

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****228****RSA-4761-2015 (O&M)****Date of decision: 21.04.2026****Darshani Devi****...Appellant(s)****Vs.****Sumer Chand****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Shyam Singh Chooker, Advocate
for the appellant.

Mr. Tarun Dhingra, Advocate
for the respondent.

NIDHI GUPTA, J.

The plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned District Courts, whereby the suit filed by the appellants for declaration with consequential relief of permanent injunction, has been dismissed by both the District Courts.

2. Brief facts of the case are that plaintiff had averred in the plaint that she was owner in possession of land measuring 12K-2M being 242/2911th share of total land measuring 145K 11M as described in the plaint. Plaintiff and the defendant are real sister and brother. It was stated that plaintiff had given land measuring 4K on lease to the defendant for an amount of Rs. 8,000/- per year; and the remaining land had been given on lease to one Salinder Singh for Rs.8,200/- per year. It was alleged that on 12.06.1998 on the asking of the defendant, plaintiff had gone to Shahbad Tehsil for execution of some documents regarding lease where the



defendant had got her thumb marked on some papers on the pretext of lease money. It was averred that defendant had continued to pay lease money to the plaintiff; but in August 2007, defendant had refused to pay the lease money and stated that he was owner of land measuring 4K. On enquiry, plaintiff discovered that defendant had got executed a Gift Deed No. 461/1 dated 12.06.1998 in his favour through the plaintiff. It was contended that plaintiff had never intended to give the land to the defendant by way of gift. The alleged Gift Deed and subsequent entries are illegal, forged and not binding upon the rights of the plaintiff. Hence, the present suit was filed on 10.09.2007.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Kurukshetra had dismissed the suit of the plaintiff vide judgment and decree dated 22.02.2014. The Civil Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 27.05.2015. Hence, the present second appeal by the plaintiff.

4. Learned counsel for the appellant assails impugned judgments and decrees by submitting that learned District Courts were in error in non-suiting the appellant as they failed to appreciate that respondent himself has admitted in his cross-examination that appellant had never remained in the house of the respondent. Hence, there was no question of taking care of, or of extra love of the plaintiff for the respondent; and consequently, there was no ground for the appellant to executed impugned Gift Deed only in favour of the respondent. It is submitted that appellant has 4 brothers



including the respondent and appellant was having cordial relations with all his brothers. Therefore, there was no special ground for her to execute Gift Deed only in favour of the respondent.

5. It is further submitted that Gift Deed is cast in suspicious circumstances also on account of the fact that the land in question is in village Surkhpur, but the alleged attesting witnesses of the Gift Deed are not residents of the said village. Rather one of the attesting witnesses, Dalip Singh, Lumberdar is the resident of village Sirsama. Furthermore, 2 material discrepancies in the evidence of the said witnesses is that respondent has stated in cross-examination that appellant had called Dalip Singh, Lumberdar, as attesting witness; whereas Dalip Singh had alleged in his cross-examination that he had come on the asking of the appellant, Gian Chand and respondent/Sumer Chand. Thus 2 patent contradictions in the testimony of attesting witnesses. It is contended that in actual fact, Dalip Singh Lumberdar or any other witness was not present with the appellant and respondent on that day.

6. It is further submitted that the appellant is having two children one son and one daughter. The daughter of the appellant is married and living at Shahabad with her husband but none of the children of appellant was called if the alleged gift deed was going to be executed in favour of respondent, which proves that no gift deed was executed in actual; but the same is the result of fraud played with the appellant. There was no reason to make the gift deed without disclosing to her son or daughter or the husband of the daughter by the appellant.



7. It is further submitted by learned counsel for the appellant that there is no consideration at any point of time regarding the alleged gift deed and this fact is duly admitted by the respondent and has been proved on the court file but the Ld. District Courts failed to appreciate this fact also.

8. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

9. *Per contra*, learned counsel for the respondent/sole defendant vehemently opposes submissions advanced on behalf of the appellant and takes this Court through the concurrent findings of fact rendered by both the District Courts in favour of the respondent. He further submits that this Court in the Second Appeal cannot interfere in the concurrent findings of fact rendered by the learned District Courts. He accordingly prays for dismissal of the present Appeal.

10. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellant.

11. Perusal of the record of the case shows that respondent has duly proved the Gift Deed dated 12.06.1998 Ex.D1 by examining DW3 Dalip Singh Lumberdar, who had proved that Ex.D1 was scribed in his presence. Defendant had also examined DW2 Shiv Darshan Deed Writer/Scribe of the Gift Deed Ex.D1. DW2 had also deposed that documents were scribed by him in the presence of the parties. Further DW2 had proved the entry regarding Ex.D1 duly mentioned in his Register at Sr. No. 497 dated



12.06.1998. However, the said Register was not exhibited in Court. Thus, it is my view that the Gift Deed stood proved in accordance with Law.

12. Furthermore, the Gift Deed Ex.D1 was a registered document before the Sub Registrar, Shahabad on 12.06.1998 itself. Thus, presumption of truth is attached to it. Moreover, it is to be noted that plaintiff has nowhere stated that she has never visited office of Shahabad for executing Gift Deed.

13. Further the fact that Gift Deed has been executed by the plaintiff of her own free Will, is also evident from the fact that plaintiff had executed a Relinquishment Deed dated 16.12.2010 Ex.D2 in favour of Salinder Singh; whereby plaintiff had given her remaining land to Salinder Singh. It may be pointed out that Salinder Singh is grand nephew of the plaintiff i.e. grandson of Mehar Singh, who is brother of the plaintiff. It was also shown on record that plaintiff is residing with Salinder Singh; and that she is not residing with her own children. Even further, it was the specific contention of the defendant in his written statement that plaintiff had filed instant suit at the instigation of Mehar Singh as there were various litigations going on between Mehar Singh and defendant Sumer Chand.

14. Furthermore, there were contradictory pleas of plaintiff in as much as, as per the Relinquishment Deed Ex.D2, the remaining share of the land of the plaintiff was given to Salinder Singh on 16.12.2010. However, as per para 2 of the amended plaint filed by the plaintiff on 19.03.2011, it has been specifically pleaded that she had given 4K of land on lease to the defendant and the remaining land has also been given to the said Salinder



Singh on lease for a sum of Rs.8,200/- per year. Needless to say, once the plaintiff had already relinquished her share in favour of Salinder Singh on 16.12.2010, it was not possible as to how she could have given the land to Salinder Singh on lease in the year 2011.

15. From the above facts, it would therefore, appear that the contention of the defendant/respondent that plaintiff had filed suit to harass the defendant at the instigation of Mehar Singh, is proved to be correct.

16. Further the learned District Courts have discarded the evidence of PW2 who is one of the witnesses of the Relinquishment Deed, on the ground that as the facts on record give rise to presumption that he is interested witness and procured witness. Last but not the least, simplicitor suit for declaration without relief of possession is not maintainable. Learned counsel for the plaintiff has specifically admitted before learned District Court that plaintiff had never remained in the possession of the suit property and her possession over the suit property was only symbolic.

17. Besides the above, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings



only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellant.

18. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

19. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

20. Pending applications, if any, stand disposed of.

21.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No