

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.766 of 1998 (O&M)
Date of Order: 04.12.2018

Surjit Singh

..Appellant

Versus

Nand Lal and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Goel, Advocate,
for the appellant.

Mr. Kuldip Sanwal, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the findings of fact arrived at by the first appellate court while reversing the judgment passed by the trial court.

Issue which needs consideration is:-

“whether in the presence of documentary evidence, the court is justified in relying upon a stray line in the cross-examination of the witness?”

The dispute in the present case is whether the sale deed executed by Nand Lal on 15.01.1987 is valid or not as Nand Lal was claimed to be minor on that day. As per certificate issued by the Registrar of Births and Deaths, the age of Nand Lal is 17.09.1972. Same is the position with regard to the school record. However, there is an error in the entry in the register of Births and Deaths wherein father's name of the child

has been recorded as Ucho Ram, although his correct name is Bucha Ram. However, defendant when appeared in evidence has admitted that Bucha Ram and Lachhmi Bai, parents of the plaintiff Nand Lal used to live near Sat Narain Mandi, Kar Khas Colony, Patiala. In the date of birth register, the address is recorded as near Sat Narain Mandir. No evidence has been led to prove that there was another person in the name of Ucho Ram.

Learned trial court recorded a finding by picking up few lines in the cross-examination of Nand Lal and ignored the documentary evidence which has come on record. Bucha Ram had already died and Lachhmi Bai, his widow was having two sons and one daughter i.e. Om Parkash, Nand Lal and Ram Kumari became co-owners in a joint land measuring 121 kanals 2 marlas. Nand Lal is alleged to have sold the property on 15.01.1987, which is claimed to be void in the present litigation as Nand Lal was a minor.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant has submitted that on careful examination of the evidence of Nand Lal himself, it is apparent that he was more than 18 years on the day sale deed was executed. However, on being repeatedly asked, learned counsel for the appellant admitted that defendant has not led any evidence to prove that any person having the name of Ucho Ram resided near Sat Narain Mandir, Kar Khas Colony, Patiala. A small error in the date of birth certificate which stands explained cannot be made basis to ignore the birth certificate issued by the Registrar of Births and Deaths. This date of birth certificate further stand corroborated from school

record.

In such circumstances, the trial court was not justified in picking up few lines and reading the same in isolation of the entire statement. It is well settled that documentary evidence has to be given preference to oral evidence.

However, there is another aspect of the matter which has not been considered by the first appellate court. As per the sale deed executed on 15.01.1987, total amount of Rs.4000/- was paid. The aforesaid amount has to be refunded to the defendant-appellant.

Keeping in view the aforesaid discussion, the appeal filed by the defendant-appellant is partly accepted while maintaining the judgment of the learned first appellate court. There would be decree for declaration that the sale deed dated 15.01.1987 is null and void. However, the amount which was paid under the sale deed by the defendant to the plaintiff shall be liable to be refunded along with interest @ 10% per annum from the date of payment till realization. This amount shall remain charge on the property sold.

The regular second appeal is disposed of accordingly.

December 04, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No