



RSA-5877-2019 (O&amp;M)

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

(115)

**RSA-5877-2019 (O&M)**  
**Date of decision:- 01.05.2025**

**Akhtari****... Appellant****Versus****Mohd. Yasin and others****... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Sunny K. Singla, Advocate  
for the petitioner.

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**SUVIR SEHGAL, J. (ORAL)**

1. Aggrieved of concurrent finding recorded by the two Courts below, appellant/plaintiff No.1 is in second appeal before this Court.
2. Brief facts leading to the filing of the appeal are that Mohd. Ramzan, who died on 01.05.1994, was the common ancestor of the parties. After his death, mutation of inheritance was sanctioned in favour of his widow, Gaunsi, and the plaintiffs as well as the defendants, who are his children. After death of Gaunsi, her 1/8th share devolved upon the plaintiffs and the defendants. Plaintiffs No.1 and 2 owned 1/6th each share in the suit property. Plaintiff No.3 and defendants had 1/3th share each in the suit property. Defendants started claiming themselves to be the owners in possession of 2/3rd share of the suit property. Upon inspecting revenue record, plaintiffs found that defendants had played fraud and got plaintiff's share transferred in their favour on the basis of a gift deed. Claiming that gift deed is a result of forgery, plaintiffs filed a suit

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for declaration to the effect that they are owners in possession of 2/3rd share of the suit property and the defendants are owners in possession of 2/6th share in the suit property. Declaration was also sought to the effect that the alleged gift deed is null and void. Upon notice, suit was contested by the defendants and they admitted the devolution of property on the death of Mohd. Ramzan and Gaunsi. A stand was taken that during her lifetime, Gaunsi along with plaintiffs No.1 and 2 made an oral gift, *Hiba*, regarding their share in the suit property in favour of the defendants in the presence of the relatives and respectables. Defendants claimed that the possession of gifted property was handed over to them. It has been averred that a *Hibanama* was prepared on 31.08.2004 and Gaunsi as well as plaintiffs No.1 and 2 thumb marked it in the presence of the witnesses. Asserting that *Hibanama* dated 31.08.2004 is genuine, defendants sought the dismissal of the suit. Plaintiffs filed replication to the written statement reiterating their claim. On the basis of the pleadings of the parties, Trial Court framed issues. After the parties led evidence and were heard, Trial Court dismissed the suit vide judgment and decree dated 22.11.2016. Plaintiffs remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Sangrur on 11.07.2019 resulting in the institution of the present appeal.

3. Mr. Sunny K. Singla, counsel for the appellant has argued that the *Hibanama*, Ex.D-1, relates to a property of the value of more than Rs.100/- and it required compulsory registration under the Registration Act, 1908. He asserts that in the absence of the registration, the document cannot be considered and Courts below have erred in relying upon it.



4. I have counsel for the appellant and considered his submission, besides examining the paper-book.

5. Plaintiffs have challenged the *Hibanama* dated 31.08.2004, Ex.D-1. Besides stepping into the witness box as her own witness, appellant examined Mohd. Hafiz, PW-1, who in his evidence, has admitted the relationship of the parties as well as the possession of the defendants over the suit property. Plaintiffs have not led any evidence to show that the *Hibanama*/gift deed, Ex.D-1, is a result of manipulation. This document bears the thumb impressions of the plaintiffs, however, the plaintiffs have not got the thumb impression compared from an expert nor produced any evidence to show that the thumb impressions on the *Hibanama* are not that of the plaintiffs. Onus to prove that the gift deed is a result of fraud was on the plaintiffs, which they have failed to discharge. Furthermore, the gift deed has been executed in the year 2004, but for a period of more than nine years till the filing of the suit in 2013, plaintiffs did not take any step to challenge it.

6. *Hibanama* dated 31.08.2004 is an exhibited document. An objection regarding its admissibility on the ground that it required compulsory registration, was never taken by the plaintiff. Such an objection has to be taken at the earliest stage before the Trial Court and not at the stage of second appeal. Omission to object at the first instance is fatal and amounts to waiver. Once a document has been exhibited, it cannot be ruled out of consideration altogether and appellant cannot be permitted to urge that it cannot be read into evidence. This Court does not find any reason to interfere with the concurrent finding recorded by the two Courts, which are affirmed.

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- 01.05.2025  
Kamal

**(SUVIR SEHGAL)**  
**JUDGE**

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |