

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2417 of 1988

Date of Decision: 04.12.2017

Amrit Pal Singh

... Appellant

VS.

Gurlal Singh & Anr.

... Respondents

RSA No.2418 of 1988

Amrit Pal Singh

... Appellant

VS.

Gurdit Singh & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

Present: Mr. Yashpal Thakur, Advocate for
Mr. Gurcharan Singh, Advocate for the appellant

SURYA KANT, J. (Oral)

(1) This order shall dispose of RSA Nos.2417 & 2418 of 1988 as both the appeals are at the instance of Amrit Pal Singh – the appellant, who filed two civil suits for possession of agricultural land situated in the revenue estate of village Lubanianwali which he had sold in favour of defendant-respondents (in both the cases) by way of registered sale deed dated 25.11.1981 (in the first case) and dated 04.02.1982 (in the second case) which were dismissed by learned trial court vide separate judgments and decrees dated 11.02.1986 and first appeals were also turned down vide judgment and decree dated 10.05.1988. The facts are being extracted from RSA No.2417 of 1988.

(2) The plaintiff-appellant filed suit for possession of land measuring 51 kanal 18 marla situated in the revenue estate of village Lubanianwali alleging that the suit land was inherited by him from his father Gurcharan Singh @ Gurbachan Singh s/o Partap Singh and the defendant-respondents have no

right, title or interest on the basis of sale deed dated 25.11.1981 which was stated to be illegal, *void ab initio* and hence liable to be set aside as the plaintiff-appellant never sold any part of the suit land to defendant-respondents and he did not receive any amount of consideration and also on the date of execution of sale deed i.e. 25.11.1981, he was minor as he attained majority only about a year before the instant suit was filed in March, 1986. The plaintiff-appellant thus averred that he was incompetent to execute any sale deed on 25.11.1981 for as such no title could be passed on to defendant-respondents.

(3) The defendant-respondents contested the suit through their written statement dated 22.08.1984 in which a preliminary objection was raised that the plaintiff-appellant was estopped by his act and conduct from filing the suit as he represented himself as major on 25.11.1981 and executed the sale deed in their favour.

(4) Besides other preliminary objections, the defendant-respondents averred on merits that the sale deed was a legally valid document which the plaintiff-appellant executed after getting the same typed from Deed Writer with his free-will in the presence of attesting witnesses.

(5) The defendant-respondents took an alternative plea that in case the plaintiff-appellant was proved to be a minor on the date of execution of sale deed, he be asked to pay back the entire sale consideration as well as the benefits drawn by him from the money paid by defendant-respondents as the plaintiff-appellant had purchased a plot at Bathinda city on 03.05.1982 out of the sale consideration and constructed a house, besides purchasing truck No.PNO-2003 by spending out of the sale consideration of his agricultural land.

(6) The plaintiff-appellant filed replication reiterating his allegations in the plaint.

(7) The Civil Court vide order dated 14.02.1985 formulated the following issues for determination:-

“1. Whether the sale deed dated 25-11-1981 is illegal, void and without consideration as alleged? If so, its effect? OPP

2. Whether the plaintiff was minor on the day of sale? If so, its effect? OPP

3. Whether the plaintiff is entitled to possession of the suit land as alleged? OPP

4. Whether the suit is not valued for the purpose of courts fee and jurisdiction? OPD

5. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD

6. Relief.”

(8) The appellant appeared as PW1 and tendered in evidence the school leaving certificate (Ex.P1) according to which his date of birth was 11.10.1965 and he was thus minor on the date when sale deed was executed on 25.11.1981. On the other hand, the defendant-respondents produced Surjit Singh – Document Writer (DW1), Makhan Singh (DW2) and Gurlal Singh (PW3).

(9) Both the Courts below have disbelieved the contents of the school leaving certificate on the ground that the said certificate is not linked with the appellant, for according to the plaintiff-appellant, he was born in village Lubanianwali whereas the name of the village in certificate was mentioned as Kanawali. The school leaving certificate was from a school at village Kassoana though it was not the case of the appellant that he ever studied in the school at Kassoana. The Courts below have further held that though the school leaving certificate too has evidentiary value but it has to be proved by producing the official who prepared it. In the case in hand, no official was produced to prove

the document (Ex.P1). The Courts below have further doubted the genuineness of the school leaving certificate as according to the appellant, he was admitted to the school on 29.05.1978 but in the column of attendance the certificate reveals that he was marked present in the school w.e.f. 01.04.1979. The Courts below have thus held that the certificate does not seem to be genuine and its contents cannot be relied upon. The Courts below have further viewed that the certificate appears to have been manipulated by the appellant to show his date of birth as 11.10.1965 whereas in the sale deed (Ex.D1) he mentioned himself to be a major.

(10) As regard to appellant's plea that the sale deed was executed without any consideration, the Courts below have repelled the same in view of the fact that the payment of consideration is duly recited in the sale deed and a sum of ₹ 30000/- was statedly paid before the Sub Registrar at the time of execution of sale deed. The appellant's suit(s) was consequently dismissed.

(11) I have heard learned counsel for the appellant at a considerable length and gone through the record with his assistance.

(12) The substantial question of law sought to be formulated on behalf of the appellant is "whether the appellant was a minor at the time of execution of sale deed dated 25.11.1981, and if so, what is its legal effect on the execution of the sale- deed?"

(13) In my considered view, the question whether the appellant was minor or major at the time of execution of sale deed or whether he was born on 11.10.1965 or prior thereto, is essentially a question of fact which has been concurrently answered against him by the Courts below on appreciation of evidence brought on record. The solitary piece of evidence produced by the appellant was the school leaving certificate (Ex.P1) but as rightly observed by

the Courts below, he has not produced the Principal or Clerk of the School to prove the contents of the school leaving certificate or any other record to suggest as to how his date of birth being 11.10.1965 was entered into the school record. In the absence of such evidence, the certificate (Ex.P1) completely lost its evidentiary value.

(14) The appellant presented himself as major and executed the sale deed for consideration which has been rightly found to have passed on to him. Once the sale deed was executed by the appellant by projecting himself a major and he received the sale consideration, it was too late for him to urge at a belated stage, namely, after almost 5 years that he was actually a minor at the time of execution of sale deed. Still further, onus was on the appellant to establish that he was indeed a minor at the time of execution of sale deed or that on account of his minority, he was not aware of the legal consequences of execution of the sale deed. The appellant, for the reasons best known to him, did not produce either his birth certificate or any other cogent evidence on the basis of which it could be safely inferred that he was actually a minor as on 25.11.1981 when the sale deed was executed. In the absence of any such evidence and keeping in view the concurrent finding of fact returned by the Courts below, I am not inclined to interfere with the impugned judgements and decrees dated 11.02.1986 and dated 10.05.1988. The appeals are thus dismissed but without any order as to costs.

04.12.2017

vishal shonkar

**(Surya Kant)
Judge**

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

**Yes
No**