

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

RSA No.490/1998

Reserved on:8.5.2009

Decided on:30.6. 2009

Amarjit Kaur and others.

...Appellants.

Versus

Ram Krishan Sood and others.

...Respondents.

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?¹. No.

For the appellants : Mr. S.V. Sharma, Advocate.

**For the Respondents : Mr. Bhupender Gupta, Senior Advocate with
Mr. Janesh Gupta, Adv. for respondents No. 1 to 9.**

None for respondent No.10.

Rajiv Sharma, J.

This Regular Second Appeal has been directed against the judgment and decree dated 22.6.1998 passed by the learned Additional District Judge, Shimla in civil appeal No. 85-S/13 of 1993.

Brief facts necessary for the adjudication of this Regular Second Appeal are that the respondents-plaintiffs No. 1 to 9 (hereinafter referred to as 'the plaintiffs' for convenience sake) filed a suit for declaration to the effect that the gift deed executed by proforma respondent-defendant Sh. Desh Bandu Sood in favour of the appellant-defendant (hereinafter referred to as 'the defendant' for convenience sake) in respect of share of

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?* No.

one Sh. Roshan Lal, the predecessor-in-interest of the plaintiffs and Sh. Desh Bandhu Sood i.e. proforma respondent-defendant was null and void and for possession of the same. It was further pleaded by the plaintiffs that one Sh. Bhagat Ram was survived by his two sons Roshan Lal and Banarsi Dass. Sh. Roshan Lal was owner of $1/6^{\text{th}}$ share in the land comprising Khata No. 36, Khatauni No. 62 to 65 khasra Nos. 663/1, 516, 651, 656, 657, 657/1, 666, 667, 668, 669, 670, 674, 650, 521, 523, 555 and 518/1 total measuring 35-09 bighas of which $1/6^{\text{th}}$ share comes to 5-18 bighas and $1/28^{\text{th}}$ share in Khata No. 37, Khatauni No. 66, Khasra No. 516/1, 658, 661, 663, 671 and 673 measuring 26-13 bighas of which $1/28^{\text{th}}$ share comes to 0-19 bighas. The total share of Roshan Lal was 6-17 bighas. The proforma respondent-defendant Sh. Desh Bandhu Sood is son of Roshan Lal in whose favour a power of attorney had been executed by him on 16.3.1972. He executed the gift deed in favour of the appellant-defendant Sh. Surinder Paul Singh on 3.11.1980. The plaintiffs have assailed the gift deed, inter alia, on following three grounds (a) that the property in the hands of Sh. Roshan Lal was ancestral Joint Hindu Family and coparcenary property qua the plaintiffs and Sh. Desh Bandhu Sood and he could not alienate the property without legal necessity; (b) that the power of attorney executed by Roshan Lal in favour of Desh Bandhu Gupta did not authorize him to alienate property without consideration; and (c) that the gift deed has been executed by Sh. Desh Bandhu Sood in his personal capacity and not as an attorney of Sh. Roshan Lal. The suit was contested by Sh. Surinder Paul Singh appellant-defendant. Sh. Desh Bandhu Sood, proforma respondent admitted the suit of the plaintiff. The plaintiffs have filed the replication only to the written statement filed by Sh. Surinder Paul Singh. The trial court partly decreed the suit as per the operative portion of the judgment.

The plaintiffs preferred the appeal before the Additional District Judge, Shimla. He allowed the appeal and decreed the suit of the plaintiffs. The learned Additional District Judge declared the gift deed Ex.P-2 dated 3.11.1980 null and void and without any authority. They were also held entitled for possession of the remaining land measuring 5-18 bighas i.e. 1/6th share of their predecessor-in-interest of late Sh. Roshan Lal out of the land comprised in Khata Khatauni No. 36/62 to 65 Khasra Nos. 663/1, 516, 651, 656, 657, 657/1, 666, 667, 668, 669, 670, 674, 650, 521, 523, 555 and 518/1. This Regular Second Appeal has been directed against the judgment and decree dated 22.6.1998. The same was admitted on the following substantial questions of law:

- 1. “Whether the suit property being agricultural land, ownership of which was acquired under the H.P. Tenancy and Land Reforms Act can be termed to be self acquired property or it remained ancestral in the hands of predecessors of respondent No.1 to 9?**
- 2. Whether the respondent No.10 acting as General Power of attorney of late Sh. Roshan Lal had power to execute the gift deed of the property of late Sh. Roshan Lal?**
- 3. Whether the learned Appellate Court committed grave error of law in misreading and misinterpreting the evidence on record and that the finding of the appellate court are perverse?**
- 4. Whether the respondents No. 1 to 9 by their acts and conduct acquiesced in the creation of right in the property in favour of the appellant and they are also estopped to file and maintain the suit?**

Mr. S.V. Sharma, Advocate has strenuously argued that the judgment and decree passed by the learned Additional District Judge is not sustainable in the eyes of law. He then contended that the learned Additional District Judge has misconstrued the oral as well as documentary evidence leading to grave miscarriage of justice.

Mr. Bhupender Gupta, Senior Advocate has supported the judgment and decree passed by the learned first appellate court.

I have heard the learned counsel for the parties and perused the record carefully.

Since all the substantial questions of law are inter-linked and inter connected, therefore, the same are being taken up together for determination to avoid repetition of discussion of the evidence.

The case of the plaintiffs, in nutshell, is that Sh. Roshan Lal has executed the power of attorney on 16.3.1972, which was registered in the office of Sub Registrar as document No. 100, Book No.4, Volume 61, page 56 in favour of Sh. Desh Bandhu Sood authorizing him to manage the property owned by Sh. Roshan Lal. According to the plaintiffs, Sh. Desh Bandhu Sood was only authorized to alienate the property in the share of Sh. Roshan Lal, the predecessor-in-interest of the plaintiffs No. 1 and 5 to 9 by way of sale, mortgage, exchange or in any other manner and in that connection to present sale deed or other documents for registration. He was authorized to receive earnest money and the sale price or mortgage money and for that purpose to sign the documents in any manner and to present the documents and put his signatures. However, Desh Bandhu Sood to the contrary has gifted the land falling to the share of Sh. Roshan Lal to defendant Sh. Surinder Paul Singh. The gift deed was registered on 3.11.1980.

PW-1 is Sh. Ram Krishan Sood. The general power of attorney is dated 16.3.1972 (Ex.P-1). The copy of the gift deed is dated 3.11.1980 (Ex.P-2). The copy of the Sajra Nasab is Ex.P-3. The copy of jamabandi for the year 1931-32 is Ex. P-4. Ex. P-5 is the jamabandi for the year 1939-40. The jamabandi for the year 1946 is Ex.P-6. The copy of jamabandi for the year 1952-53 is Ex.P-7 and for the year 1956-57 is

Ex.P-8. The jamabandi for the year 1960-61 is Ex.P-9 whereas the jamabandi for the 1964-65 is Ex.P-10. Ex.P-11 is the jamabandi for the year 1968-69 and Ex.P-12 is the jamabandi for the year 1973-74. Ex.P-13 and P-14 are the copies of jamabandis for the year 1978-79 and 1984-85 respectively. DW-1 Sh. Surinder Paul Singh has produced copy of mutation of the land gifted to him Ex.DW-1/A, DW-1/B, DW-1/C, DW-1/D and DW-1/E.

The suit land bearing khata No. 36, Khatauni No. 62 to 65 was possessed by Sh. Bhagat Ram common ancestor of the parties in the capacity of non-occupancy tenant alongwith other tenants. This fact is proved on the basis of jamabandi for the year 1931-32, Missal Haquiat for the year 1940, jamabandis Ex.P-9 for the year 1960-61 and Ex.P-10 for the year 1964-65. Sh. Bhagat Ram died in the year 1969. He left behind two sons, namely, Sh. Roshan Lal and Banarasi Dass. The tenancy rights after the death of Sh. Bhagat Ram were inherited by Sh. Roshan Lal, the predecessor-in-interest of plaintiffs No.1 and 5 to 9 and Sh. Desh Bandhu Sood as well as plaintiffs No. 2 to 4 sons of Sh. Banarasi Dass. Sh. Banarasi Dass has also expired. The proprietary rights were conferred upon Sh. Roshan Lal as per mutation No. 154 Ex.DW-1/A along with plaintiffs No. 2 to 4 as well as other co-sharers, who were recorded in possession of the suit land. They were shown owners in subsequent jamabandis Ex.P-13 for the year 1978-79 and Ex.P-14 for the year 1984-85. It is clear from the evidence brought on record that predecessor-in-interest of the plaintiffs No. 1 and 5 to 9 and Sh. Desh Bandhu Sood firstly inherited the tenancy rights alongwith plaintiffs No. 2 to 4 from their common ancestor Sh. Bhagat Ram and thereafter after coming into force the Himachal Pradesh Tenancy and Land Revenue Act, 1972, the proprietary rights as per their entitlement in the suit land were conferred

upon them alongwith other co-tenants. In these circumstances, the land cannot be treated as self acquired property of Sh. Roshan Lal for the reason that he inherited the tenancy rights along with Bhagat Ram, the original tenant.

The general power of attorney was executed by Sh. Roshan Lal in the name of his son i.e. Desh Bandhu Sood as per Ex.P-1. He had authorized him to get the land belonging to him situate at The Mall, Shimla and village Ambota in District Kangra partitioned and thereafter to sell the same. He had authorized Sh. Desh Bandhu Sood to sell the land falling in his share at Shimla and village Ambota either as a whole or in part, to create mortgage against the same, to exchange or to alienate in any other manner and in that connection may present sale deed or other documents for registration. He was authorized to receive the earnest money, the sale price or mortgage money and in furtherance thereto sign any document and to present documents under his signatures. The land could be alienated only for valuable consideration and not by way of gift. The gift deed Ex.P-2 dated 3.11.1980 is without any authority and confer no right, title or interest upon Sh. Surinder Paul Singh-defendant. Since the gift deed Ex.P-2 dated 3.11.1980 is invalid, the mutation attested on that basis is also bad in law.

The judgments i.e. ***Ram Asra and others versus Smt. Chinti widow of Dev Raj and others***, 1984 Sim.L.C. 380 and ***Ratti Ram versus Smt. Basanti and others***, 1985 Sim.L.C. 10 cited by Sh. S.V. Sharma, Advocate in view of the above discussion are not applicable to the facts and circumstances of the present case. These cases were decided on the basis of different facts.

Consequently, in view of the aforesaid reasoning, there is no merit in this Regular Second Appeal and the same is dismissed. There will, however, be no order as to costs.

30.6. 2009
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(Rajiv Sharma), J.