

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

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RSA 5833 of 2014 (O&M)
Date of decision: 25.01.2016

Ved Parkash and another

..... Appellants

Versus

Suresh Chand

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Abhimanyu Singh, Advocate
for the appellants

Mr. Adarsh Jain, Advocate
for the respondent

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against concurrent findings recorded by the Courts below whereby the suit filed by the respondent for possession by way of specific performance of the agreement to sell dated 02.09.2005 was decreed by the learned trial Court and the findings recorded by the trial Court have been affirmed in appeal.

Facts relevant for disposal of the appeal are that the respondent claimed possession of the suit land, detailed in para 1 of the judgment passed by the learned trial Court, by way of specific performance of the agreement to sell land measuring 04 kanals 12 marlas, as per agreement

dated 02.09.2005 executed by Smt. Vidyawati, the guardian of minor Ved Parkash and Laxman. It is averred that Smt. Vidyawati got permission to sell the suit property from the Additional Civil Judge (Senior Division), Palwal on 29.07.2005. At the time of agreement, an amount of Rs.92,000.00 was paid towards earnest money out of total sale consideration of Rs.1,80,000.00. The date for execution and registration of the sale deed was fixed as 30.06.2006. The respondent/plaintiff always remained ready and willing to perform his part of the agreement but the appellants/defendants committed a breach thereof. A legal notice was sent to the appellants calling upon them to perform their part of the agreement but to no avail.

The appellants filed the written statement seriously contesting the claim of the respondent. They raised preliminary objections challenging *locus standi* of the respondent to file the suit and he being estopped from filing the suit. It was alleged that the impugned permission was obtained by Smt. Vidyawati on the basis of misrepresentation to the Court. The suit property is very valuable property and entering into an agreement to sell with the respondent is not an act of good management on the part of Smt. Vidyawati. It is pleaded that at the time of entering into agreement to sell, the market value of the suit property was not less than Rs.25,00,000.00.

The controversy between the parties led to framing of following issues:-

- 1) Whether the plaintiff is entitled for specific performance of agreement to sell dated 02.09.2005?OPP*
- 2) Whether the suit of the plaintiff is not*

maintainable?OPD

3) Whether the plaintiff has got no locus standi?OPD

4) Whether the suit is collusive between the plaintiff and Smt. Vidyawati, the natural mother of the defendants No. 1 and 2?OPD

5) Whether the plaintiff has not come with clean hands?OPD

6) Relief

The trial Court permitted the parties to adduce evidence in support of their respective claims. After having heard counsel for the parties and bestowing its consideration to the materials on record, the trial Court answered issued No. 1 in favour of the respondent whereas issues No. 2 to 5 were determined against the appellants/defendants.

As has been noticed hereinbefore, the appeal preferred by the appellants did not find favour with the Additional District Judge, Palwal and as a result, the findings recorded by the trial Court were affirmed.

Still feeling dissatisfied, the present appeal has been preferred by Ved Parkash-appellant No. 1 and Laxman- minor through Ved Parkash, his next friend.

The sole submission made by counsel for the appellants is that Ved Parkash was major on 02.09.2005, the date of alleged agreement to sell, therefore, Smt. Vidyawati was not legally competent to enter into agreement of sale the suit property on behalf of appellant Ved Parkash. To bring home his contention, counsel has relied upon birth certificate, Ex.D1 issued by the Health Department, State of

Haryana wherein date of birth of Ved Parkash is recorded as 14.04.1986 and accordingly he attained the age of majority in April 2004. Smt. Vidyawati was never authorised by Ved Parkash to enter into an agreement to sell his property, therefore, the Courts below have committed a serious error rather illegality in decreeing the claim of the respondent/plaintiff.

Counsel for the respondent while refuting contentions of counsel for the appellants has submitted that any evidence adduced by the appellants beyond pleadings cannot be looked into by the Court and the same has been rightly ignored/discarded by the Courts below. It is further argued that Ved Parkash filed the written statement, admitting that he was minor in the year 2005 as he has averred in para 4 of preliminary objections and para 10 on merits that he (Ved Parkash) attained majority on 03.03.2006 and defendant No. 2 (Laxman) is still minor. According to learned counsel, in view of the categorical plea raised by Ved Parkash, it can be safely said that the birth certificate, Ex.D1 is a false and fabricated document and the appellants cannot derive any advantage to their contentions from the same.

I have heard counsel for the parties and perused the records.

The substantial question of law that arises for adjudication is *‘whether Ved Parkash can rely upon birth certificate, Ex.D1 to contend that as he became major in 2004, Smt. Vidyawati, his mother was not competent to enter into an agreement to sell on his behalf without any power or authority in this regard?’*

Counsel for the appellants has not disputed that in the written statement filed by Ved Parkash for himself as well as for Laxman (minor), it has been alleged that Ved Parkash attained the age of majority on 03.03.2006, meaning thereby that he was born on 04.03.1988. It is also an admitted position of the case that Ved Parkash did not file an application for amendment of the written statement seeking permission to withdraw the admission made in the written statement. As Ved Parkash averred in unequivocal terms that he attained the age of majority on 03.03.2006, Smt. Vidyawati was competent to enter into agreement to sell dated 02.09.2005 on behalf of her minor sons being their guardian on the basis of permission granted by the Court under Section 8 of the Hindu Minority and Guardianship Act, 1956. This apart, once the appellant (Ved Parkash) has raised a specific plea in regard to the date on which he attained the age of majority, any evidence led by him contrary to his pleadings to prove that he attained the age of majority on a date earlier to the date of agreement cannot be looked into being beyond pleadings. In this view of the matter, the appellants cannot seek any assistance to their contention from the birth certificate, Ex D1.

Another important aspect that invites attention of the Court is that in the certificate Ex.D1 there are special remarks to the effect that there was over writing on the date of birth. These remarks creates a serious doubt in regard to correctness and authenticity of date of birth incorporated in Ex.D1. The possibility cannot be ruled out that after filing of the written statement and realizing that Ved Parkash would be

bound by the agreement executed by his mother, the appellants adopted a clever devise to wriggle out of the agreement by getting the records altered/manipulated. In addition, the birth certificate is not an attested copy issued by the authority concerned rather the same is photo copy attested by a Notary Public and thus inadmissible in evidence. The appellants did not examine an official of the Health Department to prove date of birth entry on the basis of record. As per settled position in law, mere marking of a document as an exhibit will not dispense with its proof in accordance with law. That being so, the appellants cannot take benefit of Ex.D1 for any purpose whatsoever.

Analysed from any angle, the appellants can neither contend that Ved Parkash was not minor at the time of agreement nor can seek aid from Ex.D1 to substantiate their contention in this regard. In view of the above, aforesaid question is answered against the appellants and in favour of the respondent.

For the reasons aforestated, the appeal is dismissed, judgments and decrees passed by the Courts below are affirmed. However, the parties are left to bear their own costs.

(Rekha Mittal)
Judge

25.01.2016
mohan bimbura