

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

R.S.A. No.6226 of 2014 (O&M)

Date of decision: 27.01.2016

Manoj Rohila

...Appellant

Versus

Badan Singh and ors.

...Respondents

R.S.A. No.950 of 2015 (O&M)

Date of decision: 27.01.2016

Gurcharan Singh

...Appellant

Versus

Badan Singh and ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. B. S. Bedi, Advocate for the appellants.

Mr. Pritam Saini, Advocate for respondent No.1.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 05.11.2014, passed by the learned Additional District Judge, Panipat, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 29.11.2012, passed by the learned Civil Judge, Jr. Divn., Panipat, (for short, the 'trial Court'), has been dismissed.

The learned counsel for the appellant refers to order dated 11.02.2003, whereby the permission to sell the suit land was granted to respondent No.3-Jail Singh, natural guardian of respondent No.2-minor Gurcharan Singh, subject to the conditions that the guardian shall deposit the entire sale proceed in the name of the minor in some scheduled bank and he shall have liberty to utilise the same for purchasing some other property in the name of the minor. It is contended that in violation of the said order, the property of the minor was sold to respondent No.1-Badan Singh as sale consideration alleged to be paid to the natural guardian of the minor, is proved to be deposited in the scheduled bank. He states that the agreement to sell executed by the guardian is not binding upon the rights of the minor and the agreement is voidable at the instance of the minor. He further states that the learned Courts below have also ignored the factum of bonafide purchase by the appellant-Manoj Rohila as he has entered into an agreement to sell with the guardian of the minor and later on sale deed was executed by the minor after attaining majority.

The learned counsel cites '**Major Darbara Singh Vs. Kaminder Singh and ors.**', 1979 HLR 423, '**Thota Rambabu**

@ Ramu Vs. Cherukuri Venkateshwara Rao @ Pedababu and others.', 2005 (4) RCR (Civil) 700 and '**Rajeshwari Vs. Puran Indoria**', 2005(4) RCR (Civil) 36.

On the other hand, the learned counsel for the respondents states that the minor, Gurcharan Singh through his father i.e. natural guardian, respondent No.3-Jail Singh, entered into agreements dated 15.03.2000 and 03.04.2001, which are prior to the order dated 11.02.2003, wherein the permission to sell was granted to the natural guardian. Therefore, there is violation of order dated 11.02.2003. The minor attained majority on 01.01.2004, and therefore, there is no reason for minor to enter into another agreement dated 04.11.2008 through his father-natural guardian. The land in question is self acquired land of respondent No.3-Jail Singh purchased in the name of minor respondent No.2-Gurcharan Singh. The agreement of full and final payment was drawn on 25.09.2003 and the same was reduced into writing and signed by respondent No.3-Jail Singh for and on behalf of Gurcharan Singh, and respondent No.1-Badan Singh in the presence of witnesses.

I have heard the learned counsel for the parties and carefully gone through the record on file.

From the perusal of the record, it reveals that respondent-Jail Singh himself admitted his signature over the agreement dated 25.09.2003 executed in favour of the respondent, Badan Singh. These signatures were verified by his son respondent, Gurcharan Singh. The statements of the attesting witnesses i.e. Sadhe Ram, Sunita, Santosh Sharma, who were also present at the time of execution of the agreement, substantiated the case of the respondent-Badan Singh. They had specifically stated that respondent-Badan Singh paid sale consideration amount of Rs.1,00,000/- to respondent-Jail Singh for the execution of the said agreement. The presence of these witnesses is also admitted by respondent-Jail Singh. Thus, it stands duly proved on record that agreement to sell dated 25.09.2003 was executed by respondent-Jail Singh. Thereafter the possession of the suit land was handed over to respondent-Badan Singh, wherein he alleged that he had raised construction on it. To prove this factum, PW-7 Tejpal deposed that he is a labourer and constructed the house of the respondent-Badan Singh in the year 2003 and PW-11 Kamaljit deposed that he supplied the construction material to the respondent-Badan Singh for construction of his house and duly identified the bills

Ex.PW11/A to PW11/C. The learned counsel for the appellant-Gurcharan Singh states that agreement dated 25.09.2003 executed by his father Jail Singh on his behalf could not be enforced upon him as he had already attained majority on 01.01.2004 and after attaining the age of majority, he has also executed agreement to sell dated 04.11.2008 and thereafter sale deed dated 27.11.2008 has been executed in favour of the appellant-Manoj Rohila. However, this argument is not tenable in the eyes of law as admittedly the agreement dated 25.09.2003 which has duly been proved on record, has never been challenged either by Jail Singh or Gurcharan Singh till date. If the appellant-Gurcharan Singh was not satisfied with the sale agreement entered by his father as Court Guardian with respondent No.1 Badan Singh, then he had a right to challenge the same within a period of three years of his attaining the age of majority but no such course has been adopted by him. It is admitted fact that the permission to sell the suit land was granted vide order dated 11.02.2003, therefore, the respondent-Jail Singh had no right to enter into the agreements dated 15.03.2000 and 03.04.2001 executed by him for and on behalf of respondent-Gurcharan Singh, in favour of appellant-Manoj Rohila. These

agreements are not enforceable in the eyes of law. Even he had no right over the suit land, once he entered into agreement dated 25.09.2003 with respondent-Badan Singh. Furthermore, the version of respondent-Jail Singh is contrary to that of appellant-Manoj Rohila qua the sale consideration for which the suit property was agreed to be sold to the appellant-Manoj Rohila. There is tampering in the agreement dated 15.03.2000, as the copy of the agreement bears the signature of Sh. Parveen Rohila as a witness, but the original copy of the same does not bear the signature of the said witness. In addition to this, in view of the fact that the land in question was self acquired property of respondent-Jail Singh and he executed the agreement dated 25.09.2003 in favour of respondent-Badan Singh after obtaining the permission by order dated 11.02.2003, no fault could be found with this agreement. The sale is completed and respondent-Badan Singh has been put into possession as a bonafide purchaser.

In *Kashmir Singh Vs. Harnam Singh and another*, 2008 (2) RCR (Civil) 688, it has been held that the general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well

recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

Finding no infirmity in the judgments and decrees passed by the learned Courts below and since no question of law arises for considerations in this appeal, the same is dismissed.

27.01.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**