

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

(1)

Regular Second Appeal No.449 of 2016 (O&M)

Date of Decision: April 25, 2018.

Harbans Singh

.....APPELLANT(s).

VERSUS

Emneet Singh

.....RESPONDENT(s).

(2)

Regular Second Appeal No.4670 of 2016 (O&M)

Emneet Singh

.....APPELLANT(s).

VERSUS

Harbans Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant in RSA-449-2016
and for respondent in RSA-4670-2016.

Mr. Vivek Salathia, Advocate
for the respondent in RSA-449-2016.

Mr. Ranjit Singh, Advocate
for appellant in RSA-4670-2016.

SURINDER GUPTA, J.

These are appeals against the concurrent judgments of the

courts below decreeing the suit of the plaintiff as follows:-

“The plaintiff is held entitled to the relief of declaration that he is owner of the land measuring 5 kanals 2 marlas bearing khasra No.59/15, khewat khatoni No.149/490, situated at Kotla Doom, tehsil Ajnala, District Amritsar. He is further entitled to the relief of declaration to the effect that the sale deed dated 10.01.2003 is wrong, illegal, void and null (sic null and void) and inoperative against the plaintiff and is not binding on the plaintiff and is liable to be rejected as plaintiff was minor at the time of execution of the sale deed and registration of the sale deed. Since, the plaintiff is entitled to the relief of declaration, therefore, he is also entitled to the consequential relief of permanent injunction restraining the defendant from alienating the suit property in any manner to any person.”

First Appellate Court while affirming the judgment of learned Civil Judge (Junior Division), Ajnala, allowed refund of the amount of sale deed to the defendant with interest @ 12% per annum from 10.01.2003, till actual payment.

Against the judgment of the first Appellate Court giving direction to the plaintiff to return the sale consideration with interest, he has also filed appeal bearing RSA-4670-2016.

I have heard learned counsel for the parties and have gone through the lower Courts' record with their assistance.

The issue involved in this case is as to whether Emneet Singh was minor at the time of execution of the sale deed. In order to prove his case, he placed and proved on record following documents:-

Sr. No.	Exhibit	Documents	Date of issue
1	Ex.P1	Marksheet of M.Sc. (Information Technology)	07/12/10
2	Ex.P2	Marksheet of Secondary School Examination	28.05.2004
3	Ex.P3	Certificate regarding entry of date of birth in school record issued by Guru Harkrishan Sr. Sec. Public School, G.T. Road, Amritsar	16.02.2011
4	Ex.P4	Certificate of passing Secondary School Examination	28.05.2004
5	Ex.P5	Marksheet of Senior Secondary Examination	05.06.2006
6	Ex.P6	Certificate of passing B.Sc. (Information Technology)	10.07.2009
7	Ex.P7	Marksheet of B.Sc. Part-III (Information Technology)	10.07.2009
8	Ex.P8	Marksheet of B.Sc. Part-II (Information Technology)	05.07.2008
9	Ex.P9	Marksheet of B.Sc. Part-I (Information Technology)	06.08.2007
10	Ex.P10	Copy of passport issued by Republic of India	22.06.2005
11	Ex.P11	Copy of Voter Card issued by Election Commission of India	24.10.2006
12	Ex.P12	Birth Certificate issued by Municipal Corporation, Amritsar.	27.02.2008

In all the above documents, the date of birth of Emneet Singh is mentioned as 04.03.1987.

Learned counsel for appellant-Harbans Singh submits that all these documents came in existence after the execution of sale deed dated 10.01.2003 by respondent-Emneet Singh, as such, cannot be taken as proof of his date of birth. He has further argued that even entry in the register of date of birth in the office of Municipal Corporation, Amritsar was entered on 06.05.2005 i.e. a few days before filing the suit.

There is no substance in the submission of learned counsel for

appellant-Harbans Singh as he has not been able to rebut most material document, which is entry in the admission and withdrawal register of Shri Guru Harkrishan Senior Secondary Public School, (Chief Khalsa Diwan), G.T. Road, Amritsar in the register for the year 1991. Vikramjit Singh, concerned official, who had brought the register, had stated that respondent Emneet Singh son of Dilbag Singh took the admission in their school and his name was recorded at serial No.5974 dated 16.03.1991. In the relevant column, his date of birth, is mentioned as 04.03.1987. Appellant-Harbans Singh could not shatter his statement in cross-examination. This shows that date of birth of respondent-Emneet Singh is 04.03.1987 and in the year 1991, there was no reason to wrongly record his date of birth in the school record. The other documents i.e. Ex.P1 to P12 in which date of birth of appellant is mentioned as 04.03.1987 are based on the entry in the school record, as such, this argument of learned counsel for appellant Harbans Singh that above documents are not relevant about the date of birth of respondent Emneet Singh, has no merits. On the basis of evidence on record, the first Appellate Court has observed in para 12 of the judgment as follows:-

“However, other oral and documentary evidence, as discussed above led by the plaintiff proves that his date of birth is 04.03.1987. Defendant did not set up any other date of birth of the plaintiff. Defendant did not lead any evidence to the effect that date of birth of plaintiff being 04.03.1987 is incorrect or that school or other record including Ex.P13 has been forged and prepared ante-dated. Learned Counsel has argued for exclusion of evidence of plaintiff on certain technical grounds which in my opinion have been rightly not accepted by learned

trial court. So, it is held that date of birth of plaintiff is 04.03.1987 and he was minor at the time of execution and registration of sale deed Ex.D1. In view of Section 11 of the Indian Contract Act, such sale deed executed by minor is null and void. It is worth nothing that neither plaintiff nor his father disclosed the factum of minority of plaintiff at the time of execution of sale deed, to the vendee i.e. defendant. Rather plaintiff himself had purchased the suit land vide sale deed dated 19.04.2001 and even therein he was not mentioned as minor. Indisputably, sale deed Ex.D1 is executed by plaintiff for sale consideration of Rs.1,15,000/- . He or his father did not disclose the fact of minority to the vendee. So being a minor, he has received money under the sale deed by projecting himself as major but he is bound to surrender such benefit/money to the vendee. As per section 65 of the Indian Contract Act, 1872, any person who has received any advantage under void agreement or contract is bound to restore it or to make compensation for it to person from whom he received it.”

Learned counsel for appellant has argued that the respondent had purchased the suit land vide sale deeds Ex.D14 and Ex.D15 dated 19.04.2001 and even at that time, he was minor and had not disclosed this fact. Appellant relying on these sale deeds purchased land from respondent.

Perusal of the sale deeds Ex.D14 and D15 shows that these sale deeds were signed by father of respondent, who was competent to purchase the land in favour of his son. These sale deeds, in no manner, have any bearing on the merits of the case. The findings of learned first Appellate Court as reproduced above, is based on evidence on record and proper appreciation of law on the point and I find no reason to interfere with the

same.

On perusal of the judgment of the First Appellate Court, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in both these appeals, which have no merits.

Dismissed.

April 25, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***