
(2015) 05 P&H CK 0307

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1624 of 2009(O&M)

Chameli Devi

APPELLANT

Vs

Jagdish and Others

RESPONDENT

Date of Decision: May 29, 2015

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96
- Registration Act, 1908 - Section 17(1)
- Transfer of Property Act, 1882 - Section 3

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: P.R. Yadav, for the Appellant; Kulbhushan Sharma, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Narain Raina, J.

C.M. Nos. 4851-4852C of 2009

1. For the reasons stated in the applications, which are supported by affidavits, the same are allowed. 3 days delay in filing the appeal and 105 days in refileing the appeal are condoned.

RSA No. 1624 of 2009(O&M)

2. Bhagwan Singh was owner of half share of 186 kanals 6 marlas i.e. 93 kanals 3 marlas. He transferred his share in the land in favour of his wife Paravati and to the second wife Chameli Devi in equal shares. He also had a share in 27 kanals 3 marals of land and transferred the same in favour of Jagdish, son of Desh Ram, who was the contesting defendant in the litigation, which was filed by Chameli Devi in November, 2000 against him and 12 proforma defendants arrayed in the suit. The suit was for declaration

to the effect that she is owner in possession of land measuring 44 kanals i.e. 880/3726th share of the land described in para 1 of the plaint and she is entitled to get her name entered in the revenue records. She also challenged the gift deed dated 29th June, 1994 in favour of Jagdish, who was a legatee of Bhagwan Singh. She claimed that the gift deed was not binding on her rights. She also sought an order of injunction against Jagdish from interfering in their peaceful possession of the suit property. Bhagwan Singh died on 21st April, 1995 and his first wife Parvati expired on 7th July, 1996. The plaintiff claimed that she is also a legally wedded wife of Bhagwan Singh and on death of her husband became a Class I heir as per the Hindu Succession Act, 1956. The marriage between Bhagwan Singh and Parvati also yielded no issue. The plaintiff Chameli Devi also bore no child to Bhagwan Singh. Chameli Devi claimed she married Bhagwan Singh prior to 1956. Chameli Devi and Parvati were issueless and on the death of Parvati, Chameli Devi claimed to be the only surviving heir of Bhagwan Singh and Parvati and entitled to succeed to Bhagwan Singh's estate. Chameli Devi pleaded that neither Bhagwan Singh nor Parvati had given any land to Jagdish. It was pleaded that Bhagwan Singh's land situated in Village Nathera comprising 27 kanals 3 marlas devolved on Jagdish by a civil court decree in Civil Suit No. 322 of 1991. However, mutation of inheritance was not sanctioned in favour of Jagdish. She pleaded that Jagdish had taken Bhagwan Singh and Parvati to Tehsildar office and procured their signatures on some blank papers on which a gift deed was executed instead of mutation in his favour in respect of land measuring 44 kanals, as above stated. He had assured Bhagwan Singh and Parvati that the purpose of visit to Tehsil office was only for sanctioning of mutation in respect of 27 kanals 3 marlas of land. The gift deed was registered in Tehsil Kosli. It was never the intention of Bhagwan Singh and Parvati to give the suit land to Jagdish. On the basis of gift deed, Jagdish wanted to encroach upon the suit land in another village. Chameli Devi asked Jagdish to admit that the gift deed was null and void, but he did not relent. This is what brought Chameli Devi to institute the present suit against Jagdish etc.

3. The suit was contested by Jagdish by filing a written statement. He took several preliminary objections including bar of limitation. He claimed that Bhagwan Singh and Parvati had given 27 kanals 3 marals land to him in a family settlement which resulted in a compromise decree dated 7th September, 1991. Jagdish claimed that 44 kanals of land was given to him by the couple due to love and affection through the gift deed dated 29th June, 1994. The gift was accepted and on registration the possession passed to Jagdish. This is how Jagdish came into ownership of total 71 kanals and 3 marlas of land. Jagdish urged that since Bhagwan Singh and Parvati had already transferred the land coming to their share in joint property became his and, therefore, at the time of their death, they were not owners of any land and, therefore, the question of succeeding Bhagwan Singh and Parvati by the plaintiff does not arise by succession opening. Jagdish also claimed that about 27 or 28 years ago before the suit was filed Bhagwan Singh and Parvati adopted him for services rendered to them due to which Bhagwan Singh and Parvati had given the suit land to the defendant Jagdish by way of gift deed, which was registered document. Also Jagdish was in possession of the corpus. He prayed that the suit be

dismissed.

4. Defendants No. 7 and 8 filed joint written statement and pleaded that they have no objection if the suit of the plaintiff is decreed. Defendants No. 2 to 6 and 9 to 13 were proceeded against ex parte. A replication was filed reiterating the averments in the plaint and on 9th March, 2004, 7 issues were struck, some of which were with respect to the joint ownership of Chameli Devi and the property to the extent of 880/3725th share; the gift deed dated 29th June, 1994 and adoption deed dated 10th February, 1983, in favour of Jagdish are a result of misrepresentation and fraud and, therefore, not binding on the rights of Chameli Devi; no cause of action arose; the suit was not maintainable; in any case it was barred by limitation; Chameli Devi was stopped from filing the suit. The onus of the two first issues were on the plaintiff while the remaining on the defendant Jagdish. Both the parties led their respective evidence both oral and documentary. The documents are undisputed and accepted on the record produced by either side including the Court decrees in suit titled as "Jagdish v. Bhagwan Singh etc.", the compromise decree in the case titled as "Chameli v. Jagdish", the statement on Jagdish in case titled as "Chameli v. Jagdish etc"., copy of the compromise, the jamabandis, sale deeds, copy of the decree dated 7th September, 1991 in case titled as "Jagdish v. Bhagwan Singh etc" and the gift deed as mark "A".

5. The defendant Jagdish has examined 5 witnesses in his favour and he tendered documents i.e. the gift deed dated 29th June, 1994(Ex. DW-1/1), copy of mutation No. 1137 (Ex. D-1), Jamabandis for the year 1997-1998, 2002-2003(Ex. D-3/A) and copy of their khasra girdawari. After leading their respective evidence, the parties closed it by order.

6. Learned trial Judge found that Chameli Devi in challenging the adoption of Jagdish by her suit was of no moment since the suit was compromised and the adoption of Jagdish was cancelled. However, with respect to 27 kanals 3 marlas of land of Bhagwan Singh, Bhagwan Singh had divested himself of ownership in favour of Jagdish vide a compromise Ex. PW-2/4. Since mutation was not sanctioned in favour of Jagdish and it was he who had taken Bhagwan Singh and Parvati to the Tehsil office for sanctioning mutation instead of getting the mutation sanctioned, Jagdish had played fraud and got executed a gift deed in respect of land 44 kanals in his favour. This part was hotly disputed. It was contended before the trial Court by the plaintiff that Bhagwan Singh and Parvati had never executed any gift deed with respect of 44 kanals of land in favour of Jagdish. It was urged that Bhagwan Singh and Parvati were also owners of 22 kanals of land each at the time of executing the gift deed in favour of Jagdish. Bhagwan Singh was owner of 31 kanals 1 marla out of which he had already given 27 kanals 3 marlas land to Jagdish. Therefore, the gift deed dated 29th September, 1994 (Ex. DW-1/1) became illegal, null and void. Chiman Lal, Lambardar, had appended his signatures on the gift deed as a witness and made money by appearing as witness in 62 sale deeds executed between 1993 to 1996. Chiman Lal was a Lambardar of another village and this was cause enough to create a suspicion in the mind.

7. In the present suit, the gift deed dated 29th June, 1994 is under challenge. It was contended that when the gift deed is declared invalid then property would pass to plaintiff Chameli Devi as he was the only legal heir of Bhagwan Singh and Parvati. Fraud is alleged in making of the gift deed for which reason it deserves to be set aside. The contesting defendant, on the other hand, denied the allegations in the plaint that gift deed was a product of fraud. While mutation No. 1137 was sanctioned, Bhagwan Singh was present before the revenue officers. The copy of mutation was sufficient proof that the gift deed was executed by free will. Gift deed was executed on 29th June, 1994 and Bhagwan Singh and Parvati died in 1995-1996, but during their life time they never challenged the gift deed. The present suit was filed on 25th November, 2000 and the suit was time barred as in any case, after registration of an instrument under Section 17(1) of the Registration Act, it operates as constructive notice to public at large as per Section 3 of the Transfer of the Property Act. On the other hand, plaintiff claimed that the gift deed was not to her knowledge and when she came to know of it a few days prior to the filing of the suit she came to court to assert her rights in suit property. It is not disputed that Chameli Devi filed a suit for declaration challenging the adoption deed, whereas Jagdish also filed a civil suit and challenged the judgment and decree dated 30th March, 1989 claiming that he is owner of 1/2nd part owned by Bhagwan Singh and Parvati. The suit ended in a compromise whereby the adoption deed was set aside and a compromise was also effected in the civil suit filed by Jagdish against Bhagwan Singh, Parvati, Chameli Devi and Budhram. The judgment and decree dated 30th March, 1989 was set aside and that is how Jagdish became owner of 27 kanals 3 marlas of land earlier owned by Bhagwan Singh, Parvati and Chameli Devi. Resultantly, Jagdish became owner of the share of Bhagwan Singh. At that time, Bhagwan Singh, Parvati and Chameli Devi had 31 kanals 1 marla land each. After suffering a decree in favour of Jagdish, Bhagwan Singh and Parvati were left with 44 kanals of land. Therefore, Chameli Devi could not claim that when the gift deed was executed in favour of Jagdish then Bhagwan Singh was not in possession and ownership of 44 kanals land.

8. Learned trial Judge noticed from the evidence and the pleadings that the averments of Chameli Devi to the effect that she came to know of the gift deed dated 29th September, 1994 on 20th November 2000 on which date, the defendant had flatly refused to admit her claim was a made up story to create a cause of action. That the gift deed was bad was an assertion which is not mentioned in the affidavit Annexure PW-4/A being the examination-in-chief of Chameli. If this fact was not mentioned in the plea then no evidence could be lead to establish the date when Jagdish repudiated the claim of plaintiff Chameli Devi. Consequently, the cause of action in challenging the gift deed was barred by limitation being beyond the period of three years from the date of its execution by registered instrument. There is a presumption as to the registered instrument, which can be rebutted only by best evidence establishing fraud and misrepresentation etc. It is a matter of common knowledge that in pleadings before the mufassil Courts as to when cause of actions arise are usually tailored by a common averment that the plaintiff came to know the existence of an instrument causing injury only a few days prior to the filing of

the suit. A registered instrument carrying endorsement of the Sub Registrar carries a presumption of correctness with it. The trial Court decided issues No. 1, 2 and 5, which forms pith and substance of the suit in favour of the defendant Jagdish and against the plaintiff that the gift deed DW-1/1 in respect of 44 kanals was a valid document. The possession was delivered when gift deed was accepted is supported by revenue entries disclosing Jagdish being in cultivating possession of the suit land. As a result, the plaintiff was not able to prove ownership over 44 kanals i.e. 880/3726th share of land. Issues No. 3, 4 and 6 were not pressed by the defendant Jagdish during the course of arguments, therefore, were decided against the defendants. The suit was dismissed and decree drawn accordingly by the learned Additional Civil Judge (Senior Division), Kosli, by judgment and decree dated 26th August, 2006.

9. Aggrieved by the decree, Chameli Devi carried an appeal under Section 96 of the CPC in the Court of the learned Additional District Judge, Rewari, who rejected the same vide judgment and decree dated 31st July, 2008. Court of first appeal re-examined the materials on record and agreed with the learned trial Court that the gift deed was validly executed by Bhagwan Singh and Parvati. He read the deposition of DW-2 Ram Kishan, who stated that since 1983, Jagdish took good care of the old couple and then on 29th June, 1994 they gifted the land measuring 27 kanals 3 marlas to Jagdish, who has been in possession of the land and crop has been sown by Jagdish on the suit land. There was no infirmity in the conclusions reached by the learned trial Court. The allegations of fraud and misrepresentation in the making of the gift were not believed. In the face of the gift deed being registered instrument and by act of Bhagwan Singh and Parvati not challenging the gift deed in their life time, the present suit filed in November 2000, was barred by 6 years. The witnesses to the gift deed i.e. DW-1 Hans Raj and DW-3 Chiman Lal deposed in favour of Jagdish and that they were witnesses of the gift deed. When the gift deed was proved to be a valid transfer of property, nothing remained for Chameli Devi to press in the suit.

10. Having heard learned counsel for the parties at length, this court finds the judgment and decree of the Court below as not suffering from any legal or factual infirmity warranting interference in regular second appeal, the concurrent findings of fact of the Courts below with respect to gift deed are unexceptionable and do not warrant intermeddling. No question of law, much less substantial one, or as proposed in the grounds of appeal arises for consideration. The appeal stands accordingly dismissed.