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

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RSA-2383-1991 (O&amp;M)

Reserved on : 08.01.2025

Pronounced on : 07.04.2025

Risal Singh

... Appellant

Vs.

Smt. Beeran and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. R.A. Sheoran, Advocate for the appellant.  
Mr. Rajiv Sharma, Advocate with  
Ms. Indu Bala Sharma, Advocate and  
Mr. Shubham Chauhan, Advocate for the respondents.

**SUVIR SEHGAL J.**

1. Appellant-plaintiff is in second appeal assailing concurrent findings recorded by the two courts below.
2. Plaintiff filed a suit for declaration to the effect that he is owner in possession of the suit land comprised in Khewat No.246, 249, 252, 257 and 352 as per the Jamabandi for the year 1971-72 in village Suharhwa Tehsil Siwani, District Bhiwani, being a co-sharer and entry regarding ownership in the name of the defendants is not binding upon him. His pleaded case is that Maman had two sons namely Dalla and Sukhi Ram. They were owners of 191 bighas and 16 biswas of land in Khewat no.180 as per Jamabandi for the year 1908-09. Dalla son of Maman sold his half share of land to Chuni Lal and Basti without any share in the shamlat. The names of both the vendees were entered as

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owners of land measuring 95 bighas, 18 biswas and Dalla continued to be the owner in Shamlat Deh. After the death of Sukhi Ram, who died issue less, his share was also inherited by Dalla, who sold 38 bighas 1 biswa to Basti without any share in the Shamlat and a mutation was sanctioned on 12.2.1919. Dalla sold the remaining land measuring 57 bighas 17 biswas in khewat No. 175 along with his rights in the Shamlat to Dalla son of Maidhan and a mutation was entered on 02.06.1921. As a result, Dalla son of Maman remained owner in the shamlat to the extent of 133 bighas and 19 biswas in khewat No. 175 and he was also co-sharer in khewat No. 199, 200, 215, 219 and 220. While implementing mutation on 02.06.1921, Dalla son of Maidhan, in collusion with the revenue officials, got his name entered as owner of Khewat No. 193, 194 and 210. This error was detected when the consolidation proceedings took place in the village and it was corrected. After the rectification of the revenue record, Dalla son of Maman gifted his rights in the aforesaid khewat to the plaintiff vide registered gift deed dated 02.06.1958. Mutation No. 1006 of the gift deed was entered into revenue record, which was changed by the consolidation authorities in collusion with Dalla son of Maman. Plaintiff filed an application for correction of the revenue entry and apprehending that it will not be carried out, instituted the civil suit. Upon notice, suit has been contested by the defendants by filing written statements, wherein various preliminary objections have been taken. On merits, it has been submitted that land measuring 57 bighas 17 biswas was sold by Dalla son of Maman to Dalla son of Maidhan with all the

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shamlat rights in the agricultural land and mutation dated 02.06.1921 was correctly entered. Correction in the revenue record during the consolidation was denied. A specific stand was taken that after the sale, Dalla son of Maidhan had no right or interest in the shamlat land and the gift in favour of the plaintiff is illegal. Entry of mutation No. 1006 was categorically denied. Plaintiff filed the replication reasserting his claim. Trial Court framed issues on the basis of the pleadings of the parties, who led evidence in support of their respective case. After contest, suit was dismissed by the trial Court by judgment and decree dated 18.01.1986. Plaintiff remained unsuccessful in the first appeal which has been rejected by the learned Additional District Judge, Hisar, by judgment dated 24.08.1991, resulting in the institution of the present appeal.

3. Besides other arguments, Mr. R.A. Sheoran, counsel for the appellant, submits that the gift deed Ex.P-13 executed on 02.06.1958, was much prior in time to the sale deed executed in favour of Dalla son of Maidhan. He urges that courts have erred in assuming that the sale deed was subsequent in point of time. He asserts that appeal deserves to be remitted to the lower Appellate Court.

4. While supporting the judgments and decrees under appeal, Mr. Rajiv Sharma, counsel for the respondents, has contended that this argument was never raised by the appellant before the courts below and the appellant is trying to set up a new case in the second appeal, which cannot be permitted. He asserts that on the basis of the evidence, led by the parties, both the courts have concurrently held that after the sale of



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land by Dalla son of Maman, he was not left with any land and therefore, there was no question of execution of the gift deed.

5. I have heard counsel for the parties and considered their respective submissions besides examining the record with their able assistance.

6. After analyzing the ocular as well as documentary evidence led by the parties, both the courts have returned the concurrent finding that the sale deed as well as the gift deed stand duly proved. A perusal of the gift deed Ex.P-13, which is in Urdu and has been translated, shows that Dalla son of Maman has described his share holding in different numbers and has stated that for the last 20 to 25 years he has been living with Risal Singh, plaintiff, who has been sincerely serving him. Stating that he does not possess anything to pay him in lieu of his service and he is 70 years old senior citizen, Dalla son of Maman executed the gift deed in favour of the plaintiff on 02.06.1958 in the presence of two witnesses and presented it to the registering authority. It cannot be disputed that gift deed is much earlier in time to the sale deed in favour of Dalla son of Maidhan. By virtue of gift deed, Dalla son of Maman has gifted his share in the Shamlat land to the plaintiff. As he was not left with any share in land, he could not sell land in favour of any of the defendants. An argument to this effect has been raised before the first appellate Court but it has been rejected by the learned Additional District Judge, by holding that after the rectification of the revenue record, Dalla son of Maman, never challenged its correctness and his subsequent conduct



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corroborates that he admits the mutation as well as the subsequent revenue entries to be correct. The implication of the gift deed, which is prior in time to the sale deeds has however, not been examined by the first Appellate Court. For this reason alone, this Court is of the view that the matter deserves to be remitted to the first Appellate Court for fresh decision on merits.

7. Accordingly, judgment and decree dated 24.08.1991, passed by the learned Additional District Judge, Hisar is set aside. Matter is remitted to District Judge Hisar, to decide the appeal afresh, after hearing the parties, uninfluenced by any observation made hereinabove.

8. Appeal is disposed off.

9. Parties are directed to appear before learned District Judge, Hisar on 05<sup>th</sup> May, 2025, who may hear the appeal himself or assign it to any other court of competent jurisdiction. Upon remand, the first Appellate Court shall make an endeavour and conclude the hearing of the appeal as expeditiously as possible.

10. Pending application, if any, shall stands disposed off.

**07.04.2025**

pooja saini

**(SUVIR SEHGAL)**

**JUDGE**

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No