

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

**RSA No. 419 of 2004 (O&M)
Date of decision: 03.07.2018**

Kulbir Singh

...Appellant

Versus

Wazir Singh and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Goyal, Advocate,
for Mr. Pritam Saini, Advocate,
for the appellant.

Mr. Rajinder Goel, Advocate,
for the respondents.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 27.11.2003 passed by the Additional District Judge, Kaithal, dismissing an appeal filed by plaintiff-appellant against the judgment and decree dated 05.03.2001 passed by the Civil Judge (Junior Division), Guhla, whereby his suit for declaration and possession has been dismissed.

Kulbir Singh-plaintiff (appellant herein) filed a suit for declaration to the effect that he was owner in possession of the suit land by virtue of a decree dated 29.01.1993 passed in civil suit No.71 of 1993, titled as 'Kulbir Singh vs. Wazir Singh' by the then Additional Senior Sub Judge, Guhla and the decree dated 28.05.1994 passed in civil suit No.252 of 1994, titled as 'Wazir Singh vs. Kulbir Singh' by the Additional Senior Sub Judge, Kaithal was null, void and illegal. It was further pleaded that the sale deed

dated 09.12.1997 was null, void and illegal and the same did not have any effect on the rights of the plaintiff-appellant. As per plaintiff, defendant No.1 had filed civil suit No.252/1994 titled as 'Wazir Singh vs. Kulbir Singh' before the Additional Senior Sub Judge, Guhla, whereupon the decree passed in civil suit No.71 of 1993 dated 28.05.1994 was set aside. Plaintiff challenged the decree passed in civil suit No.252 of 1994 on the ground that he was not properly represented by his guardian-ad-litem as per the procedure prescribed under Order 32 CPC. The defendant had no pre-existing right, title or interest in the suit land. No lawyer was engaged for the minor plaintiff at that time. It was further alleged that defendant No.1 had sold land measuring 2 Kanals 13 Marlas i.e. 1/6th share out of the land, mentioned in para No.1 of the plaint, to defendant Nos. 2 to 4 without having any right, title or interest in the same. Neither defendant No.1 was owner of the suit land nor he was competent to alienate the same. As per plaintiff, sale deed dated 09.12.1997 being without any legal necessity was not binding upon him. It was also pleaded in the plaint that the plaintiff was minor and was living under the care and custody of Smt. Bohti Devi wife of Wazir Singh, who had got no adverse interest to that of minor.

Upon notice, defendant No.1 failed to appear before the trial Court and was proceeded against exparte vide order dated 14.01.1999. Defendant Nos. 2 to 4 filed written statement taking preliminary objections with regard to maintainability of the suit, locus standi, estopal, jurisdiction of the civil court and the suit being time barred. On merits, it was stated that plaintiff is neither owner nor in possession of the suit land. On the other hand, defendant Nos. 2 to 4 are owners in possession of land measuring 2 Kanals 13 Marlas. The impugned judgment and decree passed in civil suit

No.71 of 1993 had been set aside by virtue of a decree passed in civil suit No.252/94, which was legal, valid and binding upon the parties. It was further submitted that the plaintiff was duly represented by the competent person i.e. by his natural mother in civil suit No.252 of 1994 and the suit was filed through the said guardian. All other allegations levelled in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the impugned decree passed in civil suit No.252/1994 titled as Wazir Singh vs. Kulbir Singh is illegal, null and void?
OPP
2. Whether the sale deed dated 09.12.1997 is also null and void?
OPP
3. If issue Nos. 2 and 3 are proved, whether plaintiff is entitled for the relief of possession of the suit land? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has no locus standi to file the present suit?
OPD
6. Whether the present suit is time barred? OPD
7. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
8. Whether the defendants are bonafide purchaser? OPD
9. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Plaintiff-Kulbir Singh is son of defendant No.1-Wazir Singh. It is not in dispute that land measuring 2 Kanals 13 Marlas was purchased by defendant Nos. 2 to 4 from defendant No.1-Wazir Singh vide sale deed dated 09.12.1997. Plaintiff-appellant is aggrieved by the judgment and decree passed in civil suit No.252 of 1994, by virtue of which, impugned judgment and decree passed in civil suit No.71 of 1993 in his favour, had been set aside. His grievance is that while setting aside the above said decree, he being minor was not properly represented by a guardian ad-litem as there was no sanction of Court, vide which, the guardian ad-litem was appointed for the minor plaintiff. Therefore, there was non compliance of the provisions of Order 32 Rule 7 CPC. Both the Courts have given a concurrent finding of fact that while passing the judgment and decree dated 29.01.1993 in civil suit No.71 of 1993 titled as 'Kulbir vs. Wazir', Kulbir Singh-plaintiff was never represented by any guardian. Hence, the provisions of Order 32 rule 7 CPC were never complied even in that case. Plaintiff had instituted the said suit himself being a minor. In civil suit No.71 of 1993, decree was passed in his favour. In the subsequent civil suit bearing No.252/1994, titled as 'Wzir Singh vs. Kulbir Singh', plaintiff did not proceed to examine his father Wazir Singh, who had suffered a decree in his favour in civil suit No.71 of 1993. Plaintiff did not prove the signatures/thumb impressions of Wazir Singh on the power of attorney and written statement of civil suit No.71 of 1993. A perusal of the decree-sheet Ex.P3 passed in civil suit No.252 of 1994 shows that Kulbir Singh-plaintiff (defendant in that suit) was properly represented by Smt. Bohti as his guardian ad-litem. While dismissing the suit, trial Court had observed that the judgment passed in civil suit No.252 of 1994, titled as 'Wazir Singh vs.

Kulbir Singh', was legal and sustainable in the eyes of law, as Kulbir Singh was represented by her mother Smt. Bohti.

Before the lower appellate Court, an application under Order 41 rule 27 CPC for additional evidence was made, which was not objected to by defendant-respondents and the same was allowed vide order dated 26.02.2003. Defendant Nos.2 to 4 had set up a case that they had purchased 2 Kanals 13 Marlas of land from Wazir Singh-defendant No.1 (father of plaintiff) for valuable consideration of Rs.66,500/- and Wazir Singh had never suffered a decree in respect of the suit land in favour of his son Kulbir Singh. It had been further stated that the total sale consideration was paid to the vendor by the vendees before the Sub Registrar. As per copy of order dated 28.05.1994 Ex.P4, the suit was decreed in view of the written statement filed by defendant-Kulbir Singh through his mother Smt. Bohti Devi, who acted as his guardian-ad-litem. The statements of the parties were recorded in the Court. The suit file was summoned and perused, which further revealed that Smt. Bohti Devi wife of Wazir Singh being natural guardian of minor-Kulbir Singh, had submitted her affidavit dated 23.03.1994, which was attested by the Oath Commissioner. It was specifically stated that the suit land was never allotted to the minor in any family settlement, as had been alleged in civil suit No.71 of 1993 titled as 'Kulbir Singh vs. Wazir Singh.' The said affidavit was also enclosed with the certificate dated 23.03.1994 of Sh. M.S. Dhillon, Advocate, Guhla, certifying that the written statement filed by Smt. Bohti on behalf of minor Kulbir Singh being natural guardian was in the interest of minor itself. Hence, a perusal of file of civil suit No.252 of 1994 revealed that the same had been commenced legally and properly while complying the provisions

of Order 32 Rules 3 and 4 CPC.

Both the Courts have rightly come to a conclusion that there was no need for the plaintiff to challenge the decree passed in civil suit No.71 of 1993 Ex.P2, as the same had been passed in his favour without following the provisions of Order 32 Rules 3 and 4 CPC. But, in the subsequent suit, he was duly represented by Smt. Bohti Devi as guardian and her statement was also recorded by way of affidavit. While passing a decree in civil suit No.252 of 1994, Kulbir Singh had been properly represented by a guardian at-litem. Ex.P2 and Ex.P4 confirmed that the same had been passed in compliance with the provisions of Order 32 Rules 3 and 4 CPC.

After going through the impugned judgments, this Court is of the view that judgment and decree in civil suit No.252 of 1994 had been passed in compliance with the provisions of Order 32 Rules 3 and 4 CPC and the impugned judgment and decree of civil suit No.71 of 1993 has been rightly set aside by the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, the present appeal is dismissed.

03.07.2018
ajp

(RITU BAHRI)
JUDGE

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