

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

RSA No.64 of 2018

Date of Decision.08.05.2018

Sudesh

.....Appellant

Vs

Kapoori Devi and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Neeraj Sheoran, Advocate
for the appellants.

-.-

AMIT RAWAL J.(ORAL)

C.M. No.77-C of 2018

For the reasons stated in the application, delay of 11 days
in filing the appeal is condoned.

Application is allowed.

RSA No.64 of 2018

The appellant-defendant No.3 is in regular second appeal against the concurrent finding of fact whereby the suit of the respondent-plaintiff claiming possession and permanent injunction directing the defendants to give the possession qua 1/6th share of the disputed plot i.e. 0 kanal 3 marlas comprising in khewat No.250, Khata No.294, Khasra No.259 measuring 0 kanal 18 marlas situated within the revenue estate of village Yakubpur, Tehsil and District Jhajjar and restraining the defendants from alienating or creating third party rights, has been partly decreed by the trial Court and upheld by the lower Appellate Court.

The suit aforementioned was instituted by the
respondent-plaintiff claiming that defendant No.1 was owner to the

extent of 1/6th share as described above which was purchased by the plaintiff for a consideration of Rs.36,000/-. Defendant No.2, Parveen Kumar is real brother of the defendant No.1 and he had constructed the house over the share of the plaintiff for which he agreed to accept Rs.2 lacs from the plaintiff being the price of the material. However, the defendants being strong headed persons in collusion with each other did not give physical possession of the share of the suit land and wanted to alienate the same, therefore, cause of action arose to the file the aforementioned suit.

Defendant No.1 during the pendency of the suit expired and he was given up whereas defendant No.2 did not put in appearance.

Defendant No.3 Sudesh Devi contested the suit by taking numerous preliminary objections and on merits submitted that defendant No.1 never sold the plot in dispute to the plaintiff nor any consideration was passed. The sale deed, if any, was without consideration, for, defendant No.1 at the time of execution of the sale deed was minor nor defendant No.2 ever received Rs.2 lacs being the price of the building material.

The trial Court on the basis of the pleadings framed five issues including the issue of relief.

The plaintiff in support of his pleadings examined as many as six witnesses. On the other hand, defendant No.3 examined herself as DW1 and tendered her affidavit Ex.DW1/A. In rebuttal, the plaintiff tendered Ex.PX.

The trial Court on the preponderance of evidence partly

decreed the suit which has been affirmed by the lower Appellate Court.

Mr. Neeraj Sheoran, learned counsel appearing on behalf of the appellants submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law, for, failed to appreciate that date of birth of Jagbir son of Shish Ram was 02.04.1991 which fact has been proved from the school certificate Ex.D3 and the sale deed was executed on 7.9.2007 and therefore, he was not legally competent to execute the sale deed and vitiated in law. Kapoori Devi, PW4 had also stated in evidence that Jagbir was born in the year 1991. Ex.D2 i.e. mutation of inheritance in favour of defendant No.3 was based upon the sale deed dated 22.11.2007 executed by Parveen Kumar, defendant No.2. The suit aforementioned was not maintainable. In fact, the remedy lied somewhere else i.e. for partition, thus, urges this Court for setting aside the judgment and decree under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sheoran, for, appellant-defendant No.3 failed to prove the age of Jagbir to be minor at the time of execution of the sale deed as the birth certificate Ex.PX was brought in rebuttal where it was found that date of birth of Jagbir was 18.05.1987 and not 02.04.1991 as alleged by the appellant-defendant. Therefore, the sale deed and the mutation were valid documents.

Vis-à-vis the question of delivery of possession, the trial Court rightly held that the possession could not have been handed

over to the plaintiff in the manner and mode as sought but as per the sale deed only 1/6th share was purchased and the remedy was to seek partition, therefore, argument of Mr. Sheoran qua delivery of possession has already been taken care by the Court below.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees under challenge, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 08, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No