

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

RSA No. 586 of 2011(O&M)

Date of decision: 17.9.2019

Amarjit Kaur and anotherAppellants

VERSUS

Manjit Singh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Manoj Kaushik, Advocate and
Mr. Shubkarman, Advocate for the appellants.

Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Akshit Chaudhary, Advocate for respondent No.2.

REKHA MITTAL, J. (Oral)

CM No.1625-C of 2011

Prayer in this application is for condoning delay of 69 days in
re-filing the appeal.

Heard.

In view of averments made in the application, the same is
allowed. Delay of 69 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA No.586 of 2011

Challenge in the present appeal has been directed against
consistent findings recorded by the Courts whereby suit for possession by
way of specific performance of agreement to sell dated 14.10.1994

regarding land measuring 80 kanals, detailed in headnote of the plaint purportedly executed by appellants/defendants was decreed by the trial Court vide judgment and decree dated 30.10.1999 that came to be affirmed in appeal by the Additional District Judge (Adhoc) Fast Track Court, Gurdaspur.

The case set up by the respondents/plaintiffs, in brief, is that the appellants agreed to sell the disputed land along with electric motor 3 H.P. and existing construction in the form of Kothaas and Safeda trees/plantation for sale consideration of Rs.12 lakhs out of which Rs.1,20,000/- was paid as earnest money. The sale deed was agreed to be executed on payment of balance sale consideration on 30.04.1995. On the target date, it was a holiday and the plaintiffs contacted the defendants to come present in the office of Sub Registrar, Batala on 02.05.1995 as 01.05.1995 was also holiday. It is averred that respondents/plaintiffs remained present in the office of Sub Registrar, Batala on 02.05.1995 but the appellants/defendants did not turn up to execute and register the sale deed. The plaintiffs sent telegram calling upon the defendants to execute the sale deed as per terms of agreement. A legal notice dated 25.07.1995 was issued requesting the defendants to execute and register the sale deed but to no effect. Hence the suit.

The suit was contested by defendant No.1 by raising preliminary objections regarding valuation, suppression of material facts and defendant No.2 being minor. She also denied that defendants ever agreed to sell the suit land in favour of the plaintiffs. However, it was averred that plaintiffs contacted the answering defendant Smt. Amarjit

Kaur for sale of land and she expressed her inability to sell half share of defendant No.2 for want of valid or proper authorization as defendant No.2 was minor at that time. The plaintiffs insisted defendant No.1 for sale of entire land and assured that signatures of defendant No.2, to be obtained on the agreement will be entirely their responsibility. The agreement to the extent of half share of defendant No.2 is alleged to be null and void. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial Court framed issues reproduced in para 7 of judgment of the said Court. The parties were permitted to adduce evidence and they led evidence referred to in para 8 of the judgment of trial Court. The trial Court accepted plea of the respondents/plaintiffs in respect of agreement of sale being executed by the appellants/defendants, their readiness and willingness to perform their part of the agreement and negated plea of the defendants/appellants that defendant No.2 was minor at the time of agreement of sale on 14.10.1994. Eventually, suit filed by the respondents/plaintiffs was decreed and they were allowed specific performance of the agreement, in terms indicated in para 21 of judgment of trial Court. As has been noticed hereinbefore, the appeal preferred by unsuccessful defendants did not find favour with the first Appellate Court.

Counsel for the appellants by relying upon the document Ex.DX register of admission and withdrawal and Ex.D3 school leaving certificate produced by Sanjeev Kalia DW-3 would argue that since Didar Singh was minor at the time of agreement as well as institution of the suit having born on 01.02.1980, agreement to sell in respect of half share of

Didar Singh is not enforceable for want of competence of Amarjit Kaur to alienate share of the minor. It is further argued that respondents/plaintiffs did not examine attesting witnesses of the agreement to prove that the same was read over to the executants and they affixed their signatures/thumb impressions after accepting its contents to be correct.

Counsel representing the respondents, on the contrary, would urge that consistent findings recorded by the Courts are based upon materials on record and correct appreciation thereof and as such intervention in the impugned judgments is not warranted more particularly in the circumstances that the appellants have not raised a question of law for adjudication, in second appeal. It is further argued that the trial Court while dealing with issues No.2 and 4, taken up together, had adverted to testimony of Sanjeev Kalia and documents Ex.DX and D3 wherein name of the person is stated to be Dara Singh and not Didar Singh. He would apprise the Court that no such plea was raised by the defendants that Didar Singh was known as Dara Singh, therefore, the Courts have rightly refused to rely upon the documents Ex.DX and D3 with regard to date of birth of Didar Singh. It is further argued that appellants failed to adduce sufficient much less cogent evidence on record that Didar Singh was also known as Dara Singh when otherwise in the revenue record, he has been mentioned as Didar Singh son of Chanan Singh.

I have heard counsel for the parties, perused the paper-book and records.

The only issue that invites consideration is, whether the appellants could substantiate their plea that Didar Singh was minor on the day of execution of agreement of sale dated 14.10.1994.

Smt. Amarjit Kaur has not denied execution of the agreement as she raised the plea that she expressed her inability to enter into an agreement with regard to share of Didar Singh. No such plea was raised by Smt. Amarjit Kaur that defendant – Didar Singh was also known as Dara Singh or his short name is Dara Singh. She did not produce any documentary evidence with regard to registration of birth of Didar Singh in support of her contention that Didar Singh was minor at the time of agreement on 14.10.1994. Counsel for the appellants has fairly conceded that in the document i.e. school leaving certificate and matriculation certificate, name of the person is Dara Singh. The trial Court has rightly held that even if testimony of Amarjit Kaur is taken into consideration that short name of Didar Singh was Dara Singh, in the school records there would have been final name not short name. In the revenue records, Didar Singh has been mentioned as Didar Singh son of Chanan Singh.

As per evidence adduced by the defendants/appellants, Didar Singh was born on 01.02.1980. He did not appear in the witness box during the course of defendants evidence recorded in the year 1999 that he was also known as Dara Singh. In the given scenario, I find it difficult to accept contention of the appellants that concurrent findings recorded by the Courts rejecting plea of the appellants with regard to minority of Didar Singh suffer from an error much less perversity warranting intervention. Amarjit Kaur had admitted execution of the agreement though with a plea

that signatures of Didar Singh were obtained at responsibility of the plaintiffs, therefore, there was no requirement for the plaintiffs/respondents to examine attesting witness(s) to prove execution of the agreement. The attesting witness, primarily is examined to establish identity of executant of the document. In this view of the matter, contentions raised by the appellants are not meritorious, thus, rejected.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

SEPTEMBER 17, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no