

(13) This is an additional ground to hold against the petitioner. The Counsel for respondent No. 5 has urged that the prayer made in the previous writ petition No. 8946 of 1996 was a very limited prayer and; in fact, this Court had no occasion to deal with the question of maintainability of reference. I am afraid this argument can be of little avail. The finding of Division Bench of this Court is binding upon me. It was open to the respondent No. 5 to have got the said finding corrected in appropriate proceedings but neither the AAIFR could set it aside and nor can it be set aside during the hearing of this petition.

(14) In this view of the matter, this writ petition is allowed, however, with no order as to costs.

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**R.N.R.**

*Before K.C. Puri, J.*

**KAMLA WATI (DECEASED) THROUGH HER  
L.RS.,—Defendant No. 2/Appellant**

*versus*

**CHAMAN LAL AND ANOTHER,—Plaintiff/Respondents**

R.S.A. No. 3888 of 1999

23rd January, 2008

*Code of Civil Procedure, 1908—Execution of gift deed by owner of suit property in favour of defendant No. 1—Defendant No. 1 selling property to defendant No. 2/appellant—Plaintiff claiming separate possession ½ share of suit property by partition—Courts below interpreting execution of gift deed to extent of ½ share in favour of defendant No. 1 finding that defendant has not specifically denied execution of gift deed to extent to ½ share—Gift deed showing that original owner had gifted his entire property and not half share—Mutation of sale deed already reflected in revenue record and defendant No. 1 or defendant No. 2 has been recorded as owner of whole of property for last 27/28 years—Plaintiff raising no objection at time of execution of sale deed in*

***respect of whole property—Affixation of less Court fee does not invalidate sale deed—Both Courts below misunderstanding pleadings of parties giving wrong finding that defendant has not specifically denied execution of gift deed to extent to ½ share—Appeal accepted, judgments and decrees of both Courts below entitling plaintiff owner of ½ share of land and directing to effect mutual partition set aside.***

*Held*, that the mutation regarding whole of land 0-1-15-1/2B was entered in the name of Gurdev Kaur, Chaman Lal has not raised any little finger at that time. Thereafter, Gurdev Kaur executed sale deed in respect of whole of the land in favour of Kamla Wati and that mutation has not been challenged. The learned trial Court has held that mutation is for fiscal purposes and on that count the rights of ownership are not affected in the suit property. The proposition of law that mutation is for fiscal purposes cannot be disputed, but the act remains that the conduct of Chaman Lal is relevant. Had he gifted away only half share of the suit property, in that case he would not have allowed mutation in respect of whole of the land sanctioned in favour of Gurdev Kaur. The other chance for Chaman Lal was when the sale deed was executed by Gurdev Kaur in respect of whole of the property in favour of Kamla Wati on 15th March, 1971. The mutation of that sale deed has already been reflected in the revenue record and Gurdev Kaur or Kamla Wati has been recorded as owner of the whole of the suit property, for a long span of 27/28 years, till the filing of the present suit. Chaman Lal has not been recorded as owner in respect of the suit property. So this conduct of Chaman Lal clearly shows that he was satisfied with the gift deed in favour of Gurdev Kaur in respect of whole of the land.

(Para 28)

**Code of Civil Procedure, 1908—O.22 RL.10—Death of seller of property—No legal representative coming forward to array as a party—Whether vendors of property can be arrayed as party—Held, yes—After sale of property L.Rs of seller has no legal right in suit property—Only vendors can properly defend case—Request for impleading son of seller as L.R. declined—Vendors of property ordered to be arrayed as party.**

*Held*, that application under Order 1 Rl. 10 CPC filed by both Sandeep Sethi and Sudesh Sethi, legal representatives has been dismissed by observing that they were purchasers of the suit property during the pendency of suit and as such they are bound by the decree under Section 52 of the Transfer of Property Act. That finding of the trial Court is correct. Kamla Wati has expired and none of her legal representatives has come forward. For representing Kamla Wati, Sandeep Sethi and Sudesh Sethi applicants are ordered to be brought on record subject to all just exceptions. They will step into the shoes of Kamla Wati and shall be bound by the ultimate decision of the appeal.

(Para 17)

*Further held*, that none of the legal representatives of Kamla Wati has come forward to array him as a party in the appeal. Moreover, after the sale of the suit property by Kamla Wati, no legal representative of Kamla Wati has been left with any legal right in the suit property. Sandeep Sethi and Sudesh Sethi have been arrayed as a party in the application under Order 22 Rule 10 CPC. It is only vendors who can properly defend the case set up by Kamla Wati. In case the actual legal representatives of Kamla Wati are brought on record, they may collude with the respondents. In that case, situation would change altogether. Since legal representative of Kamla Wati have not been left with any right in the suit property, so there is every likelihood that they may collude with the respondents. So, the application under Order 22 Rule 3 CPC for arraying son of Kamla Wati as a party stands declined.

(Para 20)

Amit Rawal, Advocate, *for the Appellant*.

Sumeet Mahajan, Senior Advocate with Sham Bhalla and Amandeep Singh, Advocates, *for the Respondents*.

**K.C. PURI, J.**

### **JUDGMENT**

(1) Under challenge is the judgment and decree dated 28th August, 1999 passed by Shri M.R. Batra, the then Additional District

Judge, Ludhiana whereby the appeal filed by appellant Kamla Wati against the judgment and decree dated 20th November, 1998 passed by Shri Rohan Lal, the then Civil Judge (Junior Division), Ludhiana was dismissed.

(2) The facts of this case need to be noted in brief as under:—

(3) Chaman Lal respondent filed civil suit against Gurdev Kaur, respondent and Kamla Wati, appellant for separate possession by partition of plot measuring 0B-1-15-1/2B being  $\frac{1}{2}$  share of land measuring 0B-3B-11B out of Khasra No. 1252, Khata No. 318/563 as entered in the Jamabandi for the year 1950-51 situated in Dholewal, Ludhiana on the averments that he was the owner of the land in dispute. He had gifted  $\frac{1}{2}$  share thereof in favour of Gurdev Kaur, defendant No. 1 (now respondent No. 2) and continued to be in possession of the remaining  $\frac{1}{2}$  share as owner. He and defendant No. 1 in this manner, had become co-sharers to the extent of  $\frac{1}{2}$  share each. He was not interested to keep the suit land as joint and wanted to get his share partitioned. He, thus, prayed that a preliminary decree and final decree for separate possession by partition of the land measuring 0B-1B-15-1/2B being  $\frac{1}{2}$  share of the land measuring 0B-3B-11B be passed.

(4) The suit was contested by defendant No. 1. She filed written statement in which she took some preliminary objections. On merits, she pleaded that the plaintiff was not a co-sharer along with her. The plaintiff never entered into possession on any inch of the property in dispute. She remained in possession of the said property for the last 26/27 years and that thereafter Kamla Wati, defendant No. 2 was owner in possession of the entire property. Her possession was exclusive as owner and after that defendant No. 2 was in exclusive owner and in possession of the property in dispute. Defendant No. 2 was in possession for the last 17/18 years. Even otherwise, defendant No. 2 had become owner by way of adverse possession. Chaman Lal, plaintiff had no share at all in any of the properties in dispute. No partition can be effected and as such plaintiff was not entitled to get any partition of the property in dispute effected.

(5) Defendant No. 2 (now appellant) also filed separate written statement. She pleaded that the suit was mis-conceived and had been filed with *mala fide* intention in order to harass her illegally; that the claim had been based by the plaintiff on the Jamabandi for the year 1950-51 though the suit was filed in the year 1987-88 and that the suit was collusive between the plaintiff and defendant No. 1. She also pleaded that the land in dispute was purchased by the plaintiff,—*vide* sale deed dated 30th July, 1949 from one Mansha Ram and that the plaintiff had then gifted said land,—*vide* gift deed dated 30th July, 1949 registered on 22nd August, 1949 in favour of Smt. Gurdev Kaur, defendant No. 1. Subsequent to that, Gurdev Kaur, defendant No. 1 had sold the property in dispute along with her right in the property received by her,—*vide* gift deed dated 5th January, 1959 in her favour and since then she was in peaceful, undisturbed and exclusive possession of the property in dispute. It was also averred that three sides of the plots were covered by the property of others and on the front side, a wall had been constructed by her and a door was fixed which was locked by her the key of which was with her. In the alternative, she pleaded that even if it was proved that she was not the owner of the property in dispute, then she had matured her title by way of adverse possession. It was also pleaded that the matter involved in the suit was exclusively triable by the revenue Court. Mutation No. 8224, was sanctioned in favour of defendant No. 1 and mutation No. 9453 was sanctioned in her favour.

(6) The plaintiff, in the replication denied the averments of the defendants and reiterated his claim made in the plaint.

(7) From the pleadings of the parties, the following issues were framed :—

- (1) Whether the plaintiff is entitled to separate possession by partition of plot in dispute ? OPP
- (2) Whether the defendants are owners of the plot in dispute by adverse possession ? OPD
- (3) Whether the plaintiff is estopped by his act and conduct from filing the suit ? OPD

(4) Whether the plaintiff is the owner of ½ share of land as claimed in para No. 1 of the plaint ?

(5) Relief.

(8) The plaintiff, in support of his case, examined PW1 Manjit Singh, PW2 Udham Singh and PW4 Bhupinder Singh. He also stepped into the witness-box as PW3.

(9) On behalf of defendant, Ajmer Singh appeared as DW1, Janak Raj as DW2, Raghbir Singh DW3, Sudesh Kumar Sethi as DW4 and Raj Kumar as DW5.

(10) After hearing counsel for the parties, the learned trial Court returned findings on all the issues in favour of the plaintiff and against the defendants. As a necessary corollary, the learned trial Court,—*vide* judgment and decree dated 20th November, 1998, decreed the suit of the plaintiff to the effect that he was entitled to separate possession by partition of suit property to the extent of half share. The plaintiff and the defendants were directed to effect mutual partition within two months. In case, the parties failed to come to a mutual partition, the plaintiff was given liberty to seek final decree for partition. Accordingly, a preliminary decree was passed.

(11) Feeling aggrieved by the said judgment and decree, Kamla Wati, defendant preferred an appeal which was dismissed by the learned Additional District Judge, Ludhiana,—*vide* judgment and decree, dated 28th August, 1999.

(12) Still feeling dis-satisfied with the impugned judgment and decree, dated 28th August, 1999 passed by the learned Additional District Judge, Ludhiana, Kamla Wati has filed this appeal.

(13) I have heard arguments addressed by counsel for the parties and have gone through the record of the case.

(14) The Regular Second Appeal preferred by Kamla Wati was accepted by the Single Judge of Punjab and Haryana High Court,—*vide* order, dated 2nd April, 2002. The aggrieved party i.e. respondent/ plaintiff challenged the said judgment and decree in the Hon'ble Supreme

Court and the Hon'ble Supreme Court,—*vide* judgment, dated 6th October, 2003 was pleased to set aside the order, dated 2nd April, 2002 and to remand the matter to this Court for fresh decision due to non-compliance of Section 100 C.P.C. The appellant has submitted that the following substantial questions of law arise for consideration in this appeal :—

- (1) Whether the suit for partition was maintainable after execution of the gift deed, dated 10th April, 1958 and, thus, the plaintiff ceased to be joint owner of the property in dispute ?
- (2) Whether the appellant-defendant No. 2 has become owner of the suit property by way of adverse possession assuming the property as a coparcenary property ?

(15) An application under Order 22 Rule 10 C.P.C has been filed by the counsel for the appellant for bringing on record Sandeep Sethi son of Sudesh Sethi and Sudesh Sethi son of Hari Ram, residents of 17-J, Sarabha Nagar, Ludhiana on the allegations that Kamla Wati had sold the property in dispute,—*vide* registered sale deeds, dated 4th January, 1995 and 6th January, 1995 to them.

(16) Notice of the application was given to the opposite party which has filed the reply denying the contents of the application. It is pleaded that the applicants have not approached the Court with clean hands. They moved an application under Order 1 Rule 10 CPC for becoming party to the suit in the Court of Civil Judge (Junior Division), Ludhiana. The said application was dismissed by the learned trial Court,—*vide* order, dated 22nd January, 1998. Fresh application on behalf of the applicants to become party on the death of Kamla Wati is not maintainable and the same is liable to be dismissed. On merits, it is submitted that even if Kamla Wati had sold the property in dispute,—*vide* sale deeds, dated 4th January, 1995 and 6th January, 1995 even then they are transferees pendente lite and as such are bound by the decree passed in the present case. The application is barred by *resjudicata*.

(17) I have heard arguments addressed by both the sides and have gone through the record of the case and have also gone through the order passed by the learned trial Court dismissing the application under Order 1 Rule 10 CPC filed by both Sandeep Sethi son of Sudesh Sethi and Sudesh Sethi son of Hari Ram, legal representatives. That application has been dismissed by observing that Sandeep Sethi and Sudesh Sethi were purchasers of the suit property during the pendency of suit and as such they are bound by the decree under Section 52 of the Transfer of Property Act. That finding of the trial Court is correct, Kamla Wati has expired and none of her legal representatives has come forward. For representing Kamla Wati, Sandeep Sethi and Sudesh Sethi applicant are ordered to be brought on record subject to all just exceptions. They will step into the shoes of Kamla Wati and shall be bound by the ultimate decision of the appeal. The application under Order 22 Rule 10 CPC stands disposed of accordingly.

(18) Another application under Order 22 Rule 3 CPC has been moved by the respondent for impleading the legal representatives of Kamla Wati. It is pleaded in the application that Kamla Wati has died and she is survived by her son Jai Parkash Thapar and respondent is not aware of any other legal heir. So, Jai Parkash Thapar may be ordered to be impleaded as legal representative of Kamla Wati.

(19) This application has been opposed by the appellant.

(20) Now, according to the amended C.P.C., it is the duty of the legal representatives to come forward. However, none of the legal representatives of Kamla Wati has come forward to array him as a party in the appeal. Moreover, after the sale of suit property by Kamla Wati, no legal representative of Kamla Wati has been left with any legal right in the suit property. Sandeep Sethi and Sudesh Sethi have been arrayed as party in the application under Order 22 Rule 10 CPC. It is only vendors Sandeep Sethi and Sudesh Sethi who can properly defend the case set up by Kamla Wati, in case the actual legal representatives of Kamla Wati are brought on record, they may collude with the respondents. In that case, situation would change altogether. Since legal representatives of Kamla Wati have not been left with any right in the suit property, so there is every likelihood that they may collude with the respondents.



So, the application under Order 22 Rule 3 CPC for arraying Jai Parkash Thapar as a party stands declined.

(21) Now, coming on the merits of the case, it is to be noticed that the entire controversy revolve around the interpretation of gift deed, Exhibit P-1. Both the Courts below have interpreted the gift deed, dated 22nd August, 1949 to the effect that Chaman Lal, the original owner has executed gift deed of  $\frac{1}{2}$  share of the suit property and on that assumption, the suit of the plaintiff for partition has been decreed. In case Chaman Lal has executed gift deed to the extent of  $\frac{1}{2}$  share in favour of Gurdev Kaur, in that case, the appeal has to be dismissed and in case the Court comes to the conclusion while interpreting the gift deed, Exhibit P-1 that Chaman Lal has executed gift deed in respect of whole of his land in favour of Gurdev Kaur, in that case, this appeal has to be accepted.

(22) Both the Courts below have returned finding that Chaman Lal has executed gift deed, Exhibit P-1, in favour of Gurdev Kaur to the extent of  $\frac{1}{2}$  share of land measuring 0 Bigha 1 Biswa 15-1/2 Biswasi. One factor which weighed in the mind of both the Courts was that stamp paper of the value of Rs. 800/- has been affixed on the gift deed, Exhibit P-1.

(23) It is not disputed that Chaman Lal has executed gift deed, dated 22nd August, 1949, Exhibit P-1, in favour of Gurdev Kaur. It is also not disputed that Gurdev Kaur had sold the disputed land,—*vide* sale deed, dated 5th January, 1959 in favour of Kamla Wati, defendant/appellant. The present suit has been filed on 20th August, 1987 claiming separate possession by partition of the suit land. Mutation of the sale deed in favour of Kamla Wati was also attested in the revenue record. The other factor which weighed in the mind of the Courts below is that Kamla Wati has not specifically denied the execution of gift deed, Exhibit P-1, to the extent of  $\frac{1}{2}$  share.

(24) Now, the question which arises is whether the said findings of both the Courts below sustain the test of legal scrutiny.

(25) The document, Exhibit P-1 is in Urdu. The original of that document has not been placed on the file and only a copy maintained

by the office of the Sub Registrar has been placed on the file. Justice Swatanter Kumar, the then Judge of Punjab & Haryana High Court,— *vide* order, dated 1st March, 2001 directed that Translation Branch of High Court shall translate Exhibit P-1 (Annexure PA) gift deed and place copy of the same on the file. In compliance to that, translated copy of Exhibit P1 (Annexure PA) has been placed on the file. The relevant portion of gift deed, dated 10th March, 1958 executed by Chaman Lal son of Shri Munna Lal in favour of Gurdev Kaur is as under :—

“Now, I while in the enjoyment of my right, senses and intellect and with my own accord execute this gift-deed and transfer my land measuring 0-1-15-1/2 Biswa (Pukhta) of which I am the owner by way of a sale-deed and land measuring 0-1-16 Biswas (Pukhta) as per entries in the revenue record, the value of which comes to Rs. 1600/- and half of which comes to Rs. 800/- together with my all other rights pertaining thereto in favour of Smt. Gurdev Kaur daughter of Smt. Nanti daughter of Kishan Singh, resident of Mohalla Gobindpura, Ludhiana.”

(26) So, from the translation made by the Translation Branch of Punjab and Haryana High Court, it is crystal clear that Chaman Lal had gifted all his rights in respect of land measuring 0-1-15-1/2 B in favour of Gurdev Kaur for consideration of Rs. 1,600/- half of which is Rs. 800/-. Both the Courts below have been swayed away by the wording of the gift-deed. The first Appellate Court has reproduced the Roman wording of the gift-deed as under :—

“Leehaja Baseeat Akal Baa Kayimi Hos Ba Hawas Khamisa Khud Aaraji 0-1-15-1/2 Biswa Pukhta Barrue Bainama Baa 0.1.16 Biswa Pukhta Baruey Kagjat Mali Maleeti Sola So Rupeya (1600/- Rs.) Se Nishaf Hissa Maleeni Aath Sad Rupeya Emm Digger Halook Tamami, Ash Behak Smt. Gurdev Kaur Dukhter Smt. Nanti Dukhter S. Kishan Singh Saken Ludhiana Mohala Gobindpura Hewa Baa Bakshish Kerka Ekrar Karta Hoon”.

(27) Much importance has been given to the word **Sey** in the above-said Roman wording. The intention of Chaman Lal plaintiff was to gift away his whole of the property 0-1-15-1/2B and not half share of the property. Had Chaman Lal gifted away half of his property, in that case he would have mentioned  $\frac{1}{2}$  share prior to the land 0-1-15-1/2B. This translation done by the department of the High Court cannot be said to be incorrect in any manner. Generally in the transfer documents, total price is mentioned firstly and thereafter  $\frac{1}{2}$  share of the price is mentioned so that there may not be any confusion regarding transfer price. It so seems that the word "**Sey**" in the above-said Roman word has been wrongly copied instead of "**Ka**". There is very little difference in word "**Say**" and "**Ka**" in Urdu language. In case the word "**Ka**" is taken in that case, it becomes crystal clear that Chaman Lal has gifted whole of his property. However, as discussed above, since  $\frac{1}{2}$  share has not been mentioned prior to the land, as such Chaman Lal has gifted away whole of his land 0-1-15-1/2B Pukhta in favour of Gurdev Kaur.

(28) Secondly the conduct of Chaman Lal is also relevant. The mutation regarding whole of land 0-1-15-1/2B was entered in the name of Gurdev Kaur. Chaman Lal has not raised any little finger at that time. Thereafter, Gurdev Kaur executed sale deed in respect of whole of the land in favour of Kamla Wati and that mutation has not been challenged. The learned trial Court has held that mutation is for fiscal purposes and on that count the rights of ownership are not affected in the suit property. The proposition of law that mutation is for fiscal purposes cannot be disputed, but the fact remains that the conduct of Chaman Lal is relevant. Had he gifted away only half share of the suit property, in that case he would not have allowed mutation in respect of whole of the land sanctioned in favour of Gurdev Kaur. The other chance for Chaman Lal was when the sale deed was executed by Gurdev Kaur in respect of the property in favour of Kamla Wati on 15th March, 1971. The mutation of that sale deed has already been reflected in the revenue record and Gurdev Kaur or Kamla Wati has been recorded as owner of the whole of the suit property, for a long span of 27/28 years, till the filing of the present suit. Chaman Lal has not been recorded as owner

in respect of the suit property. So, this conduct of Chaman Lal clearly shows that he was satisfied with the gift deed in favour of Gurdev Kaur in respect of whole of the land. However, on one fine morning on the expert advice, he has filed the present suit.

(29) The other factor which weighed in the mind of the Courts below is that stamp duty of Rs. 800/- has been affixed on the gift deed, Exhibit P-1. The gift deed has been interpreted by the revenue officials. At the time of attesting mutation in favour of Gurdev Kaur regarding gift deed, they reached at the conclusion that gift deed is in respect of whole of the land has been executed. Gurdev Kaur has executed sale deed in respect of whole of the suit land and the plaintiff has not raised any little finger at that time or for sufficient long period till the filing of the present suit. Moreover, affixing less Court fee does not invalidate the sale deed and at the most, Collector can proceed under Section 47A of the Indian Stamp Act to recover the less amount of Court fee.

(30) Another factor which weighed in the mind of both the Courts below is that the respondent has not specifically denied the execution of gift deed. That findings of the Courts below is also against facts. The defendant in para No. 1 of the preliminary objections has categorically stated that defendant No. 2 is owner in possession of the entire property. It has been further averred in that para that previously defendant No. 1 was the owner and now defendant No. 2 is the exclusive owner in possession of the suit property. Again in para No. 3 of the written statement. It has been reiterated that defendant No. 2 is the exclusive owner in possession of the property. So, both the Courts below have mis-understood the pleadings of the parties and have given wrong finding that the defendant has not specifically denied the execution of the gift deed.

(31) So, in view of the above discussion, the question of law No. 1 formulated stand determined in favour of the defendant-appellant and against the plaintiff and gift deed dated 10th March, 1958, Exhibit P1 is interpreted to the extent that Chaman Lal has executed gift deed in respect of whole of the land measuring 0-1-15-1/2B and not in respect of ½ share as held by both the Court below.

(32) The parties have addressed arguments in respect of question No. 2 also regarding adverse possession. However, since it is held that the defendant/appellant has been in possession of the suit property, therefore, the question of law formulated above becomes redundant.

(33) In view of the above discussion, the appeal is accepted. The judgments and decrees of both the Courts below stand set aside and the suit of the plaintiff stands dismissed. However, in view of peculiar circumstances of the case, the parties are left to bear their own costs.

(34) Decree sheet be prepared and the files of the Courts below be sent back after due compliance.

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**R.N.R.**

***Before Ajay Tewari, J.***

**ZILA PARISHAD, LUDHIANA—*Petitioner***

***versus***

**STATE OF PUNJAB & OTHERS—*Respondents***

C.W.P. No. 479 of 2000

13th August, 2008

***Constitution of India, 1950—Art. 226—Transfer of Property Act, 1882—S. 106—Punjab Panchayat Samitis and Zila Parishad (Sale, lease and other alienation of property and public places) Rules, 1964—Petitioner letting out shop to respondent by way of a licence agreement—Ejectment proceedings—Lease period expired—Collector ordering ejectment—Commissioner setting aside proceedings on ground of non-issuance of notice under section 106 of TP Act—Rules of 1964 coming into force whereby premises of Zila Parishad could be let out only by auction for a period of 5 years—Statutory rules superseding covenants of licence agreement—Not lawful for respondent to claim differential treatment on basis of his long stay—After period specified in agreement was over, a fresh interest in property could be created only in accordance with***