

## Mit Singh and Another Vs Rajinder Singh and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Feb. 16, 2011

**Acts Referred:** Civil Procedure Code Amendment Act, 1976 â€” Section 100, 100(4) , 100(5)

Civil Procedure Code, 1908 (CPC) â€” Order 7 Rule 11, 92

Limitation Act, 1908 â€” Article 142 , 144

Punjab Courts Act, 1918 â€” Section 41

Transfer of Property Act, 1882 â€” Section 123, 41

**Citation:** (2011) 162 PLR 32

**Hon'ble Judges:** Ram Chand Gupta, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Ram Chand Gupta, J.

Facts leading to present regular second appeal are as under:

2. In the present case, suit was filed for possession of agricultural land measuring 153 kanals 10 marlas comprising in killa numbers duly described

in heading of the plaint situated in Village Sargheri, Tehsil and District Sangrur, on the basis of title by Respondent Nos. 1 to 3-Plaintiffs against the

present Appellants and proforma Respondent-Defendants. It has been averred that Respondent-Plaintiffs have acquired ownership right of the

land in dispute vide sale deed dated 19.1.1951 executed in favour of Sardar Assa Singh son of Sardar Gurbachan Singh, i.e., predecessor-in-

interest of Plaintiffs by previous owners Gurdial Singh son of Jaimal Singh and Smt. Harnam Kaur widow of Sewa Singh. Appellant-Defendants

Mit Singh and Sadhu Singh are continuing in possession of the land in dispute as Managers and Mohtmims of Dharamshala of village Sargheri as

they are claiming themselves to be so, however, their possession over the land in dispute is unauthorized. Chuhar Singh is also alleged to be in

possession of the suit land and hence he has also been arrayed as Defendant. Gurdial Singh, Joginder Singh and Inder Singh, minor through his

brother Joginder Singh, have also been impleaded as parties. On refusal of Defendants to hand over the possession of the land in dispute to

Respondent-Plaintiffs in recognition of the right of the ownership of the suit land, the present suit has been filed. It has also been averred that

Sardar Assa Singh had also filed a suit for possession of the suit land against Dharamshala Sargheri, which was decreed by learned trial Court.

However, in appeal the plaint was rejected only on the ground that no suit could be filed against Dharamshala and hence it is stated that the same is

having no bearing on the present suit.

3. The suit was contested by present Appellant-Defendants by taking the plea that previous owner, namely, Gurdial Singh, Defendant No. 4 had

executed a gift deed in favour of Dharamshala of the village on 18.10.2006 B.K. and since then Dharamshala is in possession of the suit land and

that the entries regarding gift have also been made in the revenue record and the mutation has been sanctioned in favour of Dharamshala on the

basis of the said gift deed. It is further averred that the Plaintiffs also filed an appeal for correction of said revenue entries and remained

unsuccessful upto highest revenue Court. Hence, it is contended that sale transaction effected by Defendant No. 4 in favour of Assa Singh is null

and void, ineffective and in-operative of rights of Dharamshala because at the time of execution of the sale-deed, Defendant No. 4 was left with

no right in the property in dispute. Plea has also been taken that Dharamshala is in possession of the land in dispute for the last 20-21 years and

hence, the suit has not been instituted within prescribed period of limitation.

4. In the replication, Respondent-Plaintiffs re-asserted their claim and controverted the assertions of contesting Appellant-Defendants. It has been

stated that no such alleged gift deed was executed in favour of Dharamshala and if there is any such alleged gift deed, the same is null and void and

having no effect on the rights of Respondent-Plaintiffs. It has been specifically pleaded that Plaintiffs are owners of the land in dispute vide sale-

deed dated 19.1.1951 for consideration of Rs. 10,000/- and hence, Defendants cannot acquire any title on the suit property on the basis of alleged

gift deed. It has also been averred that the sale-deed in favour of predecessor-in-interest of present Respondent-Plaintiffs is a registered document

and, hence, if there is any alleged unregistered gift-deed in favour of Appellant-Defendants, the same is having no effect on the rights of

Respondent-Plaintiffs, as their predecessor-in-interest Assa Singh was a bona fide purchaser for consideration.

5. From the pleadings of the parties, the following issues were framed by learned trial Court:

1. Whether Gurdial Singh son of Jaimal Singh and Joginder Singh and Inder Singh sons of Sewa Singh through their guardian Smt. Harnak Kaur

sold the land mentioned in para No. 1 of the plaint to Assa Singh predecessor-in-interest of the Plaintiffs, if so to what effect? O.P.

2. Whether the land mentioned in the heading of the plaint has been allotted in consolidation operations in lieu of the land mentioned in para No. 1

of the plain? O.P.

3. Whether the Defendants have become the owners of the land in dispute by virtue of the alleged gift-deed dated 18.10.2006 B.K. executed by

Defendant No. 4 in favour of Dharamshala? O.D.

4. Whether the suit is liable to be dismissed as the Plaintiff had filed a suit earlier which had been dismissed by the learned District Judge, and the

Hon"ble High Court? O.D.

5. Whether the suit is time-barred? O.D.

6. Whether the suit is bad for lack of sanction u/s 92 Code of Civil Procedure? O.D.

7. Whether the suit is bad for non-joinder of necessary parties? O.D.

8. Whether the Plaintiffs are protected by the provisions of Section 41 of the Transfer of Property Act? O.P.

9. Relief.

6. Parties adduced evidence in support of their respective contentions before learned trial Court. After hearing learned Counsel for the parties,

learned trial Court decided issue No. 1 in favour of Plaintiffs by holding that Plaintiffs have been able to prove that sale-deed Ex.PI was duly

executed by Gurdial Singh and Harnam Kaur in favour of Assa Singh for Rs. 10,000/-.

7 . Issue No. 2 has also been decided in favour of Plaintiffs by holding that in the consolidation, land in dispute has been allotted in lieu of the land

mentioned in para No. 1 of the plaint, as per the sale-deed.

8. Issue No. 3 has been decided against Appellant-Defendants by observing that Appellant-Defendants have failed to prove any alleged gift deed

in their favour executed by previous owner. It has been specifically held that though according to Defendants the document was written by a

petition-writer, however, neither any said gift-deed was produced nor any other evidence in order to prove the said gift-deed was produced,

whereas on the other hand Plaintiffs have been able to prove registered sale-deed in their favour.

9. Issue Nos. 4 to 6 have been decided against Appellant-Defendants by observing that the same were not pressed during the course of.

arguments. It was also observed that plaint of the previously instituted suit was rejected under Order VII Rule 11 of the CPC (hereinafter to be

referred as the "Code") as per judgment Ex.DA and hence the present suit was not barred. It was also observed that it was admitted during

course of arguments that the suit was within limitation from the date of sale.

10. Issue No. 7 has also been decided in favour of Plaintiffs by holding that the suit is not barred for non-joinder of necessary parties as Appellant-

Defendants Sadhu Singh and Mit Singh had deposed that they are managing the property of Dbharmshala.

11. Issue No. 8 has also been decided in favour of Plaintiffs by holding that they are bona fide purchaser for consideration.

12. As a sequel to findings on various issues, suit of Respondent Plaintiffs was decreed against present Appellant-Defendants with cost.

13. Aggrieved against the said judgment and decree dated 15.3.1971, passed by learned trial Court, present Appellants filed appeal before

learned Additional District Judge, Sangrur, which was dismissed by learned Additional District Judge, Sangrur, vide judgment and decree dated

10.9.1980.

14. Aggrieved against the judgment and decree passed by both the Courts below, the present regular Second appeal has been filed by the present

Appellant-Defendants.

15. I have heard learned Counsel for the parties and have gone through the whole record carefully.

16. The present regular second appeal has been filed in the year 1981 and the same was admitted for hearing on 12.10.1981, without framing

substantial questions of law.

17. A Full Bench of this Court in the case of Ganpat Vs. Ram Devi and Others, had taken a view that in view of Section 41 of the Punjab Courts

Act, the amended provisions of Section 100 of the Code, as amended in 1976, were not applicable to the second appeals filed in this Court and

accordingly, no substantial question of law was framed, nor the aforesaid regular second appeals were admitted on any such substantial question of

law. However, the Hon"ble Apex Court in the case of Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., has held

that after amendment of CPC in the year 1976, thereby amending Section 100, Section 41 of the Punjab Courts Act had become redundant and

repugnant to the Central Act, i.e., CPC and therefore was to be ignored and therefore, the second appeal shall only lie to this Court u/s 100 of the

amended CPC on a substantial question of law.

18. It may be mentioned here that though question of law was not framed at the time of admission of present appeal, and however, it has been

observed by Full Bench of this Court in Dayal Sarup v. Om Parkash (since Deceased) through L.Rs. and Ors. (2010)160 P.L.R. 1, that this Court

can formulate question of law as contemplated u/s 100 of the Code at any point of time before hearing of the appeal, even without amending the

grounds of appeal. It has also been held that it is the duty of the Court to formulate substantial question of law while hearing the appeal under

Sections 100(4) and 100(5) of the Code and question of law can be permitted to be raised at any stage of proceedings.

19. Hence, in view of this legal background, though the appeal was admitted without framing any substantial question of law, the matter is being

considered by this Court as to whether any substantial question of law is found to have arisen in the present regular second appeal.

20. On behalf of the Appellants amended grounds of appeal requesting for framing following substantial questions of law, stated to be arising in this

appeal, for determination by this Court was filed on 29.3.2010, which was taken on record. It has been contended that the following substantial

questions of law arise in this regular second appeal:

(a) Whether oral gift dated 18.10.2006 B.K accompanied by delivery of possession was a complete transaction and the provisions of Section 123

of Transfer of Property Act were not applicable in PEPSU at that time as held in 1968 CLJ 95 (DB)?

(b) Whether the oral gift executed in favour of Dharamshala Sargreri alongwith possession confers right, title and interest particularly when suit

property is being used by the villagers collectively and for common purposes since delivery of possession on dated 18.10.2006 B.K.?

(C ) Whether decree for possession passed without impleading the Dharamshala Sargreri as one of the Defendants in the suit by the Courts below

can be legally executed against the Mohatmim (i.e. Defendant Nos. 1 and 2) as ownership of the land in dispute belongs to Dharamshala Sargreri,

i.e., Juristic Person?

(d) Whether the findings of the Courts below on issue No. 7 were erroneous and perverse in view of the fact that Defendants No. 1 and 2 are only

the custodian and administrators of the suit property and cannot be personally liable for the satisfaction of the decree?

(e) Whether the decrees passed by the Courts below are legally executable as the property vide subsequent jamabandies is shown to be in the

ownership of Dharamshala Village Sargreri and suit cannot proceed without impleading juristic person, i.e., Dharmashala Donee?

(f) Whether the suit is within limitation?

(g) Whether the findings contained in the impugned judgments are perverse as contrary to law and the same are liable to be set aside.

21. However, at the time of arguments, learned Counsel for the Appellants has argued only one point that the suit has not been filed within the

prescribed period of limitation. Hence, the following substantial question of law is framed for consideration by this Court in this regular second

appeal.

Whether the suit is within limitation?

22. It has been vehemently contended by learned Counsel for the Appellant that the sale-deed on the basis of which the present suit has been filed

by Respondent-Plaintiffs is dated 19.1.1951. It is further contended that, however, original owners already transferred the said property in favour

of Dharmshala vide gift deed dated 18.10.2006 B.K., i.e., 12.1.1950 and that mutation regarding the same was entered in favour of Dharmshala,

which is Ex.D3, on 28.9.1950 and the same was sanctioned on 12.6.1953. It is further contended that present suit has been filed on 18.1.1962. It

is further argued that as the present suit was filed before coming into force of Limitation Act, 1963, old Limitation Act 1908 (hereinafter to be

called as "Act 1908") is applicable in the present case and that as per Article 142 Schedule I of the Act 1908, Respondent-Plaintiffs were to file

the suit within 12 years of their dispossession. It is further contended that in this case the predecessor-in-interest of the Respondent-Plaintiffs, who

executed the sale-deed relinquished possession in favour of present Appellant-Defendants by way of gift and that though the gift deed was made

on 12.1.1950, entry was made in Ex.D3 on 28.9.1950 and hence it is argued that the present suit has been filed after expiry of 12 years of

dispossession of predecessor-in-interest of the present Respondent-Plaintiffs. It is further argued that in the plaint, no specific plea has been taken

by Respondent-Plaintiffs as to when they or their predecessor-in-interest were dispossessed. It is also contended that present Appellant-

Defendants are not claiming adverse possession, rather they are claiming possession as owners on the basis of gift made by previous owner in their

favour. It is further contended that even if it is taken that no valid gift is proved, Ex.D3 can be considered for the purpose of date of dispossession

of the previous owner from the property in dispute and hence it is contended that the present suit has not been filed within 12 years of

dispossession of Respondent-Plaintiffs and their predecessor-in-interest and hence, it is contended that the suit is liable to be dismissed on this

ground alone. On this point he has placed reliance upon a Full Bench judgment of Hon"ble Madras High Court in The Official Receiver of East

Godavari Vs. Chava Govindaraju and Another, , relevant paragraph of which reads as under:

I have said sufficient to indicate that in my opinion a Plaintiff who is suing for possession of property in the occupation of another cannot rest his

case on title alone. He must show that he has exercised rights of ownership by being in possession within 12 years of suit. It follows that in my

opinion the observations which I have quoted from the judgment in 50 M L J 183 cannot be accepted and that 21 M.L.W. 398 and 25 M.L.W.,

127 were wrongly decided.

23. On the other hand, it has been contended by learned Counsel for the Respondent-Plaintiffs that Appellant-Defendants have failed to prove

valid execution of the alleged gift-deed in their favour by the previous owner as has been held by both the Courts below and hence, it cannot be

said that Appellant-Defendants are having any right to remain in possession of the property in dispute. It is further vehemently contended that case

of Respondent-Plaintiffs is not that they were in possession of the property in dispute and that they were dispossessed or has discontinued the

possession, and hence, it is contended that case of present Respondent-Plaintiffs is not covered under Article 142 of Act 1908 and rather the

same is covered under Article 144 of the Act 1908 and that as the possession is being claimed by Respondent-Plaintiffs within 12 years of the

execution of the sale-deed for consideration in their favour by previous owner, it cannot be said that the suit is not within limitation. It is further

contended that moreover it is not such a case in which Appellant-Defendants have claimed possession adverse to Respondent-Plaintiffs and rather

they have claimed possession on the basis of gift deed which they have failed to prove. He has placed reliance upon Gurbinder Singh and Another

Vs. Lal Singh and Another, ; Shivagonda Subraigonda Patil and Others Vs. Rudragonda Bhimagonda Patil and Another, ; Lalit Mohan Bhowmick

and Others Vs. Smt. Kshirodeswari Das and Another, , and Liaq Mohammad v. D.D.A. and Ors. 1993(3) R.R.R. 616.

24. Hon"ble Apex Court in Gurbinder Singh's case (supra), has specifically held that in order that Article 142 is attracted, the Plaintiff must initially

have been in possession of the property and should have been dispossessed by the Defendant or someone through whom the Defendants claim or

alternatively the Plaintiff should have discontinued possession. The relevant paragraph of the aforementioned judgment reads as under:

6. In order that Article 142 is attracted the Plaintiff must initially have been in possession of the property and should have been dispossessed by the

Defendant or someone through whom the Defendants claim or alternatively the Plaintiff should have discontinued possession. It is no one's case

that Lal Singh ever was in possession of the property. It is true that Pratap Singh was in possession of part of the property which particular part we

do not know by reason of a transfer thereof in his favour by Bakshi Singh. In the present suit both Lal Singh and Pratap Singh assert their claim to

property by succession in accordance with the rules contained in the dastw ul amal whereas the possession of Pratap Singh for some time was

under a different title, altogether. So far as the present suit is concerned it must, therefore, be said that the Plaintiffs-Respondents were never in

possession as heirs of Raj Kaur and consequently Article 142 would not be attracted to their suit.

25. In Shivagonda Subraigonda Patil's case (supra), Hon"ble Apex Court observed as under:

5. On the other question namely whether the suit is barred by limitation, we are of the view that it is not. The facts as narrated will show that in one

case possession was given to the Plaintiff's widow after the mortgage was redeemed. But the Collector under a misapprehension effected a

forfeiture and took possession but subsequently perhaps realising the mistake, released the property but handed over possession to the wrong

person namely the Defendant. It is only after that, that a right would accrue to the Plaintiff to file a suit for ejectment and for recovery of possession

on the ground of his title. There is no validity in the submission made on behalf of the Defendant that the Plaintiff was out of possession from 1928

till the date of suit - April 17, 1953. Article 142 has no application because the suit is not against the Defendant on the ground that he has been

dispossessed by him but against a person who is not entitled to possession. The Defendant did not dispossess the Plaintiff, and as such Article 142

is not applicable at all. In any case, it is not necessary to go into this question in any great detail, because in the view we have taken upholding the

Defendant's plea that the said alienation is void the Plaintiffs suit must fail.

26. In Lalit Mohan Bhowmick's case (supra), Hon"ble Calcutta High Court has considered the aforementioned judgment rendered by Hon"ble

Full Bench of Madras High Court and the various judgments rendered by Hon"ble Apex Court on the point and observed that in case when A

succeeds in proving his title it is not necessary for him to prove his dispossession within 12 years preceding date of suit and it would be for B to

show that suit was brought beyond 12 years from date of dispossession.

27. In Liaq Mohammad's case (supra) Hon"ble Delhi High Court while dealing with the scope of Articles 142 and 144 of Limitation Act 1908,

observed that there are three categories of suits for possession governed by different provisions of Limitation Act and that if the suit is brought

within six months from dispossession, question of title becomes immaterial and the suit has to be decreed; that a suit brought on the basis of

previous possession, commonly known as possessory title, the suit has to be filed within 12 years of dispossession which also can be decreed if

possessory title is established without proving actual title and however where the suit for possession is based on title, there is no limitation for filing

of such suit and cause of action for such suits for the purpose of running of period of limitation arises only from the point of time the person in

possession establishes an adverse possession in accordance with law against the title holder and hence, it is observed that suit on the basis of

possessory title would be governed by Article 142 whereas the suit based on title only is governed by Article 144 of the Limitation Act.

28. Hence, in view of the aforementioned authoritative pronouncements of Hon"ble Apex Court on the point, this Court is of the view that on the



facts and circumstances of the present case, the same would be governed by Article 144 of the Act 1908 and not by Article 142. The present

case is simple for possession on the basis of title and the same has been filed within 12 years of registration of sale-deed for consideration in favour

of Respondent-Plaintiffs by previous owner. It is not a case of Respondent-Plaintiffs that they were in possession of the property in dispute and

that they were illegally dispossessed.

29. Moreover the specific case of the present Appellant-Defendants is that a gift-deed was executed by previous owner in favour of Dharamshala

and however, they have failed to prove the same. Ex.D3 is a copy of mutation, vide which land in dispute was mutated in favour of Dharmashala

on the basis of oral gift. However, it is not a case of Appellant-Defendants that it was a oral gift. It may be mentioned here that at the time of

arguments, it has been stated by learned Counsel for both the parties that an application for amendment of written statement to take the plea of oral

gift was filed by Appellant-Defendants before first appellate Court and however, the same was dismissed and the revision filed against the said

order before this Court was also dismissed, as it was not case of Appellant-Defendants that property was given to Dharamshala by way of oral

gift.

30. There is another aspect of this case as well. It was held in previous litigation between the parties that Dharmshala is not a juristic person and

hence, plaint of previously instituted suit was rejected. The said judgment has become final. After rejection of the previous plaint, the present suit

was filed by Respondent-Plaintiffs against the present Appellant-Defendants in their individual capacity as Manager/Mohtmims of Dharamshala.

The present Appellant-Defendants have admitted that they are managing the land in dispute and giving the same on batai/lease. Hence, when

Dharamshala is not a legal entity, Dharamshala was not competent to accept the alleged gift and hence, it cannot be said that alleged oral gift was a

valid one.

31. Relevant paragraph 356 of Mulla's Hindu Law reads as under:

356. Gift defined.- Gift consists in the relinquishment (without consideration) of one's own right (in property) and the creation of the right of

another; and the creation of another man's right is completed on that other's acceptance of the gift, but not otherwise.

32. Paragraph 358 of Mulla's Hindu Law reads as under:

(1) A gift under pure Hindu Law need not be in writing. But a gift under that law is not valid unless it is accompanied by delivery of possession of

the subject of gift from the donor to the donee. Mere registration of a deed of gift is not equivalent to delivery of possession; it is not therefore

sufficient to pass the title of the property from the donor to the donee. But where from the nature of the case physical possession cannot be

delivered, it is enough to validate a gift if the donor has done all that he could do to complete the gift, so as to entitle the donee to obtain

possession.

(2) As regard Hindu gifts to which the Transfer of Property Act, 1882 applies, the rule of pure Hindu Law that delivery of possession is essential

to the validity of a gift is abrogated by Section 123 of that Act. Under that Act delivery of possession is no longer necessary to complete a gift, nor

is mere delivery sufficient to constitute a gift except in the case of moveable property.

33. In *Inder Singh v. Mst. Nihal Kaur and Anr.* 1968 Current Law Journal 95, a Division Bench of this Court while dealing with validity of alleged

oral gift before applicability of Section 123 of Transfer of Property Act to the property situated in the area which formed part of the Patiala and

East Punjab States Union prior to the merger of that Union with the then existing State of Punjab on November 1, 1956 observed as under:

9. For the purpose of deciding whether the suit as framed is maintainable or not, we have to assume the allegations made in the plaint to be correct.

The property in dispute is situated in the area which formed part of the Patiala and East Punjab States" Union prior to the merger -of that Union

with the then existing State of Punjab on November 1, 1956. There was no law corresponding to the Transfer of Property Act in PEPSU. The

provisions of Section 123 of the Transfer of Property Act (4 of 1882) were extended on and with effect from May 15, 1967, by notification No.

305-ST-57/2166 of that day published in that day"s Punjab Gazette, Extraordinary, to the territories which immediately before November 1,

1956, were comprised in the State of Patiala and East Punjab States" Union. The gift deed which is in dispute in the present suit was executed and

registered on April 30, 1957. The provisions of Section 123 of the Transfer of Property Act are therefore, not applicable to the gift in dispute and

the mere registration of the gift deed does not make the gift complete or effective. The position regarding a valid and effective gift being made in the

Punjab, in the absence of the applicability of Section 123 of the Transfer of Property Act appears to be the same under the Hindu Law as in cases

governed by the Customary Law. Gift consists in the relinquishment (without consideration) of one"s own right (in property) and the creation of the

right of another and the creation of another man"s right is completed on the other"s acceptance of the gift, but not otherwise. (Paragraph 356 of

Mulla"s Hindu Law).

34. Hence, even if it is taken that previous owner was competent to make a oral gift, the oral gift in this case cannot be said to be a valid one as the

same was allegedly made in favour of Dharamshala, which is not a juristic person and was not competent to accept the gift and hence, as per

aforementioned paragraph 356 of Mulla's Hindu Law, when the other man is not able to accept the gift, it cannot be said that creation of another

man's right is legally completed.

35. Hence, taking from any angle it cannot be said that the present suit has not been filed within prescribed period of limitation. Hence, the question

of law as framed above, is decided against the Appellant-Defendants and in favour of Respondent-Plaintiffs.

36. As a sequel to my above discussion, I am of the view that there is no merit in the present regular second appeal. The same is, hereby,

dismissed.

37. However, in the peculiar facts and circumstances of the case, parties are left to bear their own cost.