

RSA No. 2368 of 2014 (O&M)

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

**RSA No. 2368 of 2014 (O&M)
Date of Decision: 13.7.2017**

Ranjana Goel

.....Appellant

Vs.

Sham Lal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. C.B. Goel, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant regular second appeal, at the hands of unsuccessful defendant No.3, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession by way of specific performance of the agreement to sell filed by the plaintiffs-respondents, was partly decreed by the learned trial court and two appeals filed by both the parties were dismissed together, vide common impugned judgment and decree passed by the learned first appellate court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that defendant No.1 Nidhi and on behalf of her minor daughter Shreya i.e. defendant No.2 entered into an agreement to sell with the plaintiffs of the land measuring 17 kanals 3 marlas

RSA No. 2368 of 2014 (O&M)

being $\frac{1}{2}$ share out of total land measuring 34 kanals 6 marlas comprised in khewat No.332, khatoni No.516, rect. No.30, khasra No.6 (8-0), 7 (8-0), 14 (8-0), 15(8-0), 16 (2-6), total kitas-5 situated at village Dera, Tehsil Thanesar, District Kurukshetra as per jamabandi for the year 1996-97 on 15.3.2003 for a sale consideration of ₹20,51,000/- and if the possession was to be delivered on the western side, otherwise, the sale consideration was ₹25,00,000/-. Defendant No.1 received a sum of ₹5,00,000/- as earnest money and agreed to execute the sale deed of her share on or before 27.6.2003. Defendant No.1 undertook to get the permission to sell the share of defendant No.2 in favour of the plaintiffs through the court of law and to get the sale deed of the same executed in favour of plaintiffs by 15.12.2003. Defendant No.1 for herself and on behalf of defendant No.2 also agreed to comply with all the conditions of the agreement to sell dated 15.3.2003.

It was further alleged that a petition under Section 6, 7 & 25 of the Guardian and Wards Act, 1890 read with Section 13 of the Hindu Minority and Guardianship Act, 1956 ('the Act' for short), was filed by defendant No.3 against defendant No.1 and in a suit bearing No.71/2003 for declaration and joint possession filed by defendant No.1 against defendant No.3, a compromise was effected between defendants No.1 and 3 to the effect that the share of defendant No.1, which was the subject matter of agreement to sell dated 15.3.2003, fell to the share of defendant No.3 and both defendants No.1 and 3 were liable to execute the sale deed of 8 kanals 12 marlas land i.e. half share of land measuring 17 kanals 3 marlas in favour of plaintiffs and defendant No.1 was liable to execute the sale deed of the remaining 8 kanals 11/12 marlas land of the share of defendant No.2 Shreya in favour of plaintiffs after getting permission from the competent court of

RSA No. 2368 of 2014 (O&M)

law.

On 27.6.2003 and 15.12.2003, the sale deed could not be executed as there was stay order from the court. Defendant No.1 undertook to execute the sale deed in favour of the plaintiffs as and when the stay was vacated. Defendant No.1 had not informed the plaintiffs whether she had taken the permission from the competent court of law or not, to execute the sale deed qua her minor daughter in favour of plaintiffs. The plaintiffs requested the defendants to execute the sale deeds in favour of the plaintiffs in terms of agreement dated 15.3.2003 and a legal notice dated 6.7.2005 was also served upon the defendants. Defendant No.3 refused to receive the registered notice. In spite of the legal notice, the defendants did not execute and register the sale deed in favour of the plaintiffs.

Having been put to notice, defendants No.1 and 2 filed their joint written statement. They did not contest the suit of the plaintiff. Defendant No.1 stated that she was ready to execute the sale deed qua the share of her minor daughter-defendant No.2 and as she had entered into a compromise qua her own share with defendant No.3-her mother-in-law, it was defendant No.3 who was bound to execute the sale deed in favour of the plaintiffs.

Defendant No.3 filed her separate written statement, raising more than one preliminary objections. However, she admitted the factum of compromise arrived at between her and defendant No.1. She also claimed that share of defendant No.1 had fallen to her share in the compromise arrived at between both of them. Regarding defendant No.2, defendant No.3 stated in her written statement that share of the minor in the suit land could not have been sold, nor any agreement to sell could have been entered by defendant No.1.

RSA No. 2368 of 2014 (O&M)

On completion of pleadings of the parties, the learned trial court framed the following issues:-

- 1) Whether the plaintiffs are entitled for possession by way of specific performance as paid for? OPP
- 2) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
- 3) Whether the suit is not maintainable? OPD
- 4) Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that suit of the plaintiffs was to be decreed partly. Since the learned court refused permission to defendant No.1 for selling the share of the minor-defendant No.2, the learned trial court partly decreed the suit of the plaintiffs only qua share of defendant No.1, which had fallen to the share of defendant No.3, because of compromise between them. Accordingly, suit of the plaintiffs for possession by way of agreement to sell dated 15.3.2003 was partly decreed by the learned trial court vide its impugned judgment and decree dated 4.12.2010, directing respondent No.3 to execute the sale deed qua 1/4th share of the total land measuring 34 kanal 6 marla in favour of the plaintiffs on receipt of balance sale consideration.

Both the parties felt aggrieved. Plaintiffs filed their first appeal No. 277 of 2013, seeking decree of their suit in toto, whereas defendant No.3 preferred her first appeal No. 422 of 2013, seeking dismissal of the suit. Both these appeals came to be dismissed by the learned first appellate court vide its common impugned judgment dated 9.1.2014. Plaintiffs have not come in appeal before this Court. Present regular second appeal has been

RSA No. 2368 of 2014 (O&M)

filed only by defendant No.3.

Heard learned counsel for the appellant.

Facts are hardly in dispute. So far as agreement to sell dated 15.3.2003 was concerned, it had been duly proved by the plaintiffs-respondents. In fact, it was defendant No.1 who entered into an agreement to sell with the plaintiffs qua her share as well as share of her minor daughter-defendant No.2. This was the reason that defendant No.1 was ready to execute the sale deed qua the share of defendant No.2. Regarding her own share, she stated that since her share had fallen to the share of defendant No.3 as per terms of compromise between them, it was defendant No.3 who was bound to execute the sale deed in favour of the plaintiffs.

So far as the share of defendant No.2-minor was concerned, learned court of competent jurisdiction refused to grant permission vide order dated 14.12.2006, thus, defendant No.1 was no more competent to execute the sale deed qua share of the minor in favour of the plaintiffs. This permission was sought by defendant No.1 under Section 8 of the Act, which was declined by the learned District Judge, vide abovesaid judgment dated 14.12.2006 (Ex.D1). Judgment dated 14.12.2006 passed by the learned District Judge became final against defendant No.1. This was the reason that the learned trial court rightly declined decreeing the suit of the plaintiffs qua the share of minor-defendant No.2.

Since the agreement to sell was for half share of the land measuring 34 kanal 6 marla, shares of defendants No.1 and 2, being 1/4th each, learned trial court rightly decreed the suit only qua the share of defendant No.1, which had fallen to the share of defendant No.3, as per their inter se compromise. Accordingly, vide impugned judgment and decree

RSA No. 2368 of 2014 (O&M)

dated 4.12.2010, learned trial court directed respondent No.3 to execute the sale deed in favour of the plaintiffs qua 1/4th share of the total land measuring 34 kanal 6 marla, after receipt of payment of balance sale consideration of ₹ 7,50,000/-.

As noticed hereinabove, both the parties felt aggrieved and two first appeals were filed which came to be dismissed by the learned first appellate court vide common impugned judgment and decree dated 9.1.2014. A bare combined reading of both the impugned judgments and decrees would make it crystal clear that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Compromise arrived at between defendants No.1 and 3, being daughter-in-law and mother-in-law, was exhibited on record by the plaintiffs as Ex.P-11. Defendant No.3 filed civil suit No. 71 of 2003 against defendants No.1 and 2 for declaration and joint possession with consequential relief of permanent injunction. This suit was decreed on the basis of Ex.P11 and the compromise was also made part of the decree. As per this compromise Ex.-11, defendant No.3-appellant had undertaken to execute the sale deed in favour of the plaintiffs qua share of defendant No.1. It was so mentioned in para No.11 of the compromise. Neither ownership of defendant No.1 was in dispute, nor she disputed the material fact of due execution of the agreement to sell by her in favour of the plaintiffs. As referred here-in-before, suit of the plaintiffs was rightly dismissed qua the share of defendant No.2-minor, permission regarding which under Section 8 of the Act had been declined by the learned District Judge.

It is also not in dispute that in terms of compromise arrived at

RSA No. 2368 of 2014 (O&M)

between defendant No.1 and defendant No.3, share of defendant No.1 had fallen to the share of defendant No.3-present appellant. Once the appellant had undertaken to execute the sale deed qua the share of defendant No.1 in favour of the plaintiffs at the time of entering into compromise with defendant No.1, she was rightly directed by the learned trial court to execute the sale deed in favour of the plaintiffs, however, only qua 1/4th share, which was originally held by defendant No.1. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. Cogent findings recorded by the learned first appellate court in para 14 to 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“Firstly, it may be mentioned that it is settled principle of law that share of a minor children cannot be alienated without permission of the court. In the present case, the defendant No.1 for herself and on behalf of her minor daughter Shreya entered into the agreement to sell dated 15.3.2003 without obtaining permission of the court. She was not competent to alienate the share of her minor daughter Sherya. Thus, the learned trial Court has rightly declined the execution of the agreement to sell in respect of share of defendant No.2, who is minor daughter of defendant No.1.

Shri Vijay Jindal, learned counsel for appellant Ranjana Goel (CA No.422 of 2013) argued that the agreement to sell cannot be enforced in part. The share

of Ranjana Goel and minor defendant No.3 Shreya cannot be segregated as suit property has not been partitioned so far. In support of his contentions, he has placed reliance on Gopal Dass Versus Khan Chand (died) through L.Rs. 2006(2) Civil Court Cases 336 (P&H), Swaran Sing (died) through L.Rs. Versus Dalip Kaur & Ors. 2005(2) Civil Court Cases 762 (P&H), Devaki Amma Versus Varghese 2000(3) Civil Court Cases 667 (Kerala), O.G.Sankar & Anr. Versus S.Veera Sameera Kumar Devi & Anr. 1997(2) Civil Court Cases 700 (Andhra Pradesh) and Gupreet Singh Versus Chaterbhuj Goel 1991(2) Recent Revenue Reports 504 (P&H).

The arguments has no force in the eyes of law. It is admitted position on record between the parties that when the compromise was effected between defendant No.1 and defendant No.3, in para No.11 of the compromise deed (Ex.P11) defendant No.3 agreed to execute and register the sale deed of share of defendant No.1 which had fallen to her. She also agreed that the earnest money of Rs.5,00,000/- shall remain with defendant No.1 and she shall be entitled to receive the remaining amount and the share of minor Sherya shall be deposited in fixed deposit. Moreover, in the agreement to sell (Ex.P1) it has not been mentioned that if defendant No.1 fails to obtain permission of the court to sell the share of her minor daughter, the agreement to sell would become infructuous. In P.C. Varghese Versus Devaki Amma Balmbika Devi & Ors. 2006(1) Civil Court Cases 321 (SC) if permission to sell of minor's share is rejected during pendency of suit, vendor is having definite share in property excluding minor's share and it was not a composite contract, decree of specific performance excluding share of minor can be passed. In

RSA No. 2368 of 2014 (O&M)

Kartar Singh Versus Harjindr Singh and others AIR 1990 SC 854, vendor entered into agreement for himself and on behalf of his sister. Sister refused to sell her share of property. Specific performance can be granted in respect of vendor's share. In Ran Dass & Anr. Versus Shisa Singh & Ors. 2008(1) Civil Court Cases 635 (P&H) it has been held that no law prohibits a co-sharer from alienating his share in the joint property. Any alienation so made by a co-sharer is always subject to the partition and rights of other co-sharers. The vendees simply step into the shoes of the vendor-co-shares and will acquire status of a co-sharer and all their rights to the extent of land purchased will remain subject to the partition and rights of other co-sharers.”

It is the settled proposition of law that co-sharers of the joint property cannot stop one co-sharer from alienating his share. However, it is also equally true that such alienation of share would be subject to partition. Further, if one co-sharer enters into an agreement to sell qua his share as well as share of another co-sharer, the other co-sharer shall not be bound by the terms of agreement to sell if he was not party to it. In such a situation, Section 12 of the Specific Relief Act, 1963, will not apply and decree of specific performance can be granted in respect of vendor's share, if plaintiff is found entitled for such a decree of specific performance.

So far as the case in hand is concerned, defendant No.1 never denied the factum of agreement to sell executed by her in favour of the plaintiffs. Readiness and willingness of the plaintiffs on all the relevant points of time have also gone undisputed. Defendant No.3-appellant bound herself for executing the sale deed in favour of the plaintiffs qua share of defendant No.1, in terms of compromise Ex.P-11. So far as share of

RSA No. 2368 of 2014 (O&M)

minor-defendant No.2 was concerned, decree of the learned trial court has attained finality, because plaintiffs are not in appeal before this Court. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below were well justified in passing the impugned judgments and decrees and the same deserve to be upheld.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

Kartar Singh Vs. Harjinder Singh, 1990 AIR (SC) 854 (SC)

Sardar Singh Vs. Krishna Devi, 1995 AIR (SC) 491 (SC)

P.V. Varghese Vs. Devaki Amma Balambika Devi and others, 2005 (8) SCC 486 (SC)

Piru Vs. Fakir Chand, 2006 (4) RCR (civil) 207 (P&H)

Ran Dass and another Vs. Shisha Singh and others, 2007 (5) RCR (civil) 800 (P&H)

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

RSA No. 2368 of 2014 (O&M)

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

13.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No