

2025:PHHC:030925



205-u **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2403-2022 (O&M)

Decided on:-03.03.2025

Khem Raj and another

....Appellants..

VS.

Madan Lal and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vishal Gupta, Advocate,
for the appellants.

HARKESH MANUJA J. (Oral)

1. By way of present appeal challenge has been laid to the judgments and decrees dated 09.09.2017 and 14.02.2022 passed by the courts below, whereby, a suit for declaration filed at the instance of appellants-plaintiffs for claiming themselves to be joint owner in possession along with respondents No.6 & 7 of the suit land situated at village Bhoj Mataur, Hadbast No.317, Tehsil and District Panchkula as well as qua declaration of the two relinquishment deed-gift deed dated 08.09.2015/10.09.2015 executed by respondent No.1 to 5-defendants No.1 to 5 jointly in favour of appellants-plaintiffs and respondents No.6 & 7-defendants No.6 & 7 to be illegal null and void, besides for grant of permanent injunction for restraining respondents No.6 & 7 from alienating the suit land or causing any interference in possession thereof, was dismissed.

2. In the present case, the parties are closely related to each other. The appellants-plaintiffs happens to be brothers of respondents No.1 to 7 as well as of one Fatta (sister). The dispute relates to the suit land comprised in Khewat No.56, Khatauni No.164, Khasra kitte 7, total 8 bighas 1 biswas, khewat no.59, Khatauni No.169-170, khasra Kite 3, total 2-3 khewat No.81, Khatauni No.206, 207, Khasra Nos.4 total 25-6, Khewat No.285, khatauni No.692, 693, 694, 695, 696, 697, 698, 699, 700, 701, Khasra Kite 29, total 18-1, situated at village Bhoj Mataur, H.B.No.317, jamabandi year 2008-2009, Tehsil and District Panchkula, which was originally owned by the deceased-father of the parties, namely, Rikhi Ram.

3. Briefly, the appellants-plaintiffs filed a suit for declaration to the effect that the appellants-plaintiffs and defendants No.6 & 7 along with their another sister-Fatta were joint owners and in joint possession of above mentioned land. Defendants No.1 to 5 entered into a family settlement about transfer of their share in equal proportion to appellants and defendants No.6 and 7. However, later it was found that on account of misrepresentation & fraud, more area was transferred to defendant No.7. Accordingly, a suit for declaration to the effect that the relinquishment deed and the gift deed dated 08.09.2015 registered on 10.09.2015 were both illegal, null and void as defendant No.7 mischievously/fraudulently got excess share transferred in his favour and as such, the same were liable to be set aside/cancelled being illegal, null & void and further for declaration to the effect that the alleged mutation No.2545 dated 18.10.2015 sanctioned on the basis of the abovementioned relinquishment deed and the gift deed was also wrong, illegal, null and void, besides, seeking consequential relief of permanent injunction restraining defendants No.6 and 7 themselves or through their

agents, servants or assignees from alienating the suit land by way of sale, transfer and mortgage in any manner whatsoever and also for restraining them from altering the nature of the suit land illegally and forcibly.

4. Upon notice, defendants No.1, 3, 4, 6 and 7 filed joint written statement raising preliminary objections on the grounds of maintainability, estoppel; concealment; cause of action; suit being bad for non-joinder of necessary parties; improper value for the purpose of court fee. On merits, the specific stand of defendant No.1 was that he being un-married was residing with defendant No.7 as such was being taken care of by him only and thus, knowingly transferred the entire share in his name, whereas, the stand of others was that the two deeds were never read over to them at the time of execution.

5. Based on pleadings of the parties, the Trial Court framed the following issues:-

“1. Whether the plaintiff is entitled to the relief of declaration against the defendants as prayed for? OPP

2. If issue No.1 is proved, whether the plaintiff is entitled to the relief of permanent injunction against the defendants as prayed for? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff is estopped from filing the present suit by his own acts and conduct? OPD

5. Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPD

6. Whether the present suit is bad for mis-joinder and non-joinder of necessary parties? OPD

7. Whether this court has got no jurisdiction to try and entertain the present suit? OPD

8 Relief.”

6. The Trial Court vide judgment and decree dated 09.09.2017, dismissed the suit filed at the instance of appellants-plaintiffs while upholding the valid execution of relinquishment deed as well as the gift deed executed by defendants No.1 to 5 in favour of appellants-plaintiffs and defendants No.6 and 7.

7. Aggrieved thereof, the appellants-plaintiffs filed first appeal, however, the same came to be dismissed by the Court of Id. Additional District Judge, Panchkula, vide its judgment and decree dated 14.02.2022.

8. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellants submits that the relinquishment deed and the gift deed dated 08.09.2015/10.09.2015 executed by defendants No.1 to 5 in favour of defendants No.6 and 7 along with appellants-plaintiffs were result of fraud and not in consonance with the oral settlement arrived at between the parties and thus, were liable to be declared illegal. No other argument has been addressed.

9. I have heard learned counsel for the appellants and perused the record.

10. In the present case, though, a plea of fraud/misrepresentation was set-up by appellants-plaintiffs for seeking declaration qua the relinquishment deed and the gift deed in question, however, neither particulars of fraud were ever pleaded in their plaint nor even the same were established through evidence, in such, circumstances, the same was never proved on record for holding the two deeds being illegal, null and void.

10.1 In the aforesaid context, it has also come on record that all the four sisters i.e. respondents No.2 to 5 relinquished their shares equally in

favour of all their brothers i.e. appellants and respondents No.6 and 7, whereas, respondent No.1-Madan Lal got his share transferred exclusively and solely in favour of respondent No.7-Mehma Dutt as being un-married and issue less, he being looked after by defendant No.7. Thus, it was only respondent No.1, who could have challenged the relinquishment deed and the gift deed on the basis of fraud and misrepresentation, whereas, to the contrary, he continuously admitted the valid execution of the two deeds in his written statement and it was nowhere established on record that the averments made therein were wrong and incorrect.

11. Moreover, concurrent findings of facts have been recorded by the Courts below to the effect that neither particulars of fraud or misrepresentation have been specifically pleaded nor proved, thus, finding no merits in the present appeal, so as to discard the registered relinquishment deed and the gift deed dated 08.09.2015/10.09.2015, where under the appellants were also conferred certain right in the property in question cannot be held to be illegal, null and void. Accordingly, the present appeal being devoid of merits is thus dismissed.

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

03.03.2025

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No