

# Keshav vs Gian Chand on 24 January, 2022

**Author: Sanjiv Khanna**

**Bench: Sanjiv Khanna, M.R. Shah**

NON-RE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 364 OF 2022

KESHAV AND OTHERS

.....

APPE

VERSUS

GIAN CHAND AND ANOTHER

..... RESPONDE

JUDGMENT

^ SANJIV KHANNA, J.

The judgment under challenge dated 8 th August 2018 passed by the Single Judge of the High Court of Himachal Pradesh at Shimla allows the second appeal and decrees the suit filed by the plaintiffs Gian Chand and Dhanbir, setting aside concurrent findings of the trial court and the first appellate court. Aggrieved, Keshav and five other defendants have preferred this appeal. The dispute relates to land admeasuring 13 bighas 8 biswas being 7/20th share of total land measuring 38 bighas 6 biswas in Mouza Jakharal, and 1.17 bighas being 1/3 rd share in 5.12 bighas in Mohalo Talai, which land was owned by Hardei, who died issueless in 1991. Gian Chand is the son of Hardei's brother, whereas Keshav is her sister's son.

2. Gian Chand and Dhanbir, on 4 th/6th December 1991, instituted Civil Suit No. 149 of 1991 for declaration that late Hardei had gifted the land to them during her lifetime vide gift deed dated 23rd December 1985 (Ex. PW-3/A), which was registered with the Sub- Registrar, Salooni, on 1st January 1986. Gian Chand and Dhanbir were put in possession of the land by Hardei. Keshav in connivance with defendants No. 2 to 6 had got mutation recorded in his favour, which mutation was wrong and illegal and did not affect their rights under the gift deed. Gian Chand and Dhanbir had prayed for: (i) decree of declaration that they were owners in possession of the land; (ii) a decree of permanent injunction restraining Keshav and others from interfering with their possession of the land; and (iii) in case they are disposed from the land by the defendants during the pendency of the suit, a decree for possession.

3. Keshav and other defendants contested the suit on several grounds including validity of the relied upon gift deed. Keshav claimed that he was a tenant in occupancy of the land for over 15 years, a fact admitted by Hardei before the revenue authorities. Keshav had therefore acquired rights over the land. Hardei, during her lifetime, had denied execution of the gift deed and opposed the request of mutation of the land in favour of Gian Chand and Dhanbir, which request for mutation was rejected in 1989.

4. The Sub-Judge 1st Class, Chamba, Himachal Pradesh, vide judgment and decree dated 17 th December 1997, while accepting that the gift deed was a registered document, held that the document was of decrepit origin. The gift deed was not signed by Gian Chand. There was contradiction and lack of clarity whether post the execution and before registration, the gift deed was handed over to Hardei, the first plaintiff or to the other plaintiff. Hardei used to reside with Keshav, who would look after and take care of her. Keshav also performed her last rites. Given these facts, execution of a gift deed by Hardei in favour of Gian Chand and Dhanbir would not arise. Hardei in her life time had opposed and objected to the request for mutation of the land in dispute made by the plaintiffs. Ex. PA, Mutation No. 193 of Mouza Jakharal recites the statement of Hardei before the revenue authority, wherein she had admitted that it was Keshav who was looking after her and cultivating her land for the last 15 years. She had denied having executed the gift deed in favour of the plaintiffs. The plaintiffs' version that Keshav took possession of the land in dispute sometime in the early 1990s was false as Raghu (DW-2) and Kanth Ram (DW-3), who had land adjoining to the disputed land, had categorically deposed that Keshav was in possession of land for the last 18 to 20 years. On the question of possession of the land, the trial court agreed with Keshav that he was in possession of the land as a tenant of Hardei for the last 15 years. The suit preferred by the plaintiffs was, accordingly, dismissed.

5. Civil Appeal No. 18 of 1998, preferred by the plaintiffs before the District Judge, Chamba Division, was also dismissed with the first appellate court evaluating the evidence on record to affirm that the execution of the gift deed by Hardei in favour of the plaintiffs was a delusion. The gift deed statedly executed on 23 rd December 1985 and registered on 1st January 1986, was not produced for mutation till 1989, where also, Hardei had opposed the mutation and denied execution of gift deed in favour of the plaintiffs. She had stated before the revenue authority that Keshav was in possession of the land in dispute for about the last 15 years. Further, there was ample evidence to show that Keshav was looking after Hardei and taking care of her needs. Therefore, there was no reason for Hardei to execute a gift deed favouring the plaintiffs. The plaintiffs were never in possession of the suit land even for the period after execution of gift deed in 1986, and till the institution of the suit in 1991. The revenue entries for the said period did not support the plaintiffs. As a result, the appeal was dismissed.

6. The second appeal, RSA No. 236 of 1999, preferred by the plaintiffs was allowed by the High Court vide its decision dated 14th June 2010, reversing the concurrent findings on the ground that the trial court and the first appellate court had misread and misinterpreted the documentary and oral evidence. We need not refer to the reasoning of the High Court, as this Court in Civil Appeal No. 11059 of 2017 vide order dated 28th August 2017 set aside the judgment and remitted the matter to the High Court for fresh hearing after framing of an appropriate substantial question of law. This

Court observed that the substantial question of law so framed by the High Court was vague and not proper.

7. By the impugned judgment dated 8 th August 2018, the High Court has allowed RSA No. 236 of 1999, primarily for the reasons that in terms of execution, the gift deed satisfies the legal mandates of Sections 122 and 123 of the Transfer of Property Act, 1882 and being a registered document, it enjoys presumption of truth. Reliance has been placed on the depositions by Devia (PW-4), an attesting witness and by Ratan Chand (PW-3), a witness who was present during the proceedings at the time of the registration. Devia had accepted that Hardei was suffering from auditory impairment, but no credence should be given to that portion of the cross-examination, as at the time of registration Hardei was explained and made to understand the contents of the document and she had then appended her thumb impression. The fact that Hardei was residing and living with Keshav was not a good ground to doubt the execution of the gift deed. The findings as recorded by the trial court and the first appellate court were not based on a proper and mature appreciation of evidence on record. Answering the substantial questions of law in favour of the plaintiffs, the second appeal was allowed and the suit was decreed.

8. Devia (PW-4), the witness to the gift deed at the time of its execution on 23rd December 1985, Ratan Chand (PW-3), who had signed the deed before the Sub-Registrar, Salooni, at the time of registration on 1st January 1986, as well as Gian Chand (PW-1), have deposed as to the execution of this gift deed. Yet, there are several circumstances and supporting facts relied by the trial court and first appellate court on absence of voluntariness and animus and thus, the gift deed was held to be an invalid and spurious document. The facts highlighted by the trial court and the first appellate court are as under:

(i) Hardei was an old illiterate lady who used to live in a village with her sister's son Keshav. She did not have any children and Keshav used to take care of her daily needs and requirements. No reason is forthcoming as to why Hardei would execute the gift deed in her lifetime in favour of the plaintiffs, when she was living with and was dependant on Keshav for her day-to-day necessities. The land was her source of income and comfort.

(ii) Devia (PW-4) has deposed that he knew Hardei, who was suffering from auditory impairment. Further, as per Devia, Hardei had taken him with her to Chamba to get the gift deed written from a scribe in favour of the plaintiffs. Gian Chand (PW-2) while admitting that he was present when the gift deed was executed by Hardei, did not sign the same as token of acceptance. The gift deed was registered with the Sub-Registrar, Salooni, after about seven days on 1 st January 1986. If the gift deed was to be registered at Salooni, there was no need for Hardei, an old illiterate woman who had ailments, to go to Chamba for drafting of the gift deed. The scribe at Chamba was not known to her.

The trial court has rightly referred to the discrepancy in the statements of witnesses as to the person who had the gift deed between 23rd December 1985 and 1st January 1986. Admittedly, Keshav was

not present at the time of execution of the gift deed nor at the time of its registration.

(iii) The plaintiffs did not take any steps post the execution of the gift deed for mutation of the land in their favour from 1986 till 1989.

(iv) Hardei had denied execution of the gift deed before the revenue authority in 1989, when the plaintiffs had moved an application for mutation of the land in their favour. Application filed by the plaintiffs for mutation was rejected on 13th May 1989 in view of the contest and objection raised by Hardei. The plaintiffs did not challenge and question the rejection during the lifetime of Hardei.

(v) Hardei had accepted before the revenue authority that Keshav was looking after her and was cultivating her land for the last 15 years.

(vi) The plaintiffs filed the suit in question in December 1991 after Hardei had died, and two and a half years after their application for mutation was rejected on 13th May 1989.

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. 1 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. 1 Rao Saheb v. Rangnath Gopalrao Kawathekar (Dead By LRs) and Others, (1972) 4 SCC 181. 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. 2

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. 3 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 2 Krishna Mohan Kul alias Nani Charan Kul and Anr. v. Pratima Maity and Ors., (2004) 9 SCC 468. 3 Ladli Parshad Jaiswal v. The Karnal Distillery Co. Ltd., Karnal and Others, AIR 1963 SC 1279; and Bellachi (D) by LRs. v. Pakeeran, (2009) 12 SCC 95. 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.4

11. We have elaborately referred to the reasoning given by the trial court, which the first appellate court had independently examined and affirmed. The findings were recorded after in-depth consideration of the factual matrix, including the statement of Hardei, an illiterate and aged woman, who during her lifetime in 1989, had staunchly refuted having executed any gift deed transferring the property to the plaintiffs. Hardei was residing with 4 See Nazir Mohamed v. J. Kamala and Others, 2020 SCC OnLine SC 676; Hero Vinoth (Minor) v. Seshammal, (2006) 5 SCC 545.

Keshav, who was looking after her and providing for all her needs.

Further, the plaintiffs did not take any steps to get the mutation of the land records for about four years from 1 st January 1986 till 1989. The rejection by the revenue authority in 1989 remained unchallenged till Hardei died in 1991. The views and findings recorded by the lower courts are well reasoned and have taken into account several factors that repel and contradict the claim of a valid execution of the gift deed by Hardei favouring the plaintiffs.

12. Recording the aforesaid, we allow the present appeal.

Consequently, we set aside the impugned judgment and uphold the decision and decree passed by the trial court and affirmed by the first appellate court. There will be no order as to costs.

.....J. (M.R. SHAH) .....J. (SANJIV KHANNA) NEW DELHI;

**JANUARY 24, 2022.**