

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****123****RSA No.1270 of 2018 (O&M)****Reserved on : 10.07.2024****Date of Decision : 26.07.2024**

Hanif

....Appellant

VERSUS

Balkeesh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ranjit Saini, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant No.3-appellant aggrieved by the judgments and decrees dated 19.10.2013 and 06.07.2017 passed by the Trial Court and the First Appellate Court, respectively.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration and permanent injunction against the defendants averring that she is the real daughter of defendant no.1 and that her father, Umardeen, had died on 31.10.2007. Umardeen was the owner of the suit property and after his death his wife i.e. the defendant No.1 (mother of the plaintiff-respondent No.1) became owner in possession of the suit property. It was further averred that marriage of the plaintiff-respondent No.1 was solemnized with one Saleem in 1993 and after marriage both the plaintiff-respondent No.1 and her husband started residing with the parents of the plaintiff-respondent No.1 in the suit property. It was further alleged that the

plaintiff-respondent No.1 and her husband were taking care of the mother i.e. defendant No.1 as she was an old lady and remained ill. As the plaintiff-respondent No.1 and her husband were providing defendant No.1 with all the daily necessities of life, in lieu of the services rendered by them the defendant No.1, by an oral family settlement and with her free will, put the plaintiff-respondent No.1 and her husband into actual and physical possession of the suit property where the plaintiff-respondent No.1 along with her husband were residing without any obstruction or interference from any quarter and had become absolute owner in possession of the suit property. As per the plaintiff-respondent No.1 the defendant Nos.2 and 3 were harassing the plaintiff-respondent No.1 unnecessarily and threatening to dispossess her from the suit property on the false pretext that the suit property was donated to the Mosque (Masjid) by the father of the plaintiff-respondent No.1. Defendant Nos.2 and 3 had no concern with the suit property but were intending to dispossess the plaintiff-respondent No.1 from the suit property forcibly and illegally. Hence, the suit. On notice, the defendant No.1 (mother of the plaintiff-respondent No.1) admitted her daughter's claim submitting that she had given the suit property to the plaintiff-respondent No.1 exclusively in an oral family settlement and now the plaintiff-respondent No.1 is the absolute owner in possession of the suit property. Defendant Nos.2 and 3 in their joint written statement controverted the claim put forth by the plaintiff-respondent No.1 and stated that her deceased father, Umardeen, had during his life time executed a Gift Deed dated 09.08.1991 bequeathing the suit property in favour of the Mosque located in village Mujafat Kalan and in pursuance thereof he also handed over possession of the suit property to the Mosque. It was also stated that the plaintiff-respondent No.1 was residing in village Dialgarh and

not in village Mujafat Kalan, as alleged and the factum of any family settlement was also denied. It has been denied that the plaintiff has become absolute owner in possession of the suit property.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is exclusive owner in possession of the suit property, as fully detailed and described in head note of the plaint ? OPP
2. Whether plaintiff is entitled to relief for permanent injunction, as prayed for ? OPP
3. Whether suit of the plaintiff is not maintainable ? OPD
4. Whether suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties ? OPD
5. Whether plaintiff is estopped from filing the present suit by her own act and conduct ? OPD
6. Whether Umar Deen son of Roshan Deen executed a gift deed dated 09.08.1991 with regard to the suit property in favour of Masjid, Mujafat Kalan. If so, its effect ? OPD
7. Relief.

4. The Trial Court vide judgment and decree dated 19.10.2013 decreed the suit of the plaintiff-respondent No.1. Aggrieved by the same, an appeal was preferred by the defendant Nos.2 and 3 before the First Appellate Court which appeal was dismissed vide judgment and decree dated 06.07.2017. Hence, the present regular second appeal which has been

preferred only by defendant No.3.

5. Learned counsel for the defendant No.3-appellant would contend that the Courts have erred in decreeing the suit of the plaintiff-respondent No.1. It is argued that it is proved on the record that father of the plaintiff-respondent No.1, Umardeen, had executed the gift deed Ex.D1 which was valid and possession of the suit property was handed over to the Masjid of village Mujafat Kalan and as such there was no occasion to grant any relief to the plaintiff-respondent No.1.

6. I have heard the learned counsel for the defendant No.2-appellant and perused the paperbook.

7. In the present case the sole plank of the case set up by the defendant No.2-appellant is a gift deed dated 09.08.1991 (Ex.D1). However, the Courts have found that the measurement and boundaries given in the gift deed and of the suit property do not tally. Hence, it cannot be inferred that the gift deed pertains to the suit property. Further, the Courts also found that the evidence of the record proved that the possession of the suit property was with the plaintiff-respondent No.1.

8. For a valid gift as per Mohammadan Law, three essential requisites are required, which are as under :

⇒ Declaration of gift by the Doner

⇒ Acceptance of gift by the Donee, and

⇒ Delivery of possession.

Mulla in Principles of Mahomedan Law (19th Edn.) page 120, states the legal position in the following words :

“Under the Mahomedan law the three essential requisites to make a gift valid are: (1) declaration of the gift by the

donor, (2) acceptance of the gift by the donee expressly or impliedly, and (3) delivery of possession to and taking possession thereof by the donee actually or constructively. No written document is required in such a case. Section 129 of the Transfer of Property Act excludes the rule of Mahomedan Law from the purview of Section 123 which mandates that the gift of immovable property must be effected by a registered instrument as stated therein. But it cannot be taken as a sine qua non in all cases that whenever there is a writing about a Mahomedan gift of immovable property there must be registration thereof. Whether the writing requires registration or not depends on the facts and circumstances of each case.”

9. The three essential ingredients have not been found to be satisfied in the present case. Infact, the First Appellate Court found that “*So, in the present case, it has not come on record that Masjid Mujafat Kalan is in possession of the suit property or that possession of the suit property was handed over to the donee/Masjid, Mujafat Kalan at the time of execution of the gift deed Ex.D1. When such is the situation, then, the gift is incomplete*”. It is an admitted position that even mutation of the alleged gift in favour of the Masjid was never done. Learned counsel for the defendant No.3-appellant has been unable point anything on the record to show the possession of the Masjid over the suit property. This Court finds no reason to differ from the findings returned by both the Courts. No other point was argued.

10. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The present appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

26.07.2024
jk

**(ALKA SARIN)
JUDGE**

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