

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

RSA-6346-2014(O&M)

Date of decision:-19.12.2018

Gurdeep Kaur and another

...Appellants

Versus

Avinder Singh through his legal representatives

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajbir Singh, Advocate
for the appellants.

Mr.Rishav Jain, Advocate
for respondent No.1.

H.S. MADAAN, J.

CM-4734-C-2018

Heard.

For the reasons mentioned in the application, the same stands allowed and legal representatives of respondent – Avinder Singh are brought on record for the purpose of this appeal only.

RSA-6346-2014(O&M)

Briefly stated, facts of the case are that plaintiff Avinder Singh had brought a suit for specific performance against defendants Gurdeep Kaur – widow and Har minder Singh minor son of Jagdeep Singh @ Jagdish Singh through his mother and natural guardian

Gurdeep Kaur, residents of Mohalla Tarkhana, Sunam, District Sangrur.

As per the version of the plaintiff, Jagdeep Singh alias Jagdish Singh son of Karamjit Singh, husband of defendant No.1 and father of defendant No.2 had entered into an agreement to sell his house measuring 11 Marlas bearing Khasra Nos.88//18/2/1(0-1), 19//1/2/1(0-3), 88//19/1/1/1(0-7) bounded as East : house of Sarup Chand now Gurmail Kaur, West : house of Nasib Kaur, North : Street and house of Purshotam, now houses of Kirna Devi and Gurmail Kaur, South : Plot of Avinder Singh situated at Kartarpura Basti, Sangrur shown as ABCD in the site plan on 15.5.2004 for a sum of Rs.6,60,000/- receiving earnest money of Rs.5,60,000/- on 15.5.2004 and remaining amount had been deposited by the plaintiff in the loan account of the deceased; that the agreement was acknowledged by defendants on 4.9.2006 after death of Jagdeep Singh; the defendants had agreed that when the loan amount was deposited, sale deed would be executed within a period of one month thereafter; that the plaintiff came in possession of the house in question, which he let out to his tenants Jaspal Singh and Gurdev Singh; that the plaintiff had complied with the condition regarding deposit of loan amount in the loan account of Jagdeep Singh @ Jagdish Singh with Sangrur Co-operative House Building Society Ltd., Sangrur on 21.4.2007. According to the plaintiff, he has been

ready and willing to perform his part of agreement but defendants dragged their feet in the matter and did not come forward to execute the sale deed in favour of the plaintiff; a legal notice dated 23.4.2007 got served by plaintiff upon the defendants but it failed to have any desired effect; that on 16.5.2007, the plaintiff went to the office of Sub-Registrar, Sangrur for execution and registration of the sale deed and remained present there but defendants did not turn up; the plaintiff got his presence marked by getting an affidavit attested from Executive Magistrate; that the plaintiff again went to the office of Sub-Registrar, Sangrur on 21.5.2007 for execution and registration of the sale deed and remained present there; on that date also the defendants did not turn up; the plaintiff got his presence marked in the similar manner. Thereafter, the plaintiff had filed the suit in question.

On notice, the defendants appeared and filed written statement contesting the suit taking preliminary objections that no cause of action arose to the plaintiff to bring the suit and suit was not maintainable. On merits the defendants denied that Jagdeep Singh ever entered into an agreement to sell the suit property with plaintiff for a sum of Rs.6,60,000/- or received Rs.5,60,000/- as earnest money; that they dubbed the agreement in question as forged, fictitious, null and void and without consideration contending that Jagdeep Singh was a drunkard person, who used to consume alcohol

from morning till evening and he had died due to excessive drinking; that Jagdeep Singh was nephew of the plaintiff and plaintiff's wife's sister was married with Jagdeep Singh; that Jagdeep Singh and his father used to sell their crops at the shop of the plaintiff; that the plaintiff is running a commission agent shop under the name and style of M/s Uttam Singh & Company; that there was a fiduciary relationship between the plaintiff and Jagdeep Singh inasmuch as the plaintiff was commission agent as well as close relative of Jagdeep Singh and the plaintiff used to render services to Jagdeep Singh and his wife in domestic needs; that Jagdeep Singh had lost mental faculty due to excessive drinking, in that way the plaintiff might have obtained signatures of Jagdeep Singh in that condition and might have prepared the agreement; that Jagdeep Singh had not signed the agreement; that the plaintiff might have deposited the amount with the society just to create evidence as value of house in dispute is not less than Rs.20 lacs; that the plaintiff is not in possession of any portion of the suit property; that the suit property had been given on rent by the grandfather of defendant No.2 as defendant No.2 was a minor, to Gurmit Kaur wife of Jaspal Singh; that neither Jaspal Singh nor Gurdev Singh were in possession of the suit property as tenants under the plaintiff. It was submitted that since no agreement had been executed, therefore question of readiness and willingness of the plaintiff did not arise; that the defendants were not bound by the

alleged agreement; that they have got a single house and no other place to reside. Refuting remaining allegations, in the end, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether Jagdeep Singh husband of defendant No.1 and father of defendant No.2 has executed a legal and valid agreement to sell dated 15.5.2004 in favour of plaintiff? OPP.
2. Whether plaintiff remained ready and willing to perform his part of contract? OPP.
3. Whether plaintiff is entitled to specific performance of agreement as prayed for? OPP.
4. Whether suit is not maintainable in the present form? OPD.
5. Whether plaintiff has not complied with the provisions of Order 32 Rule 3 CPC? OPD.
6. Whether plaintiff has no cause of action to file present suit? OPD.
7. Relief.

In order to prove its case, the plaintiff had examined Parveen Kumar Garg as PW1, Sandeep Kumar Goyal as PW2, Ashok

Kumar Goyal as PW3, Gagandeep as PW4, Rameshwar Dass as PW5, Ajit Singh as PW6, Gurmail Singh as PW7, Karnail Singh as PW8, Jagjit Singh as PW9, Sirjiwal Kumar as PW10, Gurdev Singh as PW11, Navdeep Gupta as PW12 and plaintiff himself appeared as PW13. Jamabandies Ex.P54 to Ex.P56 were tendered in evidence on behalf of the plaintiff.

On the other hand, Gurdeep Kaur – defendant No.1 herself appeared as DW1 and after tendering certified copy of order dated 21.5.2011 as ExD1 and certified copy of plaint as Ex.D2, evidence of the defendants stood closed.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendants, issue No.2 in favour of plaintiff and against the defendants, issue No.3 in favour of the plaintiff and against the defendants, issue No.4 against the defendants and in favour of the plaintiff, issue No.5 against the defendants and in favour of the plaintiff, issue No.6 against the defendants and in favour of the plaintiff, resultantly, suit of the plaintiff was decreed with costs and a decree for specific performance of agreement to sell dated 15.5.2004 was passed in favour of the plaintiff against the defendants. The defendants were directed to get the sale deed of the disputed property executed and registered in favour of the plaintiff in terms of the agreement to sell dated 15.5.2004 within two months from the date

of decree observing that failing the same, the plaintiff would be at liberty to get the sale deed executed and registered in his favour through the agency of the Court.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Sangrur, which was assigned to learned Additional District Judge, Sangrur, who after hearing arguments vide judgment and decree dated 7.7.2014 affirmed the judgment and decree passed by the trial Court and dismissed the appeal, which left the defendants aggrieved and they had filed the present regular second appeal before this Court, notice of which was issued and the respondent appeared through counsel.

It may be mentioned here that during the pendency of this appeal, the respondent/plaintiff Avinder Singh had expired and his legal representatives were brought on record.

I have heard learned counsel for the parties besides going through the record.

The solitary argument advanced by learned counsel for the appellants/defendants was that the plaintiff had failed to comply with provisions of Order 32 Rule 3 CPC; that no application had been filed by the plaintiff under Order 32 Rule 3 CPC and no list of proposed guardians was also filed with the plaint; that no order was passed by the trial Court with regard to compliance of the said

provisions, in that way no decree for specific performance could be passed against the defendants more particularly when defendant No.2 was a minor.

In support of his contentions, learned counsel for the appellants has referred to authority **Karan Singh and others Versus Raghbir Singh and others, 2014(4) RCR(Civil) 539** by a Co-ordinate Bench of this Court wherein discussing order 32 Rule 3 CPC, it was observed that it is a sacred duty of the Court to appoint guardian where the defendant is a minor, be it Civil Court or Revenue Court, or Tribunal, to safeguard the interest of a minor in any pending proceedings and if any guardian is not appointed, then the said order is a nullity. He further referred to authority **Baldev Singh and others Versus Sukhdev Singh and others, 2006(3) RCR(Civil) 76** by a Co-ordinate Bench of this Court where while dealing with the scope of Order 32 Rule 3 CPC, it was observed that when a suit is filed against minors through their mother being natural guardian but plaintiffs had not submitted any application for appointment of guardian as per procedure prescribed under Order 32 Rule 3 and 4 CPC, suit was rightly dismissed since it was mandatory to appoint guardian as per the provisions of Order 32 Rule 3 CPC. Learned counsel for the appellants has further pressed into service authority **Devaki Amma Versus Varghese, 2000(3) Civil Court Cases 667** by Kerala High Court wherein it was observed that for

agreement to sell, there was a specific condition in the agreement for sale that defendant would obtain permission from the Civil Court for the sale of the minor's share, however Court refused to grant permission, then entire contract fails.

Learned counsel for the appellants has further referred to authority **Gurpreet Singh Versus Chatterbhuj Goel, 1991(2) RRR 504** by a Division Bench of this Court wherein it was observed that in case of non-compliance of provisions of Order 32 Rule 3A and 4(3) CPC prejudice to the minor is presumed and further that decree for specific performance is by way of discretionary relief and such decree will not be given merely because it is lawful to do so and where there is hardship to defendant and no such hardship to plaintiff the decree for specific performance will not follow.

This argument is being controverted by counsel for the respondent submitting that there was due compliance of order 32 Rule 3 CPC and arguments advanced by learned counsel for the appellants/defendants are devoid of any force.

After hearing learned counsel for the parties and going through the record, I find that the argument put forward by learned counsel for the appellants/defendants clearly lack merit. Both the Courts below have discussed that aspect. A specific issue No.5 had been struck by the trial Court, which is as under:

“Whether plaintiff has not complied with the

provisions of Order 32 Rule 3 CPC? OPD.”

The trial Court in para No.28 of the judgment while giving verdict on this issue had observed as under:

“Onus to prove this issue was upon the defendants. During pendency of this case, an application was filed by the plaintiff for appointment of guardian for defendant No.2 who was a minor at that time and same was allowed by the Court vide its order dated 14.6.2007 and defendant No.2 was ordered to be summoned through his grandfather Karamjit Singh. Thus, the provisions of Order 32 Rule 3 CPC have been complied with by the plaintiff. Accordingly, this issue is decided against the defendants and in favour of the plaintiff”

The first Appellate Court has also dealt with that aspect in para No.18 of the judgment observing as under:

“18. As far as findings of learned lower Court on issue no.5 are concerned, this suit was contested by defendant no.2 through his mother/natural guardian Gurdeep Kaur. Even this appeal was filed by defendant no.2 through his mother Gurdeep Kaur. Even an application was filed by the plaintiff for appointment of guardian and vide order dated 14.6.2007 passed by the learned trial Court, defendant no.2 was ordered to be

summoned through his grandfather Karamjit Singh. Moreover, this agreement was not executed by the minor. Rather this agreement was executed by Jagdeep Singh and after his death, defendants have stepped into his shoes. Consequently, there is no such agreement which was executed by the minor which cannot be enforced. Consequently, there is no illegality or irregularity in the findings of learned lower Court on issue No.5 and these findings are hereby affirmed.”

In that way, this contention has been duly discussed and rejected by the Court below.

Learned counsel for the respondent has referred to Full Bench authority of this Court **Amrik Singh Versus Karnail Singh etc., 1974(2) ILR(Punjab) 452** wherein it was observed that when a suit was filed against major and minor defendants. However, provisions of Order 32 Rule 3 CPC had not been complied with in appointing the guardian ad-litem of the minors but interest of major defendants were identical with the minors, non-compliance of Order 32 Rule 3 CPC, which is mandatory in nature will not render the decree passed in the suit as void in every case. He has further referred to authority **Rajinder Kumar Versus Sanatam Dharam Mahabir Dal, 1999(1) RCR(Civil) 713** by a Co-ordinate Bench, wherein it was observed that in a decree against minor, when the

appeal was pending and minor defendant had attained majority during pendency of the appeal but he did not move to put his defence or to object to the decree at that stage, he may be deemed to have adopted the proceedings and will be bound by the result of the litigation. It was further observed that a defect in procedure of appointment of Court guardian can be said to be a nullity only if there was no representation on behalf of minor and that a mere defect in the procedure of appointment of guardian ad-litem does not entitle him to avoid the decree unless it is shown that the defect has prejudiced him.

Learned counsel for the respondents has contended that the date of birth of appellant No.2 happened to be 5.4.1990, which means that he had attained majority on 5.4.2008. However, neither the trial Court, nor the first Appellate Court or this Court have been informed in that regard till date and Harminder Singh is being reflected as a minor till date, which amounts to concealment of material fact from the Court. Though presently he is aged more than 28 years but no steps have been taken to intimate the Court that since he has attained majority, he be allowed to pursue the matter himself and not through the guardian.

Learned counsel for the appellants in all fairness has conceded that it has not been so done till date. Furthermore, no prejudice is shown to have been caused to the minor by the defect if

any in appointment of his guardian to defend him in the litigation while he was yet to attain the age of majority, rather his interest seems to have been watched in a proper and appropriate manner during the said litigation. Learned counsel for the appellants has further contended that the appellants had no other place to go to reside except the house in question and taking away the house would have caused great hardship to them, which aspect has not been taken into consideration by the Courts below.

However, learned counsel appearing for the respondent has contended that the suit filed by the plaintiff had been decreed by the trial Court considering all the facts and circumstances and the possession has since been taken by the plaintiff of the decree in execution proceedings and there is no question of any exceptional hardship being caused to the plaintiff.

After hearing learned counsel for the parties and going through the record, I find that no case of any exceptional hardship is made out as has been submitted by learned counsel for the appellants. The authority referred to by learned counsel for the appellants ***Gurpreet Singh Versus Chatterbhuj Goel*** (supra) is by Division Bench, whereas ***Amrik Singh etc. Versus Karnail Singh etc.*** referred to by learned counsel for the respondent is by Full Bench. Therefore, the view taken by larger Bench is to be followed.

No other point was pressed or put forward on behalf of

the appellants.

The judgments and decrees passed by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Finding no merit in the present appeal, the same stands dismissed with costs.

19.12.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No