

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

RSA No.4830 of 2013(O&M)
DATE OF DECISION:20.01.2015

Ramesh Kumar

...Appellant

Vs.

Mahabir & anr.

...Respondents

CORAM:- HON'BLE MR. JUSTICE MAHAVIR S.CHAUHAN

Present: Mr. Malkeet Singh, Advocate
for the appellant.

MAHAVIR S.CHAUHAN, J.(ORAL)

Judgment/decreed dated 17.07.2013 of learned Additional District Judge, Fatehabad, (for short, 'the first appellate Court') dismissing appellant's appeal against dismissal of his suit for declaration by learned Civil Judge (Senior Division), Fatehabad, (for short, 'the trial Court') vide judgment/decreed dated 08.06.2010, is under challenge in this regular second appeal brought by the unsuccessful plaintiff.

I have heard learned counsel for the appellant.

It is argued by learned counsel that there is sufficient evidence in the form of certificate Exhibit PW-1/A and sworn deposition of PW-2 Hanuman in support of plea of the appellant that he was born on 15.03.1992 and if that is taken so, he was minor on the day of execution of the sale deed, dated 06.11.2006, which was executed without permission of the Guardian

Judge and is without consideration.

Appellant had approached the learned trial Court for declaration that sale deed dated 06.11.2006 was void as it was executed when he was minor and no permission from the Guardian Court was obtained. Further, according to the case put forth by the appellant, the sale deed in question was without consideration. Appellant's claim was contested by the respondents by filing written statements and issues were framed. Parties adduced evidence. Learned trial Court on the basis of evidence available on record came to the conclusion that the appellant could not prove his date of birth as 15.03.1992 and instead the case pleaded by the other side that he was born in the year 1986 stood proved. Accordingly, suit of the appellant was dismissed. As aforesaid, to challenge dismissal of his suit he filed an appeal which also was dismissed.

A perusal of the record shows that Exhibit PW-1/A has been placed on record by PW-1 Prithvi Singh, an employee of the school, but the person at whose instance date of birth of the appellant was recorded in the school record as 15.03.1992, has not been examined as a witness. Prithvi Singh, indisputably would not have any knowledge of date of birth of the appellant.

Further, PW-2 Hanuman though has supported the case of the appellant in his examination-in-chief but in cross-examination he is found to have admitted that he does not know when the appellant was born.

Surprisingly appellant himself stayed away from the witness stand and, thus, failed to support his own case. In that view of the situation a presumption adverse to the case put up by the appellant in the plaint, arises.

Parties to the sale deed did not state before the Sub Registrar that consideration had not been paid.

From the circumstances referred to above it comes out that the appellant has failed to substantiate his plea as contained in the plaint that on the day of the execution of the sale deed, he was minor. This matter cannot be gone into in regular second appeal which, otherwise, is not shown to involve any substantial question of law.

In view of the above, I regret my inability to interfere with the concurrent findings of fact recorded by the Courts below.

Dismissed.

20.01.2015
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(MAHAVIR S.CHAUHAN)
JUDGE