

RSA-243-1989 (O&M)

525

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

RSA-243-1989 (O&M)

Date of decision : 05.12.2018

Jasmer Kaur and another

... Appellants

Versus

Labh Kaur (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arihant Jain, Mr. Varun Jain, Mr. Rishab Jain and
Mr. Arun Jindal, Advocates
for the appellants.

Mr. Amit Jain and
Mr. Dhruv Mittal, Advocates
for the respondent.

AMIT RAWAL, J.

The appellants-defendants are in the regular second appeal against the concurrent findings of fact, whereby the suit of the plaintiff for specific performance of agreement dated 31.08.1981 and 15.10.1981 in respect of land measuring 38 kanals 18 marlas, has been decreed by the trial Court and affirmed by the lower Appellate Court.

The respondent-plaintiff, Labh Kaur, in the year on 03.08.1982 filed a civil suit for specific performance of agreement to sell dated 31.08.1981 and 15.10.1981 in respect of land measuring 38 kanals 18 marlas. It was alleged that the appellant-defendant, Jasmer Kaur, out of 77 kanals 16 marals, was the owner of the land to the extent of half share and remaining ½ share was in ownership of defendant No.2, Balbir Kaur, her

RSA-243-1989 (O&M)

sister. Balbir Kaur sold her share to Gurdial Singh. The plaintiff entered into an agreement dated 31.08.1981 with defendnt Jasmer Kaur, regarding half share i.e. 38 kanals 18 marals @ ₹9,000/- per killa and a sum of ₹20,000/- was advanced as earnest money, even the possession was delivered. The stipulated date for registration and execution of the sale deed was 15.10.1981. The sale deed on a stamp paper of ₹5500/- was executed on 22.09.1981, but the same could not be registered as Bachan Singh, father of Jasmer Kaur, had sought the injunction qua alienation against the defendant. The aforementioned suit was dismissed on 10.02.1982 and thereafter, the defendant executed another agreement dated 15.10.1981 in favour of the plaintiff, whereby agreed to get the sale deed registered on or before 15.06.1982. An attempt was made to alienate the land, necessitating the respondent-plaintiff to obtain the stay order on 14.05.1982. The plaintiff had always ready and willing to perform the part of the agreement to sell, but it came to the notice that the defendants had already sold the land measuring 23 kanals 4 marlas being 464/1403 share in favour of defendant No.2, on 21.06.1984, despite the injunction. Defendant No.1 had also sold 15 kanals 19 marlas through registered sale deed dated 09.07.1984 to the plaintiff for a sum of ₹18,000/- and for remaining suit land, the aforementioned, suit, was filed.

Defendant No.1 opposed the suit and denied the execution of the agreement to sell and advance of ₹20,000/-, much less, preparation of the sale deed dated 22.09.1981. It was alleged that she was minor on the relevant date of agreement, thus, was not competent as her date of birth was 03.03.1968. However, defendant No.2 admitted to have purchased the land and claimed herself to be *bona fide* purchasers.

RSA-243-1989 (O&M)

Since the parties were at variance, the trial Court framed the following issues including the additional issue:-

1. Whether the defendant executed the agreements to sell dated 31.08.1981 and 15.10.81 as alleged in favour of the plaintiff? OPP
2. Whether the plaintiff remained willing and ready to perform his part of the contract? OPP
3. Whether the defendant was minor at the time of the agreements? If so, what is its effect? OPD
4. Relief.

Additional Issue No.3-A Whether defendant No.2 is bona fide purchaser for consideration? OPD-2

The plaintiff in order to prove its case examined as many as seven witnesses and brought on record the various documents i.e. Ex.P-1 to Ex.P4, whereas the defendant examined as many as six witnesses and tendered in evidence various documents.

On the basis of preponderance of evidence, the trial Court, as noticed above, decreed the suit and the appeal taken before the lower Appellate Court was also dismissed.

Mr. Risahb Jain, Mr. Arihant Jain, Varun Jain and Mr. Arun Jindal, learned counsel appearing on behalf of the appellants-defendants submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law as Hazara Singh and Gurnam Singh, attesting witnesses, are from Samana, whereas suit land is situated at Village Mawi Kalan, this creates suspicion with regard to the execution agreement to sell dated 15.10.1981. In fact, the plaintiff failed to prove the execution of the agreement to sell. Agreement of 1981 did not reveal the exchange of any money. The appellant on the both dates i.e. 31.08.1981 and 15.10.1981, was minor and the school record (Ex.DW1/A and DW-6/A) is the testimony of the same, which has not been controverted, but for the best reasons

RSA-243-1989 (O&M)

known, has erroneously been ignored. Even the readiness and willingness is conspicuously wanting. Defendants was bona fide purchaser for a valuable consideration.

Mr. Amit Jain and Mr. Dhruv Mittal, learned counsels appearing on behalf of the respondent-plaintiff submitted that agreement has been proved by the scribe PW-1, Sudesh Kumar, who produced the register and entries. Written statement was filed in 1982, in her own capacity and if at all, she was minor, written statement could not have been filed in her own capacity, but the same should have been through guardian, thus, could not have executed the sale deed in favour of defendant No.2.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that that there is no merit and force in the submissions of Mr. Arihant Jain, for, on the following reasons:

The defendants miserably failed to prove the minority, on the execution of both the agreements dated 31.08.1981 and 15.10.1981. School record is entered into on the basis of unilateral information supplied. If at all, she was minor, the appellant could not have sold the land to defendant No.2, during the subsistence of agreement, rather disclosed her age as 25 years before the Sub-registrar. Assuming for an argument, she was minor, the defendant could not have filed the written statement in her own capacity and Court would have made an effort by taking suo motu proceedings for appointment of guardian or through some application.

As regards the non-execution of agreement to sell, Scribe PW1, despite oral testimony, also brought on record documentary evidence i.e. entry Ex.P1 and Ex.P2. Hazara Singh and Gurnam Singh, the attesting

RSA-243-1989 (O&M)

witnesses, not only proved the execution, but the payment of earnest money. The suit was also filed within the reasonable period and therefore, it cannot be said that there was no readiness and willingness. All these factors, if read in cumulative, lead to an irresistible conclusion that the plaintiff had proved ingredients for grant of discretionary relief.

Before parting with the judgment, Mr. Jain, submitted that in view of the escalation of price, the appellant-defendant can be compensated.

I am afraid the aforementioned argument would not also be beneficial as the appellants had already washed out the hands by selling the land to defendant No.2 and no such hardship at the behest of the plaintiff as per the provisions of explanation II of Section 20(2)(b) of the Act have been pleaded or proved.

I cannot remain unmindful of the fact that part of the land was already sold to the plaintiff, it was the suit only for remaining piece of land, which was allegedly sold by defendant No.1, during the subsistence of the agreement to sell, to defendant No.2.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Jain to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

05.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**