

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

R.S.A. No.1946 of 2014 (O&M)

Date of decision: 08.01.2016

Ram Kumar

...Appellant

Versus

Roshal Lal and ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. G. S. Nagra, Advocate for the appellant.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 04.12.2013, passed by the learned Additional District Judge, Ambala, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 25.11.2011, passed by the learned Additional Civil Judge, Sr. Divn., Naraingarh, Ambala, (for short, the 'trial Court'), has been dismissed.

The brief facts of the case are that the appellant filed a suit for declaration against the sale deed dated 25.03.1987 qua the property bearing Khewat/Khatauni No.66/132 min Khasra No.24//8 (7-7), 9/1(2-11) Quitas 2 measuring 9K-18M situated in village Majra Shahzadpur HB No.60 Tehsil Naraingarh, District Ambala, as the same was executed by defendant-respondent No.5 in favour of defendant-respondent Nos.1 to 4

without complying with the conditions imposed on her by the Guardian Court. The conditions were firstly, that the amount of sale proceeds would not be less than Rs.37,000/- and secondly, that the sale proceeds would be spent for the benefit of the minor appellant-plaintiff or the same would be deposited in the name of the minor in some nationalized bank. It was further averred that none of these conditions were complied with by respondent No.5. On attaining the age of majority, the appellant came to know about this wrongful act, he obtained a copy of the jamabandi and requested defendants/respondent Nos.1 to 4 to deliver back the possession of land in question but the defendants did not accede to this request. In defence, the defendant-respondent No.5 had replied that she had sold the suit property in the need of money required for welfare and benefit of the appellant. The following issues were framed by the trial court:-

1. Whether the sale deed bearing No.2293 dated 28.03.87 is illegal, null and void and not binding on the rights of the plaintiff? OPP
2. Whether the plaintiff is owner of the suit property and is entitled for decree for possession? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether plaintiff has no locus standi to file the present suit? OPD
5. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD

6. Whether suit is bad for non joinder and misjoinder of necessary parties? OPD
7. Whether the plaintiff has concealed the true and material facts from the Court if so its effect? OPD
8. Whether suit is not maintainability being partial suit? OPD
9. Whether suit is not barred by principle of res-judicata? OPD
10. Relief.

While recording the findings on issue Nos.1 and 2, the trial Court recorded that defendants-respondent Nos.1 to 4 had purchased the suit land on paying the due consideration and after seeking the necessary approval of the competent Court. Thus, the defendant-respondent Nos.1 to 4 were the bona fide purchasers. As far as the remaining issues, it was noticed that the appellant has attained the majority in the year 1996 and he challenged the said sale deed in the year 2003 i.e. after a period of around seven years, which clearly bars his suit by limitation.

Being afflicted with the said judgment and decree, the plaintiff-appellant preferred an appeal.

The first Appellate Court, analyzed the matter in issue, evidence on record and, on review thereof, found itself in concurrence with the view drawn by the trial Court and findings recorded in support thereof. Thus, the appeal was dismissed.

The learned counsel states that defendant-respondent No.5 was not competent to sell the land in dispute to the defendant Nos.1 to 4.

The Courts below have wrongly dismissed the case of the plaintiff-appellant being time barred and without considering the fact that the conditions laid down by the Guardian Court had not been fulfilled by respondent No.5.

I have heard the learned counsel for the parties and perused the record carefully.

The appellant-plaintiff had challenged the sale deed dated 25.03.1987 as it was sold by respondent No.5 to respondent Nos.1 to 4 without considering the conditions imposed by the Guardian Court, but the appellant-plaintiff had the remedy available to sue defendant No.5. As this fact was not in dispute that relevant permission of the Guardian Court was granted and as per respondent Nos.1 to 4, they had purchased the land in dispute against due consideration, they were the bonafide purchasers. Accordingly, this plea taken by the appellant was rejected by the Courts below. The learned trial Court has observed that the appellant was entitled to challenge the sale deed within the period of three years after attaining the majority, but he has challenged the same in the year 2003 i.e. after about seven years of attaining the majority.

No substantial question of law arise for determination by this Court.

Dismissed in limine.

08.01.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**