

RSA Nos.2089 & 2090 of 1987 (O&M)

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

Date of decision : 18.03.2019

1.

RSA-2089-1987 (O&M)

Birjesh Kumar

... Appellant

Versus

Sushila Devi and others

... Respondents

2.

RSA-2090-1987 (O&M)

Barjesh Kumar

... Appellant

Versus

Sushila Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant(s).

Mr. Ajay Jain, Advocate
for respondent Nos.2 to 5.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals, aforementioned, arising out of decision of Civil Suit No.211 of 1980.

The plaintiff filed the suit for possession on the ground that he along with defendant No.6 were joint owner of one shop-cum-residential property bearing No.4 situated in Chhoti Bazari Haily Mandi, marked by letters 'ABCD' in the site plan, on the premise that on 24.09.1969 i.e. sale effected of his share along with of defendant No.6 in favour of defendant No.1, he was minor as his date of birth was 07.05.1953. The plaintiff was

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duped into signing and executing the sale deed regarding the aforementioned property. Defendant No.1 had further sold the property to defendant Nos.2 to 5, vide sale deed dated 21.05.1976.

Defendant Nos.1 to 5 contested the suit by filing joint written statement and defendant Nos.2 to 5 claimed themselves to be *bona fide* purchasers for a valuable consideration and stated to be an act of violation by denying his minority and stated the plaintiff to be major.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the impugned sale is illegal, void, ineffective and nonest, as alleged in the plaint? OPP*
- 2. Whether the suit is barred by time? OPD*
- 3. Whether the defendants are entitled to any conduct from filing the suit? OPD*
- 3-A Whether sale deed dated 24.9.1969 in favour of Sushila Devi was brought about by fraud and mis-representation of plaintiff, his father and grandfather as alleged? If so its effect? OPD*
- 3-B Whether the defendant Nos.2 to 5 purchased the property in good faith for a valuable consideration? If so its effect? OPD*
- 3-C Whether the defendants No.2 to 5 spend ₹10,000/- in effecting improvements in the property as allegedly if so its effect? OPD*
- 3-D. If the suit is decreed, whether the defendants are entitled to ₹60,000/- as alleged? OPD*
- 3-E Whether the defendant No.1 was a tenant on the property at the time of sale and prior to the sale in her favour? If so its effect? OPD*
- 4. Relief.*

The plaintiff in support of the pleadings, examined seven

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witnesses and brought on record many documents. On the other hand, the defendants examined two witnesses and tendered in evidence numerous documents i.e. Ex.D1 to Ex.D48.

On the basis of the evidence, the trial Court decreed the suit by holding the defendant Nos.2 to 5 to be *bona fide* purchasers, in essence, the suit was decreed in part, entitling the plaintiff to get symbolic possession of the half share of the property, in question, on deposit of amount of ₹8750/-, on account of improvement and sale price.

Since both the parties were affected, two appeals were filed before the lower Appellate Court. The appeal preferred by the defendants has been allowed, whereas the plaintiff has been dismissed. It is, in these circumstances, two appeals were filed before this Court.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant submitted that once both the Courts below have found that the appellant-plaintiff was minor, defendant Nos.2 to 5 could not be held to be *bona fide* purchasers. Despite the fact that the sale deed qua his share, has been set aside, the possession ought to have been given.

Per contra, Mr. Ajay Jain, learned counsel appearing on behalf of respondent-defendant Nos.2 to 5 submitted that the lower Appellate Court has only accepted the appeal of the defendants in part and held the sale deed dated 24.09.1969 qua his share to be null and void, in other words, qua other half share i.e. of defendant No.6 has been held to be valid. The simpliciter suit for symbolic possession, in the absence of relief of declaration, in view of the law laid down by this Court in **"Smt. Punjabi and another V/s Hazura Singh and others" 1984 (1) All India Land Laws Reporters 356**, is not maintainable, thus, urges this Court for dismissal of

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the second appeals.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the judgment and decree of the lower Appellate Court does not call for any interference, for the simple reason that the status of the defendant Nos.2 to 5 of purchase of share of defendant No.6, along with plaintiff, would be of a co-sharer. For the sake of brevity as well as the matter of record, the plaintiff's share, as per the judgment and decree of the lower Appellate Court, has been kept intact, in essence, the sale deed, impugned qua the share of the plaintiff, has partly been held to be bad in law. The remedy for the appellant-plaintiff is not to seek exclusive or joint possession, but by way of partition through separate possession viz-a-viz defendant Nos.2 to 5, but with regard to defendant No.1, he can always seek the remedy of ejectment, in accordance with law.

Keeping in view the aforementioned facts, 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. No ground is made out for interference.

Accordingly, the second appeals are dismissed.

18.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**