

2024:PHHC:085168



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

RSA-35-2019 (O&M)

Date of decision:-09.07.2024

Rameshwar Dass

....Appellant..

vs.

Lachhmi Devi and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanjay Verma, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 23.01.2015 and 25.09.2018 passed by the Courts below, whereby, a suit for declaration along with consequential relief of permanent injunction filed at the instance of appellant-plaintiff (hereinafter referred to as “appellant”) came to be dismissed.

2. Briefly stating, the dispute relates to the estate left by Smt. Champa Devi, who happened to be mother of appellant (Rameshwar Dass) and respondent No.1-defendant No.1, namely, Lachhmi Devi @ Lakshmi Devi (hereinafter referred to as respondent No.1) besides being the grandmother of respondent No.2-defendant No.2, namely, Amit Kumar (hereinafter referred to as respondent No.2). The suit for declaration claiming ownership and possession of 42 kanals 12 marlas of land (as detailed in the plaint) situated in village Amin, Tehsil Thanesar, District

Kurukshetra was filed at the instance of appellant on the basis of registered Will No.173/3 dated 28.10.1998, whereby the suit land was bequeathed in favour of appellant and respondent No.2 by Smt. Champa Devi, who later died on 11.11.2006. It was pleaded that the gift deed bearing Vasika No.2864 dated 13.06.2005 allegedly executed by deceased-Champa Devi in favour of respondent No.1, as well as mutation No.5061 based thereupon and the subsequent revenue entries were illegal, null & void. The appellant also prayed for grant of injunction for restraining respondent No.1 from dispossessing him as well as respondent No.2 from the suit property in any forcible manner.

3. In response, respondent No.1 appeared and filed written statement while claiming ownership based on a registered gift deed bearing vasika No.2864 dated 13.06.2005 executed by her mother Champa Devi. It was pleaded that in the aforesaid gift deed, possession of the suit property was handed over to respondent No.1, who was thus cultivating the same and the revenue entries were corrected in her name, as such, appellant as well as respondent No.2 were having no right over the same. It was further pleaded that the appellant had already sold more than his share vide various sale deeds and thus, the suit was liable to be dismissed.

4. Respondent No.2 though initially appeared before the trial Court, however, later on, on account of his non-appearance, was proceeded against ex-parte vide order dated 16.03.2013. From the pleadings of the parties, learned Trial Court framed the following issues:-

“1. Whether plaintiff is entitled to a decree for declaration, as prayed for?OPP

2. Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for?OPP

- 3. Whether the suit of the plaintiff is not maintainable? OPD*
- 4. Whether plaintiff has no cause of action to file the present suit? OPD*
- 5. Whether the suit of the plaintiff is time barred? OPD*
- 6. Whether the suit is bad for non-joinder and mis-joinder of the parties? OPD*
- 7. Whether the plaintiff is estopped by his own act and conduct to file and maintain the present suit? OPD*
- 8. Whether the plaintiff has concealed the true and material facts from the Court? OPD*
- 9. Relief.”*

5. The trial Court vide judgment and decree dated 23.01.2015 dismissed the suit filed at the instance of appellant while upholding the valid execution of gift deed dated 13.06.2005 by Champa Devi in favour of respondent No.1.

6. Aggrieved thereof, appellant filed first appeal, however, the same came to be dismissed by the Court of Additional District Judge, Kurukshetra vide judgment and decree dated 25.09.2018.

7. Impugning the aforesaid judgments and decrees passed by the Courts below, learned counsel for the appellant vehemently submits that the gift deed dated 13.06.2005 allegedly executed by Champa Devi in favour of respondent No.1 was a result of fraud and fabrication and the same was thus illegal, null and void, creating no right or interest in favour of respondent No.1. He further submits that the appellant and respondent No.2 were in possession of the suit property, which was never delivered in favour of respondent No.1 by virtue of aforementioned gift deed dated 13.06.2005 and thus, the same was not a valid document in terms of Section 122 of the Transfer of Property Act, 1882. Learned counsel also submits that the valid

execution of Will dated 28.10.1998 by deceased-Champa Devi in favour of appellant as well as respondent No.2 qua the suit property was proved on record and thus, by virtue thereof, they became owner in possession of the suit property and the suit filed at the instance of appellant is liable to be decreed while allowing the present appeal.

8. I have heard learned counsel for the appellant and gone through the paper book as well as records of the case. I am unable to find substance in the submissions made on behalf of the appellant.

9. In the present case, the claim set-up by the appellant qua the property in question vesting in him as well as respondent No.2 is based on registered Will dated 28.10.1998 executed by Champa Devi, whereas, on the contrary the gift deed No.2864 dated 13.06.2005 has been set up by respondent No.1 while claiming that the suit property was transferred in her favour by the mother-Smt. Champa Devi. As per the facts available on record, Champa Devi died on 11.11.2006, thus, in such circumstances, even if the Will dated 28.10.1998 was proved on record, it would not non-suit respondent No.1, in case the valid execution of gift deed dated 13.06.2005 in her favour was established on record especially when the appellant failed to prove the same being result of fraud and forgery with Champa Devi at the hands of respondent No.1.

In the aforesaid context, it may be relevant to point out here that the valid execution of gift deed dated 13.06.2005 by Champa Devi in favour of respondent No.1 has been duly proved on record by her having produced the original gift deed as Ex.D-1. Besides it, even the deed writer/scribe of the gift deed appeared as DW-1, who even produced his original Register and also proved the thumb impression of Champa Devi therein as Ex.D-2.

The deed writer/scribe also deposed that the gift deed was read over to Champa Devi, who upon understanding the contents thereof, affixed her thumb impressions thereupon. In addition, one of the attesting witness to the gift deed, namely, Ranbir Singh appeared as DW-5, besides the Clerk from the office of Sub-Registrar appearing as DW-2 (Dharamjit Singh), who proved the relevant record pertaining to the valid registration of gift deed in question. Even the attesting witness DW2 also proved that the donor-Champa Devi thumb marked the gift deed in question in the presence of both the attesting witnesses, once the contents thereof were read over to her and she understood the same.

As such, Upon appreciation of evidence available on record a concurrent finding of fact came to be recorded in favour of respondent No.1 regarding the valid execution of registered gift deed dated 13.06.2005, which in the present facts and circumstances calls for no interference.

10. On the contrary, as regards the plea raised on behalf of appellant about the gift deed dated 13.06.2005 being result of fraud and fabrication; neither any specific details regarding fraud were ever pleaded in the plaint in terms of Order 6 Rule 4 CPC nor was the same proved by way of any substantive evidence. In such circumstances, even the presumption of valid execution attached to the registered gift deed remained un-rebutted.

11. Last but not the least, no merits even could be found in the plea raised by the appellant that the possession of the suit property not been delivered in favour of respondent No.1 in terms of gift deed dated 13.06.2005, there being no acceptance of the same by her, it became unenforceable in law being an invalid document. In the humble opinion of this Court, the said contention/submission in the given facts and

circumstances and the evidence available on record being devoid of merit, is thus rejected.

A perusal of gift deed dated 13.06.2005, shows that the same contains a specific stipulation as regards the delivery of possession of the property in question in favour of donee i.e. respondent No.1. Even, no such suggestion as regards the said averment in the gift deed being incorrect or false was ever put to respondent No.1 while she appeared in the witness box as DW-6. Furthermore, respondent No.1 while appearing as DW-6 specifically deposed that after the death of her mother Champa Devi, for some period, the suit land was being cultivated through lessee, whereas later she started cultivating same on her own and for the past 7/8 years, it was never leased out. The aforesaid deposition of DW-6 went unrebutted, there being no suggestion to the contrary put to her in the later part of her cross-examination. More than that, as per own admission made by the appellant, since the time of execution of gift deed dated 13.06.2005, the khasra girdawaris were recorded in the name of respondent No.1, reflecting her to be in possession of the suit land.

In such circumstances, on cumulative analysis of the statement made by Lachhmi Devi (DW-6) and appellant-PW-1, read with the contents of registered gift deed containing a specific stipulation about transfer of its subject matter to the donee-respondent No.1, it can be safely concluded that possession of the suit property was handed over to her in terms of the aforementioned gift deed Ex.D-1 and thus, its acceptance by the donee-respondent No.1 was duly proved on record.

12. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts

below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, at this stage, the present appeal being devoid of merits is thus dismissed.

13. Pending application, if any, also stands disposed of.

09.07.2024

(HARKESH MANUJA)
JUDGE

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