

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

103

Regular Second Appeal No.3858 of 2012 (O&M)

Date of Decision: November 30, 2015

Banta Singh

...Appellant

Versus

Guro and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P.P.S. Duggall, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10371-C of 2012

Prayer in this application is for exemption from filing the
certified copy of the judgment dated 13.04.2011.

Application is allowed.

Exemption from filing the certified copy of the judgment dated
13.04.2011 is granted subject to all just exceptions.

CM No.10372-C of 2012

Prayer in this application is for permission to place on record
documents Annexures P-1 to P-3.

Application is allowed.

Documents Annexures P-1 to P-3 are taken on record subject to
all just exceptions.

RSA No.3858 of 2012

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Junior Division), Ferozepur, dated 13.04.2011, whereby
the suit filed by the appellant-plaintiff for specific performance of the
agreement to sell dated 27.11.2003 executed by Guro widow of Dalip Singh

respondent-defendant No.1 in favour of the appellant-plaintiff, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Ferozepur, on 21.05.2012.

2. It is the contention of learned counsel for the appellant-plaintiff that may be Guro was not entitled to enter into an agreement to sell on behalf of Gurmej Singh, who was a major but she could execute the agreement to sell on behalf of herself and her two other minor children. He asserts that although at the time when the agreement to sell dated 27.11.2003 was executed, she did not have the approval of the Guardian Court to execute the sale deed on behalf of her two minor children, however, prior to the date of execution of the sale deed i.e. 20.11.2004, she had obtained the sanction of the Guardian Court on 11.11.2004. He, thus, contends that she was competent to execute the sale deed at least on her behalf and on behalf of her two minor children namely Dilawar Singh and Lachhma Kaur. He, therefore, contends that the judgments and decree passed by the Courts below cannot sustain.

3. This contention of learned counsel for the appellant-plaintiff cannot be accepted in the light of the fact that as per the agreement to sell dated 27.11.2003, earnest money amounting to ₹1,00,000/- had been paid to respondent-defendant No.1-Guro at the time of execution of the said agreement but in the cross-examination, not only the plaintiff but the two marginal witnesses admitted that no consideration amount was paid to Guro at the time of execution of the agreement to sell. That apart, at the time of execution of the agreement to sell on her behalf as also on behalf of her three children namely Gurmej Singh, Dilawar Singh and Lachhma Kaur, Gurmej Singh was a major and in fact, had entered into an agreement to sell

in his own capacity with another person. Qua her two other minor children, she did not have the sanction of the Guardian Court to execute such an agreement to sell. This further fortifies the findings recorded by the Courts below to be correct, specially when no valid consideration has changed hands and the document itself reciting that an amount of ₹1,00,000/- has been paid indicates that the said agreement was not a legal document. Validity thereof, therefore, has rightly been held to be under cloud.

4. Both the Courts below have returned concurrent findings after proper appreciation of the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

5. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal, the application for stay i.e. CM No.10373-C of 2012, stands disposed of as infructuous.

November 30, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE