

CHAMAN LAL (D) THR. LRS.

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v.

KAMLAWATI (D) THR. LRS.

(Civil Appeal No.2633 of 2012)

JULY 16, 2019

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[SANJAY KISHAN KAUL AND K.M. JOSEPH, JJ.]

Punjab Court Act, 1918 – ss. 41 and 42 – Jurisdiction of High Court – Exercise of – Execution of gift deed by the son-original owner bequeathing land in favour of his step mother – Suit for partition by original owner, claiming that only half of the total land was gifted – Suit, in respect of half portion of the land or the whole land – Trial court directed the partition into half share each – Order upheld by the first appellate court – In Second Appeal, the High Court interfered with the concurrent finding and allowed the appeal – On appeal, held: High Court cannot be said to have exceeded its jurisdiction – It was exercised within the ambit of s. 41 – When the matter was pending in the High Court, translation and transliteration was got done of the document-gift deed – Person who had translated the document was summoned in the Court and had read the document in open court in the presence of counsel for the parties and it was thus, opined that the translation effected by the translation branch is absolutely correct, resulting in a finding that original owner did make a gift of the entire land – Acknowledgment of both the parties to the accuracy of the translation and the transliteration could not be doubted thereafter – Perusal of the gift deed shows that what is sought to be gifted does not mention any lesser land than the whole land – Translation would show that the donee is deemed to be the owner in possession of the gifted land – Thus, whatever land was gifted, the possession was handed over – Furthermore, matter is sought to be raised after 16 years of the land being sold to the 2nd defendant, thus, the conduct of the parties suggests that they understood that whole land was gifted and the possession of the whole land was handed over and the status of the property is not liable to be disturbed – Deeds and documents.

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A **Dismissing the appeal, the Court**

HELD: 1.1 During the pendency of the Second Appeal, prior even to first order, was that a translation was got done from the concerned branch of the High Court of the document in question being the gift deed. A transliteration was also got done of this document. In that context it has been observed in the order dated 02.04.2002 that the concerned judge had summoned the person who had translated the document being gift deed in the Court and had read the document in open court in the presence of counsel for the parties. This was compared with the punjabi version of the document. It was thus opined that the translation effected by the translation branch is absolutely correct, resulting in a finding that late C.L. did make a gift of the entire land. In the same proceeding it is also recorded that the correctness of the version of this document's translation is not disputed. [Para 8] [1076-A-C]

D 1.2 The High Court cannot be said to have exceeded its jurisdiction, as has to be exercised within the ambit of Section 41 of the Punjab Court Act. It is said so as the fulcrum of the dispute was the gift deed itself being the document in question. The document was originally penned down in Urdu with the Persian dialect and was thereafter translated to the Punjabi language. The next translation was done in English as also the transliteration. Thus, there would be a reliance on an inaccurate document if the translation and the transliteration was not accurate. This is the objective which was sought to be subserved by getting an authenticated translation done in the High Court and the concession/submission of the appellants recorded in order dated 02.04.2002 in respect of the translation, *albeit* the order being set aside. The acknowledgment of both the parties to the accuracy of the translation and the transliteration could not be doubted thereafter. If the substratum being the document has been inaccurately translated then there would be a fundamental legal infirmity in the interpretation to be given and in determining the controversy in question. This preliminary objection sought to be raised by the appellant on the right of the High Court to look into the question on merits cannot be accepted. [Para 11] [1077-E-H; 1078-A]

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1.3 The perusal of the gift deed shows that what is sought to be gifted does not mention any lesser land than the whole land. If the plea of the appellant was to be accepted, then there should have been some area stated to have been gifted while the other would have been held back. This is not so. Of course, the submission for the appellant is that the area remained undivided and that is why the partition was being sought. [Para 13] [1078-F]

1.4 When the reference is made to Rs.800/-, it is in the context of half the value of Rs.1600/-, a methodology adopted which is prevalent in this part of the country while recording such translation wherefor accuracy of the figures, half the amount is mentioned to ensure that the actual figure is correctly reflected. Not only that the translation would show that the donee is “deemed to be the owner in possession of the gifted land”. Thus, whatever land was gifted, the possession was handed over. In the facts of the instant case, the possession of the complete land is undisputedly initially with the Ist defendant then with the IInd defendant and thereafter with the IIIrd and IVth defendants. [Para 14] [1078-G; 1079-A-B]

1.5 Jamabandi for the first time was done in the name of late G.K. for 1969–70. Prior to that the whole land remained in the name of late C.L., the original owner. It is not that the Jamabandi was done for half the land in favour of late C.L. and half in favour of late G.K. If at all a grievance would have arisen on behalf of late C.L. that could have been an occasion for it. The first time the matter is sought to be raised is 17 years later and after about 16 years of the land in question being sold to the IInd defendant. Thus, the conduct of the parties also suggests that the parties understood that whole land was gifted and the possession of the whole land was handed over. [Para 15] [1079-B-D]

1.6 The Indian Stamp (Punjab Amendment) Act, 1958 received the assent of the Governor of Punjab on 23.04.1958 and was published in the Gazette on 25.4.1958. Transaction in question was prior to that date. The status of the property is not liable to be disturbed after such a prolong period of time in the context of the facts and the legal position which has emerged

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- A since 10.3.1958. The gift deed can be read in one manner, and only in one manner. [Para 17, 18] [1079-E-G]

Pankajakshi (D) through LRs. & Ors. v. Chandrika & Ors. (2016) 6 SCC 157 : [2016] 3 SCR 1018 ; Sir Chunilal V. Mehta & Sons Ltd. v. Century Shipping and Manufacturing Co. Ltd. [1962] 3 Suppl. SCR 549 – referred to.

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Case Law Reference

[2016] 3 SCR 1018 referred to Para 7

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[1962] 3 Suppl. SCR 549 referred to Para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2633 of 2012

- D From the Judgment and Order dated 23.01.2008 of the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 3888 of 1999

Rupinder Singh Suri, Sr. Adv., Varun Khanna, Aditya Giri, Abhishek Singh, Advs. for the Appellants.

- E Ms. Aishwarya Bhati, Sr. Adv., Tushar Bakshi, Shovit Singh, Naresh Bakshi, Nikilesh Ramachandran, Advs. for the Respondents.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

- F 1. The subject matter of dispute is half of the land measuring 3 Biswas and 11 Bighas out of Khasra No. 1252, Khata No. 318/563 in Dholewal, Ludhiana. The land was purchased by Chaman Lal (late appellant) from one Mansa Ram on 30.7.1949. A gift deed was executed on 10.3.1958 by Chaman Lal in favour of late Smt. Gurdev Kaur, his stepmother. The controversy relates to the fact whether suit was in respect of half portion of the total land or the whole land was gifted to late Smt. Gurdev Kaur.

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2. It cannot really be disputed that the possession of the land remained with late Smt. Gurdev Kaur. It appears that no mutation was made till the jamabandi of 1969-70 when the whole land was mutated in the name of Smt. Gurdev Kaur, who soon thereafter, sold the land to

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Smt. Kamla Wati on 15.3.1971. The consequent mutation was made on 24.10.1972. A

4. The dispute arose from the filing of suit for partition by late Sh. Chaman Lal on 22.08.1987. In the suit claim was sought to be laid that what was gifted was only half of the total land. Late Smt. Gurdev Kaur was arrayed as the 1st defendant and Smt. Leelawati as the IInd defendant. B

5. *Pendente lite* the land was re sold by defendant No.2 to defendant Nos. 3 & 4, on 4.1.1995 and 6.1.1995 who were thus impleaded as the defendants. It is these defendants who are respondents 1 & 2 before us and are really contesting parties. C

6. The trial court in terms of judgment and decree dated 20.11.1998 decreed the suit directing the partition into half share each. The first appellate court affirmed the decree vide judgment and order dated 28.8.1999. However, the second appellate court being the Punjab and Haryana High Court interfered with these concurrent findings in terms of judgment dated 02.04.2002. Late Chaman Lal preferred a special leave petition against the said order being SLP(C) No. 2713 of 2003. The appeal was allowed on 6.10.2003 on the short ground that the Second Appeal has been decided without framing any substantial question of law as was mandatory requirement under Section 100 of the Code of Civil Procedure, 1908. The matter was thus remitted back to the High Court which has again allowed the appeal in terms of the impugned judgment dated 23.01.2008. D E

7. We may notice prior to proceeding on merits of the matter that the order of this Court dated 6.10.2003 was predicated on a legal position which stands subsequently clarified by a Constitution Bench judgment of this Court in Pankajakshi (D) through Lrs. & Ors. vs. Chandrika & Ors. (2016 (6) SCC 157) opining that insofar as the Punjab and Haryana High Court is concerned, a different legal position would prevail and a substantial question of law is not to be determined, in view of the State amendments, as a pre-requisite before interfering with the orders of the trial court. F G

8. Be that as it may, the aforesaid is being referred to, so as to complete the facts as also by reason of the learned counsel for respondent nos. 1 & 2 drawing our attention to certain facts recorded in the earlier

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- A Second Appeal order dated 02.04.2002 which may be somewhat germane to the controversy in question. We may notice that crucial development during the pendency of the Second Appeal, prior even to first order, was that a translation was got done from the concerned branch of the High Court of the document in question being the gift deed. A transliteration was also got done of this document. In that context it has been observed
- B in the order dated 02.04.2002 that the concerned learned judge had summoned the person who had translated the document being gift deed(Exh. P1) in the Court and had read the document in open court in the presence of learned counsel for the parties. This was compared with the punjabi version of the document. It was thus opined that the
- C translation effected by the translation branch is absolutely correct, resulting in a finding that late Sh. Chaman Lal did make a gift of the entire land. In the same proceeding it is also recorded that the correctness of the version of this document's translation is not disputed.

9. Learned counsel for the appellant has sought to contend that it
- D was not within the domain of the power of the Second appeal judge, who has interfered with the concurrent findings given the narrow scope in which such a second appeal has to be examined more so in the context of Section 41 of the Punjab Court Act, 1918(hereinafter referred to as the 'Punjab Court Act') read with Section 42 of the Punjab Court Act. The said provisions read as under:

- E "41. Second appeals-(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :

- (a) the decision being contrary to law or to some custom or usage having the force of law :

- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law :

- (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

- Explanation-A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of his section:

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(2) An appeal may lie under this section from an appellate decree passed ex parte. A

(3) [Repealed by Section 2B of Punjab Act 6 of 1941]

42. Second appeal on no other ground-

(1) No second appeal shall lie except on the grounds mentioned in Section 41. B

2. No second appeal shall lie in any suit of the nature cognizable by Courts of small Causes when the amount or value of the subject matter of the original suit does not exceed five hundred rupees.”

10. On the other hand, learned counsel for the respondent nos. 1 & 2 seeks to contend that the High Court was well within its jurisdiction to have a genuine translation done of the document, being the gift deed, that being the real bone of contention. The proceedings, as referred to above, have been relied upon for the purposes of the acknowledgment of both the parties that the translation is accurate. In this context, reference has been made to the provisions of clauses (a) & (c) of sub section 1 of Section 41 of the Punjab Court Act to contend that the exercise of power would fall within the said jurisdiction. C D

11. On consideration of the matter, we find that the High Court cannot be said to have exceeded its jurisdiction, as has to be exercised within the ambit of Section 41 of the Punjab Court Act. We say so as the fulcrum of the dispute was the gift deed itself being the document in question. The document was originally penned down in Urdu with the Persian dialect and was thereafter translated to the Punjabi language. The next translation was done in English as also the transliteration. Thus there would be a reliance on an inaccurate document if the translation and the transliteration was not accurate. This is the objective which was sought to be subserved by getting an authenticated translation done in the High Court and the concession/submission of the appellants herein recorded in order dated 02.04.2002 in respect of the translation, *albeit* the order being set aside. The acknowledgment of both the parties to the accuracy of the translation and the transliteration could not be doubted thereafter. If the substratum being the document has been inaccurately translated then there would be a fundamental legal infirmity in the interpretation to be given and in determining the controversy in question. We are thus not inclined to accept this preliminary objection sought to be E F G

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- A raised by learned senior counsel for the appellant on the right of the High Court to look into the question on merits.

12. We are fortified in our aforesaid view by earlier judicial pronouncements. We may note that these judgments are in the context of the provisions for second appeal under Section 100 of the said Code as it existed prior to the amendment of 1976, which is almost *pari materia* to the existing provision which applies to Punjab (as noticed in *Pankajakshi (D) through LRs & Ors.*¹ in para 24). Per se construction of documents (unless documents of title) to prove a question of fact do not involve an issue of law unless it can be shown that the material evidence contained in that was misunderstood by the court of fact.² In the facts of the present case we are, in fact, dealing with a document of title, i.e., the Gift Deed. Thus, there can be little doubt that if the translation of the document itself is not correctly done, an aspect which was addressed to by the High Court by getting the translation done, which was accepted, then the correct translation would have to be re-construed. It is this principle, which was recognized in *Sir Chunilal V. Mehta & Sons Ltd. v. Century Shipping and Manufacturing Co. Ltd.*³ while observing in para 2 as under:

- E “2.Indeed it is well settled that the construction of a document of title or of a document which is the foundation of the rights of parties necessarily raises a question of law.”

13. Returning to the factual controversy in issue and the analysis of the same by the High Court, the perusal of the gift deed shows that what is sought to be gifted does not mention any lesser land than the whole land. If the plea of the appellant was to be accepted, then there should have been some area stated to have been gifted while the other would have been held back. This is not so. Of course, the submission of the learned senior counsel for the appellant is that the area remained undivided and that is why the partition was being sought.

14. We may also notice that when the reference is made to Rs.800/-, it is in the context of half the value of Rs.1600/-, a methodology adopted which is prevalent in this part of the country while recording such translation wherefor accuracy of the figures, half the amount is mentioned to ensure that the actual figure is correctly reflected. Not

¹ (supra)

² (1963) 2 SCR 208

H ³ 1962 Supp (3) SCR 549

only that the translation would show that the donee is “deemed to be the owner in possession of my gifted land”. Thus, whatever land was gifted, the possession was handed over. In the facts of the present case the possession of the complete land is undisputedly initially with the Ist defendant then with the IInd defendant and thereafter with the IIIrd and IVth defendants.

15. We may also take note of the fact that jamabandi for the first time was done in the name of late Gurdev Kaur for 1969-70. Prior to that the whole land remained in the name of late Chaman Lal, the original owner. It is not as if the jamabandi was done for half the land in favour of late Chaman Lal and half in favour of late Gurdev Kaur. If at all a grievance would have arisen on behalf of late Chaman Lal that could have been an occasion for it. The first time the matter is sought to be raised is 17 years later and after about 16 years of the land in question being sold to the IInd defendant. Thus, the conduct of the parties also suggests that the parties understood that whole land was gifted and the possession of the whole land was handed over.

16. Learned counsel for the appellant also sought to draw an inference in favour of the appellant by submitting that what had weighed with the trial court and the first appellate court was that the document of gift was stamped on the basis that the value of the gift was Rs.800/- and not Rs.1600/-.

17. In this behalf learned senior counsel for the respondent has pointed out to us that the Indian Stamp (Punjab Amendment) Act, 1958 received the assent of the Governor of Punjab on 23.04.1958 and was published in the Gazette on 25.4.1958. Transaction in question was prior to that date. That plea will thus not hold much water.

18. We are, thus, unequivocally of the view that the status of the property is not liable to be disturbed after such a prolong period of time in the context of the facts and the legal position which has emerged since 10.3.1958. The gift deed can be read in one manner, and only in one manner.

19. We are thus not inclined to entertain the present appeal.

20. The appeal is dismissed. Parties to bear their own costs.