alternate remedy is available to the aggrieved person under the statute. Therefore, when a statutory forum is created by law for redressal of grievance, a writ petition should not be entertained ignoring the statutory dispensation.

15. In light of the above discussion and the relief claimed by the appellant, we are of the considered opinion that the learned Single judge rightly dismissed the writ petition filed by the appellant. The learned Single Judge correctly concluded that no relief could be granted to the appellant as pleaded in the writ petition unless the registered gift deed dated 27.05.2016 is set aside. Apropos, the appellant was given the liberty to challenge the said gift deed dated 27.05.2016 in accordance with law, if so permissible under the law.

16. In view of the aforesaid discussion, we are of the considered opinion that there is no infirmity in the order passed by the learned Single Judge. Accordingly the appeal is dismissed being devoid of merit. However, the

appellant is at liberty to assuage his cause by seeking any civil remedy, as available and permissible under the law.

17. Pending applications, if any, also stand disposed of accordingly.

(G.S.SANDHAWALIA)
JUDGE

(RITU TAGORE)
JUDGE

September 10th, 2024
pj

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether reportable:</i>	<i>Yes/No</i>