



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
112 **RSA-2075-2019 (O&M)**
Date of decision: 11.02.2025

Chokhraj (now deceased) through his LRs **...Appellant(s)**

Vs.

Shamsher Singh and others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Jai Singh Yadav, Advocate for the appellants.

NIDHI GUPTA, J.

The plaintiff is in second appeal before this Court against the concurrent judgments and decrees of the learned Courts below, whereby the suit for declaration and permanent injunction filed by the appellant herein, has been dismissed with costs by both the courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff No.1B'; and the respondents are the 'defendants'.

3. The brief facts of the case as set out by the plaintiff No.1-Chokhraj in the plaint are that he was owner in possession over agricultural land comprised in khewat no. 24 khatoni no. 32 total measuring 44 Kanal 9 Marla to the extent of its $\frac{1}{2}$ share measuring 22 Kanal 4 Marla and in khewat no. 23 khatoni no. 31 total measuring 48 Kanal 8 Marla to the extent of its $\frac{1}{2}$ share measuring 24 Kanal 4 Marla (suit property) situated in the village Fatehpur Pipa, Tehsil and Distt. Rewari vide registered vaseeka no. 2289 dated 25.06.2004. It has been averred that plaintiff no. 1 was real uncle (chacha) of plaintiff no. 1B and defendants no. 1 to 5 who was



unmarried and issueless and so in order to preserve their above-said suit property it was agreed upon that plaintiff no. 1 will equally distribute the suit property in equal shares among plaintiff no. 1B and defendants by way of a gift deed. However, defendants no. 4 and 5 cleverly got registered a gift deed no. 2289 (in dispute) dated 25.06.2004 and got recorded 222/464 share each in their favour whereas got recorded only 20/464 share in favour of plaintiff no. 1B against the will and intention of plaintiff no.1. The above said gift deed was allegedly never read over to plaintiff no. 1 who by acting in good faith had appended his thumb impression thereupon whereas plaintiff no. 1B was intentionally left at home at the time of execution of the above-said deed. That plaintiffs became aware of this fact in 2012 however plaintiff no. 1B and defendants have been cultivating the suit property in equal shares even after the execution of the gift deed no.2289. Hence the suit in hand has been filed and prayer made that the gift deed no.2289 dated 25.06.2004 be declared to have been executed on wrong shares and plaintiff no. 1B and defendants be held declared owners in possession in equal shares over the suit property as well as in the gift deed no.2289. It has further been prayed that any mutation already sanctioned in favour of defendants on the basis of this gift deed no.2289 be set aside and defendants be restrained from interfering in his possession over the suit property as well as alienating the same on the basis of gift deed no.2289. It is further prayed that if during pendency of the suit in hand defendants succeed in alienating the suit property on the strength of gift deed in dispute then the same be restored to its original position.



4. Upon notice, defendant no. 1 appeared and filed written statement admitting the claim of the plaintiff. Defendants no. 2,4 & 5 herein filed their separate written statement resisting the suit and denying fraud on their part. It was pleaded that though plaintiff no. 1 was owner in possession over the suit property but he had purchased a tractor by taking loan amount from bank after mortgaging his (plaintiff no. 1's) land and the same was given by him to plaintiff no. 1B and since plaintiffs could not repay the loan amount, therefore, to preserve their property defendants no. 4 & 5 had repaid the loan amount and so they were given more share by plaintiff no. 1 vide the gift deed no. 2289 and with the consent of all family members. As such, plaintiffs were very well aware of the shares mentioned in the gift deed no. 2289 and plaintiff no. 1 had willingly and after understanding the contents of the gift deed in dispute had appended his thumb impression thereupon. That plaintiff no. 1B was well aware of the gift deed in dispute since in the year 2007 their land was acquired and everyone had received compensation amount in lieu thereof as per their shares in the gift deed in dispute. Upon acquisition of the land, the plaintiff no.1B had filed a petition for increasing the compensation amount and in that petition as well, shares as per the gift deed in dispute have been mentioned. Also, in the year 2007 itself they had received compensation amount in lieu of damage to their crops due to hailstorm which was also given as per their shares in the gift deed in dispute, therefore, the suit in hand is not maintainable and is liable to be dismissed. Defendant no. 3 was proceeded against ex-parte as he did not appear.



5. From the pleadings of the parties, following issues were framed:-

1. Whether the defendant no. 4 and 5 by fraud got wrongly entered their share and share of plaintiff no. 2 in gift deed Vasika no. 2289 dated 25.06.2004?OPP
2. Whether plaintiff is entitled for the decree of declaration as prayed for?OPP
3. Whether the plaintiff is entitled for the decree of permanent injunction as prayed for?OPP
4. Whether the suit of plaintiff is not maintainable?OPD
5. Whether the suit of plaintiff is time barred?OPD
6. Relief.

6. Upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court decided the issues No. 1 to 5 in favour of the defendants No. 2, 4 and 5 and against the plaintiffs; and vide judgment and decree dated 30.03.2016, the learned trial Court dismissed the suit of the plaintiffs with costs. The appeal filed by the appellant/plaintiff was also dismissed with costs by the learned Additional District Judge, Rewari vide judgment and decree dated 18.12.2018. Hence, the present second appeal.

7. Learned counsel for the appellant/plaintiff submits that by way of gift deed dated 25.06.2004, the plaintiff Chokhraj had gifted land in favour of his nephews defendants No.1 to 4 and plaintiff No.1B, namely, Ashok Kumar in equal share. However, vide the said gift, the plaintiff No.1B has got land to the extent of 6K 14 M less. It is contended that plaintiff No.1B ought to have got 22/464 share whereas he has been given 20/464 share. Learned counsel submits that in the present case whole case is based on the Gift deed dated 25.06.2004 in which suit land was got by the

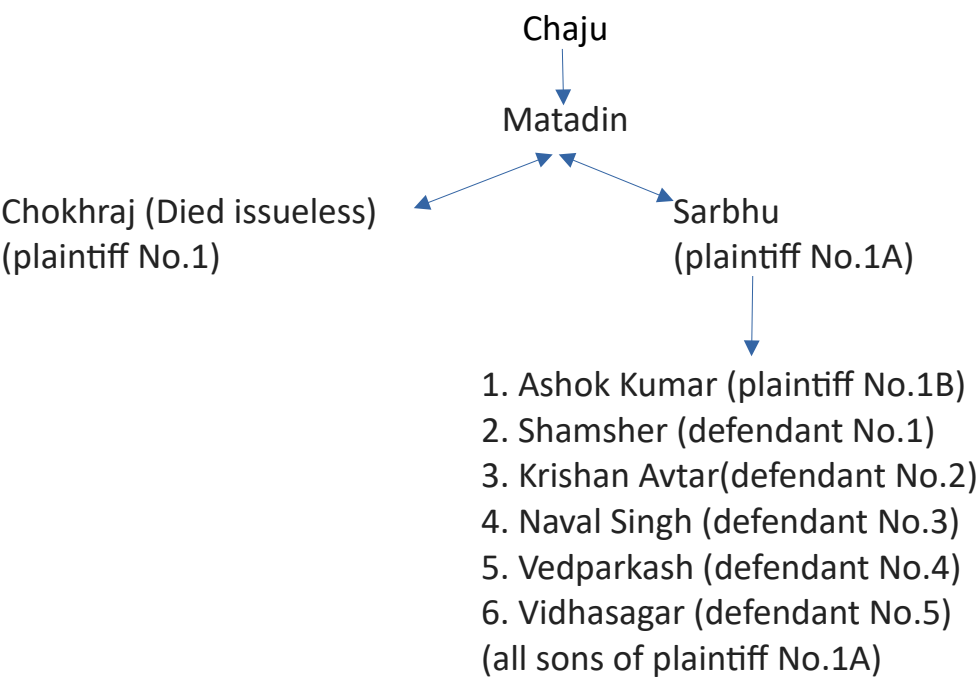
defendants. The said Gift Deed was never been proved. Once it is challenged by the Testator, the Id. court is bound to prove as per law. In the present case it has never been proved. Therefore, judgments and decrees passed by both the courts below are illegal and against the law.

8. It is further submitted that the testator was an old person and he was under the belief that land in question was given in equal shares and once the plaintiff came to know that Gift Deed in question was taken on the basis of fraud, same is challenged by the testator. The Ld court below has wrongly came to conclusion that suit is time barred. It is accordingly prayed that the impugned judgements and decrees of the courts below be set aside.

9. No other argument is raised on behalf of the appellant.

10. I have heard learned counsel for the appellant and also perused the case file in minute detail.

11. In order to properly appreciate the dispute at hand, it will be helpful to peruse the pedigree table, which is as follows:-





12. It is the case of the appellant that plaintiff No.1 (Chokhraj) owned and possessed agricultural land in 2 khewats:

Khewat No. 24, khatoni 32 total 44 K 9 M with his 1/2 share as 22 K 4 M.

Khewat No. 23, Khatoni 31 total 48 K 8 M with his 1/2 share as 24 K 8 M

13. Plaintiff No.1 Chokraj (now deceased), was the real uncle (chacha) of the plaintiff No.1B and defendants No. 1 to 5. The plaintiff No.1 remained unmarried and issueless. To preserve the property, it was agreed that plaintiff No.1 will distribute the property equally amongst the plaintiff No.1B and defendants No. 1 to 5. It is the case of the plaintiff that defendants No. 4 to 5 fraudulently got the Gift Deed dated 25.6.2004 registered in their favour and received 222/464 share each while plaintiff No.1B received only 20/464 share instead of an equal share. Plaintiff No.1 has alleged that deed was never read over to him and he unknowingly, appended his thumb impression upon it. Despite the fraud, plaintiff No.1B and defendants continued to cultivate land in equal shares. It has been contended that he became aware of the fraudulent deed only in the year 2012. Accordingly, a declaration is sought that gift deed No. 2289 was executed with incorrect shares and cancellation of any mutation is also prayed for as the same is based on disputed gift deed.

14. I find no merit in the submissions advanced on behalf of the appellant/plaintiff. The claim of the plaintiffs to the effect that the Gift Deed was a result of fraud, is not borne out from the facts of the case or the record. Moreover, the plaintiffs' claim that the Gift Deed Ex.DW2/A is forged is questionable, as admittedly, no criminal proceedings were



initiated by plaintiff No.1 or plaintiff No.1B against the defendants. This raises doubts about the credibility of the forgery claim. Further, Plaintiff No.1B Ashok Kumar had himself admitted in his testimony as PW2 that plaintiff No.1 had told him about the execution of gift deed Ex.DW2/A. Further, the plaintiff no.1 had executed a sale deed dated 26.9.2008 in favour of his wife when he had the revenue record. Thus, plaintiffs were aware of the execution of the said gift deed. However, no explanation was provided for delay of 8 years in challenging the gift deed No. 2289 dated 25.06.2004 after 8 years only in the year 2012. Even further, the Plaintiff's failure to produce revenue records from 2003 to 2012 and his lack of inquiry about receiving less compensation in 2007 further cast doubt on his claim of being unaware of the division of property. On the other hand, the Defendants successfully proved the execution of gift deed (Ex.DW2/A) by presenting attesting witness DW3 Satbir and its scribe DW2 Raj Singh (Advocate). Finally, the disputed Gift Deed is a registered document, and therefore, there is presumption of truth attached to it.

15. In this regard, the relevant findings of the learned trial Court reads as under:-

"..... Also, on 26.09.2008 a registered sale deed (Ex.DW-1/A) was executed by plaintiff no. 1 in his wife's favour and at that time he had the revenue record with him. He has produced certified copy of jamabandi Ex.P1 of the year 2012-13 and certified copy of jamabandi Ex.P1/A of the year 2002-2003 but did not produce any revenue record prepared in between the said period so was it that no revenue record was prepared during these ten years when it is well known that

revenue record i.e. jamabandi is prepared after a period of every five years? As such his contention that he was not aware of the shares given by way of gift deed Ex.DW-2/A does not find much favour with this court. Further he had admitted that he had received less compensation amount in the year 2007 when their land was acquired by the State Govt. then why he did not inquire about the same also raises suspicion as to his act and conduct.”

16. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.
17. Hence, the present regular second appeal is hereby **dismissed.**
18. Pending applications, if any, stand disposed of.

11.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No