



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-535-2022 (O&M)

Date of Decision: 12.05.2025

RADHEY SHYAM

. . . . APPELLANT

Vs.

BULLA RAM AND ANOTHER

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Jitender Nara, Advocate, for the appellant.

DEEPAK GUPTA, J.

Suit for declaration and consequential relief of perpetual injunction regarding the property in dispute filed by plaintiff-Radhey Shyam (*appellant herein*) was dismissed by the trial Court on 12.08.2014; whereas the counter-claim filed by defendant No.1-Bulla Ram (*respondent No.1 herein*) was decreed. Appeal filed by the plaintiff (*appellant herein*) was dismissed by the First Appellate Court 30.11.2017. Against these concurrent findings, plaintiff has approached this Court by way of the present Regular Second Appeal.

2. Plaintiff is son of defendant No.2-Chiranji Lal. He assailed the legality and validity of a gift deed bearing Wasika No.982 dated 06.08.2004 executed by defendant No.2 in favour of defendant No.1 on the ground that it was fraudulent and as such, the same was liable to be set aside along with the consequent mutation No.867 dated 30.04.2007.

3. According to plaintiff, suit property was coparcenary in nature belonging to Hindu Undivided Family and as such, defendant No.2 did not have the right to execute the gift deed regarding the same against the interest of the plaintiff. It was also pleaded that defendant No.2 had filed the suit assailing the aforesaid gift deed, but under the influence of

defendant No.1 and by playing fraud upon him that suit was got dismissed as withdrawn.

4.1 Defendant No.1 contested the suit and raised various preliminary objections, the material being that suit was barred by limitation and that plaintiff did not have the locus standi to file the suit. On merit, defendant No.1 denied the suit property to be coparcenary in nature. He further denied the impugned gift deed to be fraudulent in nature and contended that defendant No.2 had filed the suit assailing the gift deed but had withdrawn the same.

4.2 Defendant No.1 also filed counter-claim submitting that ever-since the execution of the gift deed dated 06.08.2004 in his favour, he was exclusive owner in possession over the suit property, but plaintiff of the case was adamant to dispossess him. As such, defendant not only prayed for dismissal of the suit of the plaintiff, but further prayed for a decree of permanent injunction to restrain the plaintiff from interfering in his possession.

5. As noted earlier, both the Courts below have disbelieved the case of the petitioner-plaintiff and dismissed the suit and decreed the counter-claim of defendant No.1.

6. Assailing the concurrent findings, it is contended by learned counsel that Courts below failed to appreciate the evidence on record to the effect that property in dispute was coparcenary in nature, as it was purchased by defendant No.2 from the funds of HUF property.

7. After going through the record, this Court does not find any merit in the aforesaid contention. It will be apt to reproduce the relevant observations made by the First Appellate Court, while appreciating the evidence on record. These read as under: -

“I have heard learned counsel for the parties and have taken myself through the record, I am of the view that the appeal is bereft of merits and is liable to be dismissed. The case of the plaintiff is that suit property was

Joint Hindu Undivided family and coparcenary property and his father defendant no.2 could not gift the same to defendant no.1. It is also the grouse of the plaintiff that defendant no.1 had fraudulently got the said gift deed executed from defendant no.2. However, from the evidence on record it clearly transpires that neither the suit property was coparcenary in nature nor any fraud was practiced by defendant no.1 upon defendant no.2 to get the said gift deed executed. It was for the plaintiff to have shown that suit property is coparcenary property in the hands of his father defendant no.2 however there is no evidence that suit property was inherited by the defendant no.2 from his forefathers. Moreover, the plaintiff when stepped into witness box as PW2 admitted in his cross examination that the suit property was purchased by his father (defendant no.2) when the plaintiff was 8-10 years old. Similarly, there is no evidence that suit property was HUF property as claimed by the plaintiff. Further the grouse of the plaintiff that defendant no.1 practiced fraud upon defendant no.2 and got the gift deed executed is completely unfounded. The defendant no.2 had earlier filed a suit (through plaintiff as his attorney) titled Chiranji Lal Vs. Bula Ram wherein he had challenged the said gift deed on the basis of fraud but he said defendant withdrew the said suit on dated 24.2.2010 by making separate statement in that regard. The present suit was filed by the plaintiff on 3.4.2010. The defendant no.2 was very much alive at the time of filing of present suit, however the said defendant did not even appear in the case and was proceeded against ex-parte. If any fraud was played upon defendant no.2 obviously it was him who was the best person to state regarding the said alleged fraud. However as already submitted that the said defendant withdrew the said suit titled Chiranji Lal Vs. Bula Ram on dated 24.2.2010 and thereafter did not challenge the gift deed at any stage. Learned counsel for the plaintiff also contended that the defendant no.1 fraudulently got the said earlier suit withdrawn from defendant no.2 but if that was so defendant no.2 could himself had lodge a complaint in that regard. It was the said defendant only who could say that he was defrauded to withdrew the suit filed by him. It transpires during the course of arguments that defendant no.2 died in the year 2014 i.e. after about 4 years of the institution of the suit. Had the said defendant was deceived at any stage either at the time of execution of said gift deed or

when the earlier suit was withdrawn by him he could have been very well examined as a witness in the present case to depose regarding said deception/fraud. It is well settled law that plea of fraud needs strict evidence and in the present case the plaintiff stands miles apart from proving the said plea. The judgments cited by learned counsel for the appellant-plaintiff do not apply to the facts of the present case where the coparcenary nature of property has not been proved and it has also not been proved that any fraud was played upon defendant no.2 for executing the gift deed in question. The appeal is without merit and is hereby dismissed with costs.”

8. It is clear from the abovesaid observations that as per the own admission of the plaintiff, suit property had been purchased by his father-defendant No.2, when he (*plaintiff*) was 8-10 years old. Plaintiff could not produce any evidence to reveal that suit property was HUF as was claimed by him. His contention that gift deed was the result of any fraud was rightly disbelieved, considering the fact that defendant No.2 had earlier filed a suit challenging the gift deed on the basis of fraud, but later on withdrew that suit on 24.02.2010. Even at the time of filing of the present suit by the plaintiff, defendant No.2-Chiranji Lal was alive, but chose not to contest the suit and was proceeded ex parte.

9. In the above facts & circumstances, this Court is unable to find any ground so as to disturb the concurrent findings of facts, as recorded by the Courts below, which are found to be based upon proper appreciation of evidence on record. Finding no illegality and perversity in the findings, the present appeal is held to be devoid of any merit and as such, the same is hereby dismissed.

12.05.2025
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No