



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

**Reserved on 20th of February, 2025
Pronounced on 16th of May, 2025**

RSA No.2769 of 1995

Smt. Indrawati

....Appellant

Versus

Ram Pat and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate and
Mr. Jagnoor Singh, Advocate for the appellant.

Mr. Rajinder Goel, Advocate
for the respondents.

PANKAJ JAIN, J.

Plaintiff is in second appeal. For convenience, the parties hereinafter are referred to by their original position as before the Court of the First Instance i.e. the appellant as the plaintiff and the respondents as defendants.

2. Plaintiff filed suit seeking decree of declaration with the consequential relief of permanent injunction. Plaintiff Devi Dutt (now deceased) filed suit for declaration claiming that he is owner in possession of 31 Kanals 18 Marlas of land as detailed out in para No.1 of the plaint. He has only one daughter namely Indrawati as his legal heir. Defendants belong



to family of the plaintiff. Earlier in order to grab his land, they got a registered Will dated 26.06.1973 executed from him, in their favour misrepresenting the facts. The same was later on cancelled vide registered document dated 20.08.1975. Plaintiff claimed that about six years back Roshal Lal, respondent No.6, approached him expressing his need to avail loan on his share of the land. He claimed that consent of the plaintiff being co-sharer was required. Plaintiff was directed to say 'yes' in reply to the questions posed by the Executive Officer. Plaintiff believing the representation of Roshan Lal, came to Rewari on 01.06.1977. His thumb-impressions were obtained and documents were executed. To his shock, he received notice from Income Tax Department in the month of April, 1982 and came to know that defendants got a gift deed executed in their favour from him on 01.06.1977 on the pretext of 'no objection'.

3. Plaintiff claimed that the gift deed is a result of fraud and misrepresentation played upon him. The same does not vest defendants No.1 to 5 with any right, title or interest in the suit property.

4. Suit was contested by defendants No.1 and 3 to 6. It was denied that the gift deed was executed by playing fraud and misrepresentation. It was claimed that the contents of the gift deed were read over and explained by Deed Writer as well as Sub Registrar to the plaintiff. Admitting the contents thereof as correct, he thumb-marked the same. Mutation regarding gift deed was also sanction in favour of



defendants No.1 to 5 on 14.06.1982.

5. Suit filed by the plaintiff was put to trial by the Court of the First Instance framing the following issues:

- “1. *Whether the plaintiff is the owner in possession of the suit land? OPP*
2. *Whether the impugned gift deed dated 1.6.77 is illegal, void and not binding upon the plaintiff? OPP*
3. *Whether the suit is properly valued for the purpose of court fee and jurisdiction (onus objected to)? OPP*
4. *Whether the plaintiff has no locus-standi to file the present suit? OPP*
5. *Whether the suit is not maintainable in its present form? OPD.*
6. *Whether the suit is bad for mis-joinder of parties? OPD.*
7. *Whether the suit is within limitation? OPD.*
8. *Relief.”*

6. While returning finding on issues No.1 and 2, Court of the First Instance held that the plaintiff failed to prove that he is owner in possession of the suit land and that the gift deed dated 01.06.1977 is result of fraud and misrepresentation of facts.

7. Issues No.3, 4, 5 and 6 were decided against the defendants.

8. While deciding issue No.7, Court of the First Instance held that the limitation to challenge gift deed is governed by Article 59 of the Limitation Act. Limitation is 3 years. PW6 Indrawati admitted that her father told her about the gift deed one year after its execution. The plaintiff having acquired knowledge of the gift deed in the year 1978, the suit



instituted on 29.07.1982 was barred by limitation. The suit filed by the plaintiff was dismissed.

9. Unsuccessful, plaintiff preferred appeal.

10. In appeal, the Appellate Court has affirmed the findings recorded by the Court of the First Instance.

11. Ld. Senior Counsel appearing for the appellant/plaintiff has assailed the findings recorded by the Courts below. He submits that the Courts below failed to infer from the facts and circumstances of the case that the Gift Deed dated 01.06.1977 (Exhibit D-1), impugned in the present *lis* by the plaintiff was nothing but a ploy to usurp the land of the plaintiff. He submits that registered Will was executed by the plaintiff in favour of defendants No.1 to 5 on 26.06.1973. The same was cancelled by registered document on 20.08.1975. It was specifically stated that the cause of cancellation of Will, was for the reason that the defendants were abusive towards plaintiff and were always ready to fight. He submits that it is highly unaccepted that a person who cancelled registered Will in favour of defendants No.1 to 5 on 20.08.1975, would again execute gift deed in their favour on 01.06.1977. He submits that the gift deed is proved to be result of misrepresentation of facts as the recital w.r.t. delivery of possession, is wrong and against the facts. He submits that the gift deed was kept secret till the year 1982. Plaintiff came to know of the same only when he received notice of gift tax from the Income Tax Department and the mutation was



entered. He further submits that it is highly improbable that Devi Dutt would gift his entire property and would not keep anything for himself or for his daughter. He further submits that the findings recorded by the Courts below on issue No.7, also need to be reversed. Specific plea has been raised in the plaint that the plaintiff came to know of gift deed only after he received gift tax notice in the year 1982. Indrawati while appearing as PW6, specifically stated of having gained knowledge of the gift deed in the year 1982. A single line from the cross-examination of Indrawati is being read out of context. He submits that the mutation was rejected for non-appearance of Devi Dutt. That the limitation shall commence from the date of knowledge of the gift deed. The plaintiff came to know of the gift deed only in the year 1982. Suit was filed in the same year.

12. Mr. Sarin apart from the merits has drawn attention of this Court to the judgment of the Appellate Court and submits that the same is totally in divorce to the requirements of Order XLI Rule 31 CPC. He submits that except repeating the conclusions recorded by the Trial Court, Appellate Court has not applied its mind to record reasons for affirming the findings recorded by the Court of the First Instance.

13. Per contra, Counsel for respondents Mr. Goel, submits that with the passage of time, the relations between the plaintiff and defendants No.1 to 5 improved. The same led to execution of gift deed dated 01.06.1977 by the plaintiff in favour of defendants. Though, the same was challenged on



the basis of fraud but the plaintiff miserably failed to prove the fraud and thus, both the Courts below rightly held that the suit of the plaintiff was liable to be dismissed. He further submits that from the cross-examination of PW6 Indrawati, it is evident that she admitted that her father told her about gift deed after a year of execution thereof. Once that is so, plaintiff Devi Dutt was well within the knowledge of gift deed in the year 1978. The present suit having been filed in the year 1982, was rightly dismissed being barred by limitation.

14. I have heard counsel for the parties and have carefully gone through records of the case.

15. A bare perusal of the order passed by the Lower Appellate Court would reveal that though the same runs into 18 pages but apart from recordings the arguments made by counsel for the parties, the only finding recorded by the Lower Appellate Court, reads as under:

“20. The learned trial court had discussed the matter in great detail and had, therefore come to a right conclusion that the gift-deed had actually been executed by the plaintiff by his own free will. Once, it is proved that the plaintiff had executed a gift-deed in respect of the property in favour of the defendants, it would not be said to be owner in possession of the suit land and the gift-deed could not be said to be void and not binding on the rights of the plaintiff. The learned trial court had rightly decided issues no.1 and 2 against the plaintiff. I therefore, uphold the findings of the learned trial court on these issues”

16. Similarly, on issue No.7, Lower Appellate Court observed as



under:

“22. As regards the findings on issue no.7, it is apparent from the statement of Smt. Indrawati that Devi Dutt had told her about the execution of the gift-deed about one year after its execution. The gift-deed was executed on 1.6.1977. Devi Dutt had told her about its execution in June, 1978 and so Devi Dutt is proved to have knowledge of the gift deed in 1978. The present suit was, however, filed in June, 1982 i.e. after four years from that knowledge. Moreover, since the plaintiff had not objected to the sanctioning of mutation of gift-deed by the revenue officers, it is evident that the plaintiff had knowledge of the gift-deed right from the date of its execution and the suit had been filed after five years from the said execution. The suit of the plaintiff was, therefore, apparently barred by limitation. In the face of this evidence, it cannot be accepted that the plaintiff had come to know only in April, 1982 when notice had been received from the income-tax department. It is proved on record that mutation was entered in 1979 and notices were sent several times to the parties and also it could not be argued that the defendants had kept the gift deed secretly. In support of this contention, learned counsel for the defendants had relied upon Smt. Parbatu Versus Pano Devi and another 1995 (3) S.L.J. 2049 (H.P.). I, therefore, find that the learned trial court had rightly decided that the suit of the plaintiff was barred by limitation. I, therefore, affirm the findings of the learned trial court in issue no.7.”

17. The Lower Appellate Court decided issue No.7 on the ground that notices were sent several times to the parties when mutation was entered in the year 1979. Thus, it cannot be said that the gift deed was kept secret. However, it failed to appreciate that notice was never served upon Devi Dutt, the plaintiff, and it is on this ground that the mutation was thereafter



cancelled.

18. In the considered opinion of this Court, Order XLI Rule 31 CPC casts legal obligation upon the Appellate Court to state:

- i) points of determination;
- ii) decision thereon; and
- iii) reasons for the decision.

The Appellate Court apart from recording its concurrence to the findings recorded by the Trial Court has not assigned any reason in support of its conclusions. Being final court of fact, it is duty of the Appellate Court to re-appreciate the evidence independent of the findings recorded by Trial Court and then to record its reasons for concurring with or over-ruling the view formulated by Court of First Instance. Appellate Court failed to shoulder the duty casted on it by law.

19. In view of above, judgment and decree passed by the Appellate Court cannot be sustained. The same is hereby set aside.

20. The present appeal is remanded back to the Lower Appellate Court to decide afresh in accordance with law within a period of 6 months from the date the parties appear before the Appellate Court.

21. The parties shall appear before District Judge, Rewari on **01.07.2025**.

22. Appeal is disposed off.



23. Pending application(s), if any, shall also stand dismissed.

May 16, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No