

HRJN020007252019



IN THE COURT OF VIVEK SINGH, ADDITIONAL CIVIL
JUDGE (SENIOR DIVISION), JIND

Computerized CIS No. : CS/507-2019
Civil Suit RBT No. : 89 of 2026
Date of institution : 11.07.2019/24.04.2026
Date of Decision : 09.07.2026

Sudesh alias Sanjana Garg daughter of Ram Niwas son of Matu Ram, resident of Vikash Nagar Bhiwani Road, Jind, now, wife of Bajrang Garg son of Krishan Kumar, resident of B-4, 97, Jain Gali, Talaki Gate, Hisar.

.....Plaintiff.

Versus

Vikas son of Ram Niwas son of Matu, resident of 833/30, Vikas Nagar Bhiwani Road, Jind, Tehsil and District, Jind.

.....Defendant.

Suit for Declaration

Present: Shri Ghanshyam Goswami, Advocate for plaintiff.
Defendant ex-parte v.o.d. 16.09.2019.

JUDGMENT

The plaintiff Sudesh has filed the present suit seeking relief of declaration. The plaintiff has sought nullity of gift deed no. 5623 dated 14.02.2012 registered in the office of Sub-Registrar, Jind.

2. It is submitted by plaintiff that the defendant is her real brother. The defendant is not a person of good nature and has

several vices and bad habits. Defendant by taking advantage of her love and affection got a gift deed no. 5623 executed from her by fraud and misrepresentation. By way of such gift deed, one part of the suit property was gifted by their father and one part was gifted by the plaintiff in favor of the defendant. It is submitted that the defendant called the plaintiff in the office of Sub-Registrar, Jind on the pretext of getting the revenue record corrected in her name and in collusion with the officials of office of Sub-Registrar, Jind, he got the gift deed executed. It is submitted that the suit property could not have been transferred in the name of defendant by the plaintiff. The defendant also committed theft of stamp papers.

3. It is submitted that about one month ago, the plaintiff came to know about the said document, when she had approached the concerned *patwari* for some work. Thereafter, she had approached the defendant for correction of gift deed and to get the property transferred in her name but, defendant refused. On this cause of action, the present suit has been filed.

4. A notice of the suit was given to defendant but, no one appeared from defendant side and defendant was proceeded against ex-parte vide order dated 16.09.2019.

5. No issue was framed and case was fixed for ex-parte evidence of plaintiff. In ex-parte evidence, plaintiff examined following witnesses:

i) PW-1, Sudesh alias Sanjana Garg: The plaintiff

Sudesh alias Sanjana Garg herself examined as PW-1 and tendered her duly sworn affidavit Ex. PW1/A, wherein she reiterated the version of plaint, which needs not be repeated here for the sake of brevity. The Plaintiff has relied upon following documents:-

Ex. P1: Photocopy of Adhar card of plaintiff;
Ex. P2: Photocopy of gift deed no. 5623 dated 14.02.2012;

ii) PW-2, Ram Niwas: The witness has tendered his affidavit as Ex. PW2/A, wherein he corroborated the version of PW1 and deposed on similar lines.

6. Learned counsel for plaintiff has also tendered following documents:

Ex. P3: Compromise entered between the parties;
Ex. P4: Photocopy of Adhar card of defendant.

7. Thereafter, the ex-parte evidence was closed by the counsel for plaintiff vide his separate statement dt. 14.03.2024.

8. The Court has heard the learned counsel for the plaintiff and has given it's thoughtful consideration to the submissions, pleadings and documents brought before it.

APPRECIATION OF EVIDENCE AND DISCUSSION

9. The plaintiff Sudesh alias Sanjana Garg has sought a declaration regarding the nullity of gift deed no. 5623 dated 14.02.2012 (Ex. P2), which was executed by Ram Niwas son of Matu and the plaintiff in favour of defendant regarding a plot measuring 12 Marla. The plot was in the name of late Savitri Devi

wife of Ram Niwas and after her death, it was succeeded by plaintiff (daughter of late Savitri Devi), her husband Ram Niwas and her two sons namely, Satish and Vikas. Both the donor who were owner of $\frac{1}{2}$ share in the suit property, gifted their shares in favour of defendant Vikas. The execution of such document has not been disputed. It can be appreciated that a 'gift' has been defined in Section 122 of Transfer of Property Act, 1882 as a transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee. Section 123 further stipulates that for the purpose of making a 'gift' of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of a donor, and attested by at least two witnesses. Similarly, Section 126 of the Act stipulates the conditions when a 'gift' may be suspended or revoked. The Section stipulates that a gift may be revoked in any of the cases (save want or failure of consideration) in which, if it was a contract, it might be rescinded.

10. Thus, to prove a valid gift in Court, one must provide the original registered document and should examine one of the attesting witnesses to testify to its execution, and present evidence that gift was voluntarily made and formally accepted by the donee during the donor's life time. In the present case, the plaintiff has contended that gift was not made voluntarily by her and her father

and same was result of misrepresentation, fraud and cheating. In the judgment of Keshav and others vs. Gian Chand and another, 2022 LiveLaw (SC) 82, the Hon'ble Supreme Court of India has held that voluntariness and animus are necessary for the execution of a valid deed. In this regard, it is pertinent to refer the relevant paragraphs nos. 9 and 10 of such judgment as under:

“9. The concurrent findings of the lower courts delve into the context and factual aspects surrounding the primary evidence viz., gift deed, to conclude that the plaintiffs case lacks base for a bona fide claim for decree of declaration. Appreciation of evidence is an exercise based on facts and circumstances where the preponderance of probability can take varying form and configurations. What facts and circumstances have to be established to prove the execution of a document depends on the pleas put forward. Ordinarily, no one is expected to sign or execute a document without knowing its contents, but if it is pleaded that the party executing the document did not know the contents thereof then it may, in certain circumstances, be necessary for the party seeking to prove the document to place material before the court to satisfy it that the party who executed the document had the knowledge of its contents [Rao Saheb v. Rangnath Gopalrao Kawathekar (Dead By LRs) and Others, (1972) 4 SCC 181]. Considering that the very origin of the gift deed was disputed by the executant during her lifetime, the lower courts were right in weighing the evidence of the gift deed on the touchstone of its validity first, rather than

its form and content. The fact in issue in the present case is the voluntariness and animus necessary for the execution of a valid gift deed, which is to be examined on the basis of evidence led by the parties who could depose for the truth of this fact in issue. Decision and determination of the fact in issue is by examination of the oral evidence of those persons who can vouchsafe for the truth of the facts in issue. The impugned judgment in the second appeal by the High Court, unfortunately, chose to ignore and not deal with the fact in issue in the background of the case, but was completely influenced by the evidence led to support execution and registration of the document, and not whether execution was voluntary and in exercise of unfettered will to effect gratuitous transfer of land in favour of the plaintiffs. When a person obtains any benefit from another, the court would call upon the person who wishes to maintain the right to gift to discharge the burden of proving that he exerted no influence for the purpose of obtaining the document. Corollary to this principle finds recognition in sub-section (3) to Section 16 of the Indian Contract Act, 1872 which relates to pardanashin ladies. The courts can apply this principle to old, illiterate, ailing or infirm persons who may be unable to comprehend the nature of document or contents thereof. Equally, one who bargains in the matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The burden of establishing perfect fairness, adequacy and equity is cast upon the person in whom the

confidence has been reposed. Therefore, in cases of fiduciary relationships when validity of the transaction is in question it is relevant to see whether the person conferring the benefit on the other had competent and independent advice. [Krishna Mohan Kul alias Nani Charan Kul and Anr. v. Pratima Maity and Ors., (2004) 9 SCC 468].

10. The question whether a person was in a position to dominate the will of the other and procure a certain deed by undue influence is a question of fact, and a finding thereon is a finding of fact, and if arrived at fairly in accordance with the procedure prescribed, it is not liable to be reopened in second appeal [Ladli Parshad Jaiswal vs. The Karnal Distillery Co. Ltd., Karnal and Others, AIR 1963 SC 1279; and Bellachi (D) by Lrs. v. Pakeeran, (2009) 12 SCC 95]. In the present case, the plea as to invalidity of the gift deed is not to be decided on general presumption and assertion. Concurrent findings of facts arrived at in the present case were based upon a holistic examination of the entire evidence relating to execution and validity of the gift deed. The lower courts did not adopt a legalistic approach but took into account not one but several factual facets to accept the version given by Keshav that the gift deed was not a valid document. These concurrent findings are not perverse but rather good findings based upon cogent and relevant material and evidence on record. These findings of the facts can be interfered in the second appeal only if they are perverse or some gross illegalities have been committed in arriving at such findings. To reverse the findings is not only to assess errors but also deal with

the reasons given by the court below and record findings and grounds for upsetting the conclusion. [See Nazir Mohamed v. J. Kamala and Others, 2020 SCC OnLine SC 676; Hero Vinoth (Minor) v. Seshammal, (2006) 5 SCC 545.”

11. Thus, in view of the aforementioned legal position and after going through the evidence led by plaintiff, following prepositions emerge:

i) The present suit has been filed by one of the donor namely, Sudesh. The other donor namely Ram Niwas was neither impleaded as a plaintiff or proforma defendant. Although, the other donor has been examined as PW-2 but, he did not join the plaintiff to seek cancellation of the document. Undoubtedly, the donor Ram Niwas is one of the necessary party and should have been impleaded as the plaintiff.

ii) The plaintiff has sought nullity on the ground that the ‘gift’ was not executed voluntarily and rather, same is result of fraud and misrepresentation. In such case, where the plaintiff has taken a specific plea of fraud, then, it was incumbent upon her to prove the act of fraud and misrepresentation by the defendant by some positive evidence. In the evidence, the plaintiff got herself examined as PW1 and the another donor as PW2. Both the witnesses, except the bare assertions that the fraud was committed, did not mention the specific act or instance or manner in which such fraud was committed by the donee.

In the evidence, PW1 stated that the document was executed as the plaintiff was actuated by

love and affection towards her brother. It is also deposed that the physical and mental condition of another donor Ram Niwas was weak. However, no evidence has been led to prove that Ram Niwas suffered any physical or mental incapacity or has a condition which rendered him incapable to take a free decision. No such medical or other evidence has been adduced. It is deposed that the defendant is a person of bad character and vices but, no evidence has been led to prove the same.

iii) The gift deed was executed in the presence of two witnesses namely Mr. Harpal, Municipal Counselor and Mr. Bajrang. However, none of them have been summoned as a witness to prove the circumstances which existed at the time of execution of gift deed and about the mental condition of executant namely, Ram Niwas. The testimony of these witnesses was necessary to prove the circumstances under which the impugned gift deed was executed and about the aspect of voluntariness of the executants.

iv) The plaintiff has further adduced a compromise (Ex. P3) which was executed between the parties allegedly during the pendency of trial, on 29.11.2021. It is urged that vide such compromise, the defendant agreed to get the gift deed and corresponding mutation canceled. However, the document which is neither attested by any attesting witness nor registered, has remained unproved. The notary public, who attested such document was also not summoned to prove such document. Even the defendant himself did not appear to prove execution of such compromise, and therefore, such compromise has

remained unproved. The document which has not been proved in a proper manner, cannot be used to discredit a validly executed document.

v) Lastly, the gift deed was executed in the year 2012 but, it was challenged by the present suit in year 2019. The limitation for challenging a document by a suit for declaration is 3 years from the date of execution or from the date of knowledge. In the present case, the plaintiff herself is an executant. There is a presumption of knowledge of execution of document by the plaintiff. The plaintiff vaguely submitted that she had come to know about the execution of gift deed when she had met the concerned *patwari* in relation to some other work. Even the name of such *patwari* has not been disclosed. The pleadings are vague and do not disclose the actual date of knowledge. The plaintiff further failed to aver that for what work she had met the *patwari*. Thus, it appears that the pleadings which do not have any basis and not been proved by the plaintiff in her evidence, were inserted only in order to create a cause of action within limitation period. Furthermore, it cannot be assumed that the plaintiff was not in the knowledge of execution of a registered document when, the signatures of the plaintiff are present over the document. Thus, from the said perspective too, the suit of plaintiff appears to be time-barred.

CONCLUSION

12. Thus, from the above circumstances, it can be concluded that the plaintiff has failed to prove that the execution of gift deed

Ex. P2 was not by her volition and same is result of misrepresentation and fraud. Hence, in view of above discussion, suit of the plaintiff fails and same is dismissed with costs. Decree-sheet be prepared accordingly. File be consigned to the records after due compliance.

Pronounced in Open Court

Dated: 09.07.2026

Vivek Singh

Addl. Civil Judge (Sr. Division),
Jind, UID No. HR0388

Note: This Judgment contains *eleven* pages and all the pages have been duly checked and signed by me.

Vivek Singh

Addl. Civil Judge (Sr. Division),
Jind, UID No. HR0388

Neeru Bala, S. Gr.II

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