

[2022 LiveLaw \(SC\) 299](#)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**SANJAY KISHAN KAUL; M.M. SUNDRESH, JJ.**

Civil Appeal No.1731/2009; 9 MARCH, 2022

**MOHINDER SINGH (D) THR. LRS. & ORS. VERSUS MAL SINGH (D) THR. LRS. & ORS.**

**Transfer of Property Act, 1882; Section 122 - Gift - If the donor is making a gift out of his own free will and volition and is the exclusive owner of the properties, it is nobody's concern as to whom he gives the properties to - It is time that the Courts get out of this mindset, or possibly may have got out of this mindset by now on passing value judgments on relationships between parties in determining either a testamentary or non-testamentary disposition so long as the document executed is found to be validly executed.**

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**ORDER**

More than half a century has passed since the suit was filed on 19.10.1971 by Mohinder Singh and Gurnam Singh, who are represented by their legal heirs as appellants before us for declaring that a gift deed executed by their brother, Gian Singh in favour of Pritam Kaur with respect to schedule properties 'A' & 'B' as mentioned in the headnote of the plaint, is null and void and not binding on their rights being reversioners as also the rights of other reversioners of Gian Singh on his death. It was the case of the appellants that Gian Singh was governed by general customary law till the enforcement of the Hindu Succession Act and Hindu Adoption and Maintenance Act and the appellants were the nearest best legal heirs of Gian Singh. It was alleged that Gian Singh was issueless, without a wife, had no relationship with Pritam Kaur, the beneficiary of the gift deed and that Pritam Kaur daughter of Gurbax Singh was not the wife of Gian Singh. The appellants alleged later, as per facts set out hereinafter that Gian Singh was married to one Pritam Kaur daughter of Inder Singh who had pre-deceased him.

On the suit being filed, a common written statement was filed by Gian Singh and Pritam Kaur, affirming to the execution of the gift deed and Pritam Kaur being his wife. Gian Singh passed away on 24.1.1972 and thereafter the respondents sought to amend the plaint on 11.2.1972 seeking a decree of possession and for declaration of ownership of Schedule Property 'C' as mentioned in the headnote of the plaint.

The suit was dismissed by the judgment dated 03.11.1973 predicated on a reasoning that the Punjab Custom (Power to Contest) Amendment Act, 1973 applied to a pending proceeding according to which no decree could be passed declaring alienation of ancestral properties to be invalid. Consequently, the suit filed by Mohinder Singh and Gurnam Singh was dismissed. An appeal against this was dismissed by the District Judge, Patiala and in the second appeal the High Court of Punjab and Haryana affirmed the view vide its judgment dated 25.9.1975. The appellants then filed a special leave petition before this Court challenging the order of the High Court in which leave

was granted and appeal was registered as Civil Appeal No.263 of 1976. This appeal was heard with a number of other matters dealing with the issue of the claim of such revisionary rights and has been decided in ***Darshan Singh Vs. Ram Pal Singh & Anr,(1992) Suppl.(1) SCC 191***. The plea raised on reversion was rejected but in terms of operative paragraph 61 the matters were reverted back to be decided in accordance with Hindu Law.

Thus after a complete round of litigation, the second round began before the High Court. The learned Single Judge of the High Court remitted the case back to the trial Court vide an Order dated 27.4.1995 on the premise that there were no pleadings to the effect that in the alternative the case of the plaintiff needed to be examined under Hindu Law. In the meantime even Pritam Kaur daughter of Gurbax Singh had passed away on 18.6.1992 and her legal representatives viz. Mal Singh, respondent No.1 herein, based on a will dated 31.1.1992 was brought on record. The said respondent No.1 filed a written statement submitting that Pritam Kaur had sold some of the suit properties to different persons including respondent No.2 to respondent No.11 before us who were also present in both proceedings. It is in their replication dated 21.11.1995 to the amended written statement so filed that the appellants for the first time averred that Pritam Kaur daughter of Inder Singh was the wife of Gian Singh, that she had died on 02.02.1968 and that they alone were legal heirs of Pritam Kaur.

The trial Court delivered a judgment dated 26.8.1998 granting a decree of declaration and possession with costs to the effect that the appellants are the owners of the suit properties being brothers of Gian Singh and having reversionary right in suit properties, because Gian Singh had passed away and his wife has predeceased him. The First Appellate Court vide its judgment dated 15.2.2002 affirmed the finding of the trial Court and dismissed the appeal.

We may briefly refer to the judgment of the First Appellate Court as that forms the bedrock of the submissions of learned counsel for the appellants. What emerges from the reading of the judgment of the First Appellate Court is following:-

- (a) It was concurrently found that suit properties were not ancestral in character.
- (b) the Appellate Court notes that insofar as the execution and validity of the gift deed is concerned, the appellants had in fact half heartedly admitted the execution of the same but challenged the same on the grounds of fraud and illegality.
- (c) More crucially in our view, the finding was that the consideration for execution of the gift deed was illegal and immoral as Pritam Kaur daughter of Gurbax Singh had not led evidence to prove the marriage to Gian Singh, was not the wife and thus such gift could not be treated as legal and valid. This was predicated on earlier views of the Punjab & Haryana High Court ***in Lilu Ram & Anr. Vs. Mst Ram Piyari, AIR 1952 (Punjab & Haryana) 293*** and the Patna High Court in ***Ram Chander Parshad Vs. Sital Prasad, AIR 1948 Patna 130*** of vintage year 1952 & 1948 that past cohabitation by a man with his mistress is an immoral consideration and cannot support a transfer.
- (d) There was haste contrary to the natural conduct post the execution of the gift deed on account of an agreement to sell being executed within eight days which alienated the rights in the properties and would have left Gian Singh homeless.

We now turn to the impugned judgment dated 27.1.2009 of the High Court which allowed the RSA in terms of the order of the learned Single Judge of the Punjab & Haryana High Court who faulted both the judgments of the trial Court and Appellate Court in what can be called a third round. The findings of the Appellate Court are predicated on a reasoning that there was a limited remit in pursuance to the Judgment of the Supreme Court and the only issue which had to be examined in

this third round by the trial Court was the impact of Hindu Law with reversionary rights being excluded. The appeal was allowed and the respondents were thus entitled to the properties in question. We may notice that it was recorded that the plea raised of fraud for the first time, on the factum of Pritam Kaur daughter of Gurbax Singh not being the wife of Gian Singh was not something which could have influenced the judgments of the Courts below.

We have spent considerable time hearing two learned counsels for the appellants and learned counsel for the respondents, though the latter was not really required to labour much on account of our view expressed at the inception itself.

In our view, the whole approach of the trial Court and First Appellate Court in this third round is completely fallacious. If one may say the reasoning is based only on a social belief that the man staying with a woman, who is not his wife and giving his property to her is something immoral and improper and she should not be the beneficiary of gift deed even if the donor stands by the gift deed.

If one may say, even the belief of the original plaintiffs and now the appellants before us is predicated on this prejudice that they have an inherent right to get the benefit of the properties as being the brothers of the deceased and the lady who stayed with him, wife or not, is not entitled for the same. It is in these circumstances that one of the issues framed originally was also whether Pritam Kaur enjoyed the status of a wife or not. In our view, if the donor is making a gift out of his own free will and volition and is the exclusive owner of the properties, it is nobody's concern as to whom he gives the properties to.

What is most material is that all the Courts have found (i.e. three concurrent findings) that they are not ancestral properties. This plea was really raised as an alternative in the second round having failed to establish the reversionary rights in the first round. That should have been the end of the matter. The gift deed is a registered gift deed. The common written statement filed by Gian Singh and Pritam Kaur affirmed to the execution of the gift deed. The fact that they did not step into the witness box is an incidence of Gian Singh passing away and much later Pritam Kaur also having passed away. That does not take the validity of the gift deed. We are really not concerned with the moralistic issue whether Pritam Kaur was actually married to Gian Singh as the second wife or was she just living with him. There was undoubtedly companionship and Gian Singh in his wisdom deemed it appropriate to handover the properties through registered gift deed to Pritam Kaur. In the written statement he did say that she is his wife of 35 years' standing.

We would in the end say that it is time that the Courts get out of this mindset, or possibly may have got out of this mindset by now on passing value judgments on relationships between parties in determining either a testamentary or nontestamentary disposition so long as the document executed is found to be validly executed. Some kind of a male chauvinistic approach appears to have coloured judgments passed by the trial Court and the First Appellate Court which is of course a reflection of the mindset of the appellants before us.

We, thus, dismiss the appeal with costs and bring this half decade of litigation to an end.