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

**RSA-3322-2013(O&M)
Date of decision:-19.03.2025**

Smt. Panmeshwari

...Appellant

Versus

Sunil Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sudhanshu Makkar, Advocate
for the appellant.

Mr. Parmod Parmar, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. Assailing judgments and decrees passed by both the Courts below, appellant/plaintiff has approached this Court by way of instant second appeal.

2. Counsel for the appellant has argued that the plaintiff filed a suit to the effect that she is owner in possession of 1/18th share of the suit land and for declaration to the effect that alleged gift deed dated 12.05.1999 executed by the plaintiff in favour of the defendant and mutation entered on its basis are based on forgery and misrepresentation. He submits that relief of permanent injunction was also sought



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restraining the defendant from interfering in the peaceful possession of the plaintiff over the suit property. By making a reference to the plaintiff and evidence led by the plaintiff, counsel urges that pleaded case of plaintiff was that her signatures on the gift deed had been obtained by playing fraud upon her. He submits that plaintiff was told that an application for partition has to be filed, whereas her signatures were obtained on the gift deed and presented before the Sub-Registrar, Siwani, who registered the document. It is his argument that the plea of fraud was specifically urged before both the Courts below, but has not been adjudicated. He has made a reference to the judgment passed by the first appellate Court wherein the argument has been specifically noticed. He submits that despite the fact that this was a vital argument, but the learned Additional District Judge, Bhiwani has dismissed the appeal without even considering it.

3. While supporting the judgments and decrees passed by the Courts below, counsel for the respondent/defendant submits that the plaintiff has failed to prove the allegation of fraud. He submits that the first appellate Court has re-appreciated the evidence led by the parties and dismissed the appeal on merits. He however could not dispute that the first appellate court has not dealt with the argument regarding forgery.

4. I have heard counsel for the parties and considered their respective submissions besides analysing the requisitioned record with their able assistance.

5. Plaintiff has set up a case that defendant, who is a shrewd



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person, is her nephew and gift deed has been executed by deceiving her. She has specifically pleaded that she had her own children and there was no necessity for her to gift the suit property in favour of the defendant. It has been averred by her that she is residing in village Gurera, Tehsil Siwani, District Bhiwani, whereas her address has been shown as village Dhani Makran in the document. It is her case that she was taken to the local Courts on the pretext that an application for partition has to be moved, whereas the defendant got a gift deed typed and presented it before the sub registrar, who registered it. Her brother, Kamal Singh, PW3 appeared in the witness box and supported her case.

6. The core issue to be determined by the Courts was whether the gift deed is valid and whether it has been procured by playing fraud upon the plaintiff. This aspect has been examined by the Trial Court in its judgment dated 28.03.2011 and finding has been recorded against the plaintiff. However, despite the fact that it has been specifically urged before the lower appellate court, no finding has been returned on it. In these circumstances, this Court is left with no other option except to remit the matter back to the first appellate Court for decision afresh on merits.

7. For the foregoing reasons, judgment and decree dated 15.02.2013 passed by the learned Additional District Judge (I), Bhiwani is set aside. Appeal is remitted to the first appellate Court to decide it afresh after giving opportunities to both the parties to address arguments.

8. Appeal is disposed off.



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9. Parties are directed to appear before the learned District Judge, Bhiwani on 12.05.2025 at 10:00 a.m., who shall either hear the appeal himself or assign it to any other Court of competent jurisdiction.

19.03.2025	(SUVIR SEHGAL)
Brij	JUDGE
Whether reasoned/speaking :	Yes/No
Whether reportable :	Yes/No