

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

RSA No. 2290 of 2019 (O&M)

Date of decision : November 19, 2019

Ruby and others

.....Appellants

Versus

Sukhbir Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Naveen Singh Panwar, Advocate
for the appellants.

LISA GILL, J.

This appeal has been filed by the appellants (who were arrayed as defendants No. 2, 3 and 4 before the learned trial court) being aggrieved of judgment and decree dated 16.02.2016 passed by the learned Civil Judge (Junior Division), Sonipat as well as judgment and decree dated 14.01.2019 passed by the learned Additional District Judge, Sonapat.

Brief facts necessary for the adjudication of the case are that plaintiffs – respondents purchased land measuring 27 kanal 9 marlas as detailed in the plaint vide sale deed dated 07.06.2005 from the defendants. It is pleaded that plaintiffs paid a sum of ₹27,45,000/- alongwith a sum of ₹1,64,000/- as stamp duty for execution of the sale deed. It is further pleaded that at the time of execution of the sale deed, the defendants bound themselves to compensate the plaintiffs, if plaintiffs suffered any loss of any portion of land out of the sold property. One Smt. Raje got land to the extent of 1/5th share measuring 5 kanal 10 marla out of the suit property by virtue of the ultimate decision of this High Court in RSA No. 665 of 2008. The plaintiffs – respondents asked the defendants to refund a sum of ₹5,50,000/-

alongwith interest but they refused. Hence, the suit was filed.

Defendant No. 1 resisted the suit while taking various preliminary objections. Averments in the plaint were controverted. It is stated by defendant No. 1 that the plaintiffs are still in possession of the suit property and have not been dispossessed by Smt. Raje. Separate written statement was filed by defendant No. 2 to 4 while submitting that the sale deed was executed by defendant No. 1 in collusion with plaintiffs without any intimation to them. It is further stated that the order vide which defendant No. 1 was granted permission to execute the sale deed, was under challenge. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled for a decree of a recovery of ₹5,50,000/- alongwith interest, cost and stampe charges?OPP.
2. Whether the suit of plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no locus standi to file the present suit? OPD.
4. Whether the plaintiff is estopped by his own act and conduct?OPD
5. Whether the plaintiff has no cause of action?OPD
6. Whether the suit of the plaintiff is barred by law? OPD
7. Whether the suit of plaintiff is bad for non joinder and misjoinder of necessary party?OPD
8. Whether plaintiff has not affixed the proper court fee? OPD
9. Whether defendants are entitled to get the special cost from the plaintiff under Sections 35 and 35A CPC?
- 10.Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts, circumstances and

evidence on record concluded that the plaintiffs successfully proved their case and they are entitled for a sum of ₹5,50,000/- alongwith interest from the date of filing of the suit. Accordingly, suit filed by the plaintiffs – respondents was decreed. Appeal filed by the appellants was dismissed by the learned Additional District Judge, Sonapat vide judgment and decree dated 14.01.2019. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that the present appellants were minor at the time of execution of sale deed dated 07.06.2005 by their mother Smt. Dinesh in favour of respondents – plaintiffs. Furthermore, the sale consideration was never used for the benefit of the appellants, neither property was purchased or deposited in a nationalised bank in their favour, therefore, both the learned courts below have wrongly directed recovery of the amount in question from the present appellants in view of the defective title of the property sold qua 1/5th share. Learned counsel for the appellants submits that the recovery, if any, should be effected from their mother - respondent No. 4 only. It is, thus, prayed that this appeal be allowed, judgment and decree dated 16.02.2016 passed by the learned Civil Judge (Junior Division), Sonipat as well as judgment and decree dated 14.01.2019 passed by the learned Additional District Judge, Sonapat be set aside.

I have heard learned counsel for the appellants and have gone through the file with his able assistance.

It is a matter of record that the property in question was sold in favour of the plaintiffs vide registered sale deed dated 07.06.2005. The appellants at the time of the sale were admittedly minor. However, it is not in dispute that the appellant's mother - Smt. Dinesh had obtained the

requisite permission from the court of competent jurisdiction, to sell the property of the minor children, as is evident from judgment dated 15.03.2005 (Ex.D25). While affording permission to sell the children's share of the property jointly belonging to Smt. Dinesh and the minor children, it was ordered vide Ex.D25, that indemnity bond in the sum of ₹30 lakhs with one surety in like amount be furnished by Smt. Dinesh in favour of the minors alongwith an undertaking that she would use the sale consideration for the benefit of minor children **or** purchase the property **or** deposit this amount in a nationalised bank in the name of minor children (appellants).

As per the specific clause in the sale deed dated 07.06.2005 (Ex. P1), it is agreed between the parties that in case of any loss of any portion of land, the vendor would be liable for compensating the other party. Sale deed (Ex.P1) is duly proved and is in fact admitted. It is a matter of record that Bijender Singh i.e. the father of the present appellants and husband of Smt. Dinesh had got half share of the suit property. Bijender's sister challenged the judgment and decree dated 20.02.1991, which attained finality vide order dated 24.01.2011 in RSA No. 4658 of 2008. It was ordered that Smt. Raje sister of Birjender is entitled to 1/5th share out of the suit property and the remaining 4/5th shall be equally divided between Vijay Singh and Bijender. Smt. Raje sold the land measuring 11 kanals out of the suit property. The loss to the extent of 5 kanal 10 marlas was, accordingly, caused to the plaintiffs. There is a concurrent finding of fact by both the learned courts below that possession of this portion of the land was not with the plaintiffs. In this view of the matter, both the learned courts below have held that the plaintiffs are entitled to a sum of ₹5,50,000/- alongwith interest from the date of filing of the present suit.

Learned counsel for the appellants is unable to deny that due permission had been sought by their mother before the sale of land and there is specific clause in the sale deed (Ex.P1) that in case, any loss etc. occurs regarding any portion of land, the vendor would be liable for compensating the vendee. In this case, the plaintiffs indeed suffered loss due to 1/5th share of the suit property going to the sister of Bijender by virtue of court order. I do not find any merit in the argument that as Smt. Dinesh - appellants' mother did not deposit the share of the consideration amount falling to the appellants in a nationalised bank and neither she purchased any property, they are not liable to pay the amount as ordered and it is only Smt. Dinesh, who can be held liable to pay the amount as ordered. Learned counsel for the appellant is unable to point out any evidence on record to indicate that the sale consideration was not used for the benefit of the appellants, which is one of the conditions mentioned in judgment dated 15.03.2005 (Ex.D25) wherein permission was afforded to the appellants' mother to sell the property. Learned counsel fairly states that the indemnity bond in terms of Ex. D25 was duly furnished by Smt. Dinesh. It is evident that Smt. Dinesh as well as the appellants are all living together. The address reflected in the memo of parties is the same and learned counsel for the appellants on a pointed query is unable to point out anything to the contrary.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any

illegality, infirmity or perversity in impugned judgment and decree dated 16.02.2016 passed by the learned Civil Judge (Junior Division), Sonipat as well as judgment and decree dated 14.01.2019 passed by the learned Additional District Judge, Sonapat, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

November 19, 2019
rts

(Lisa Gill)
Judge

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