

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2752 of 2013 (O&M)

Date of decision : 31.7.2019

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M/s Pearls Dream Palaces Construction (P) Ltd.,
Jaipur

.....Appellant

vs.

Vikas

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Sanjay Vij, Advocate for the appellant

Mr. Surender Saini, Advocate for the respondent.

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H. S. Madaan, J.

Briefly stated facts of the case are that plaintiff Vikas minor son of Mehar Singh, through his brother Devender, resident of village Rathdhana, Tehsil and District Sonipat, had brought a suit for declaration with consequential relief of permanent injunction against defendant - M/s Pearls Dream Palaces Construction (P) Limited, Jaipur.

As per version of the plaintiff, he alongwith his brother

Jasbir Singh were owners in possession of agricultural land comprised in Khewat No. 184, Khata No. 228, Rectangle and Killa No. 66/23 (8-0), situated in revenue estate of village Rathdhana, Tehsil and District Sonipat, in equal shares, on the basis of release deed No. 10//15 dated 30.1.2005, executed by their father in their favour. The defendant through his authorized officer Jagbir Singh procured a registered sale deed No. 6205 dated 24.8.2005, by the plaintiff and his brother Jasbir Singh, for an area measuring 8 kanal for a sum of Rs. 27 lacs. However, the sale deed was illegal qua share of the plaintiff since he was a minor at the time of execution of the sale deed and was still minor at the time of filing of suit, as his date of birth happens to be 31.7.1989. The plaintiff submits that the sale deed was procured by playing fraud upon him; that the minority of plaintiff was in knowledge of the defendant; that mother of the plaintiff has already died and father of the plaintiff has remarried with some other woman and has been residing outside the village for the last 4 years before filing of the suit, having no concern with the minor plaintiff; that Devender is elder brother of the plaintiff and has no adverse interest against the benefit of the minor. Therefore, the plaintiff has filed the suit against the defendant through him. According to the plaintiff, the defendant was requested to admit his claim but in vain, therefore, the necessity to file the suit arose.

On notice, the defendant appeared and filed written statement contesting the suit, taking preliminary objections that the suit was not maintainable; that no cause of action arose to the plaintiff

to bring the suit; that plaintiff had no locus standi to file the suit; that the plaintiff had concealed material facts from the Court etc. Furthermore, the impugned sale deed with the defendant is legal and valid document and no fraud etc. was played with the plaintiff; that the defendant is in possession of the suit land and is protected under Section 41 of the Transfer of Property Act, being bona fide purchaser for a consideration; that a sum of Rs.27 lacs was paid to the vendors including the plaintiff, as consideration which was as per market value. The defendant denied that the plaintiff was a minor at the time of execution of the sale deed. According to the defendant, it came to its notice after execution of the sale deed that a suit was pending in the Civil Court at Sonipat, instituted prior to the sale deed, in which the release deed executed by plaintiff's father had been challenged by his sisters. The plaintiff and his brothers did not disclose that fact to the defendant vendee. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

No replication was filed by the plaintiff.

From the pleadings of the parties, following issues were framed:-

1. Whether the sale deed No. 6205 dated 24.8.2005 is null and vlid and not binding on the rights of the plaintiff? OPP
2. If issue No.1 is proved then whether the plaintiff is entitled to injunction as prayed for ? OPP
3. Whether the suit is not maintainable in the present form?

OPD

4. Whether the plaintiff has concealed the material facts from the court? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the answering defendant is entitled to special costs under Section 35A CPC ? OPD
7. Relief.

Parties were afforded adequate opportunities to lead their evidence.

During the course of his evidence, the plaintiff got his own statement recorded as PW-1 and further examined his brother Devender as PW-2, Dr. Vijay Dahiya as PW-3, Jitender Singh as PW-4 and Raj Kumar as PW-5. The plaintiff closed his evidence after tendering certain documents.

On the other hand evidence of the defendant was closed by order of the Court.

After hearing the arguments, the trial Court decided issues No. 1 and 2 in favour of the plaintiff and against the defendant. Issues No. 3 to 6 were decided against the defendant being not pressed. As a result of findings on issues, the trial Court, vide judgment and decree dated 8.2.2012, decreed the suit of the plaintiff and declared the impugned sale deed to be illegal, null and void to the extent of share of plaintiff Vikas and set it aside in those terms. Furthermore, the defendant was restrained from alienating the suit land to any person, in any manner or from taking possession of the suit land from

the plaintiff forcibly, on the basis of impugned sale deed.

The defendant felt aggrieved by the such judgment and decree passed by the trial Court and approached District Judge, Sonipat, by way of filing an appeal, which was dismissed vide judgment and decree dated 1.3.2013.

Still feeling aggrieved, the defendant has knocked at the door of this Court, by way of filing Regular Second Appeal, notice of which was given to the plaintiff-respondent, who has appeared through counsel.

I have heard learned counsel for the parties, besides going through the record and I find that there is absolutely no merit in the appeal.

Both the Courts below have arrived at a conclusion that plaintiff Vikas was a minor at the time of execution of the sale deed and as such was incapable of entering into that transaction, because a minor is not competent to enter into a contract. The trial Court has placed reliance upon birth certificate of plaintiff Vikas Exhibit P-4, showing his date of birth as 31.7.1989. Though learned counsel for the defendant had pointed out that date of birth was registered with the department on 30.11.2009, i.e. during pendency of the suit but the trial Court observed that in the Middle Examination certificate of plaintiff Vikas the same date of birth has been mentioned i.e. 31.7.1989 and such certificate was issued on 5.2.2002. Therefore, there was no reason to dispute the correctness of such date of birth of the plaintiff. Accordingly, it was taken to be so.

The sale deed is dated 24.8.2005, which means that at the time of execution of the sale deed the plaintiff was aged a little more than 16 years, as such a minor. The defendant had not led any evidence in rebuttal, rather its evidence was closed by order of the court. The evidence produced by the plaintiff, both oral as well as documentary, has gone un-rebutted. The trial Court was justified in decreeing the suit of the plaintiff and learned District Judge, Sonipat, hearing the Ist Appeal, correctly dismissed the same. Once it is proved that the plaintiff was a minor at the time of execution of the sale deed, the sale deed cannot be held to be a legal and valid document and is liable to be set aside to the extent of share of the plaintiff. As per law, there cannot be any estoppel against the statute. Once the law provides that a minor cannot enter into a valid contract, the contract, if any, entered into by the minor cannot be held to be legal and valid, using the doctrine of estoppel. The defendant should have been vigilant enough to ascertain that vendor Vikas had attained majority and was not suffering from any legal disability, before entering into the transaction in question with him and his brother.

Learned District Judge has referred to the judgment *Lakhwinder Singh vs. Miss Paramjit Kaur, 2004 (1) LJR 371 (P&H)*, by this Court wherein it was observed that a transferee must make all reasonable and diligent enquiries regarding the capacity of the transferor and the necessity to alienate the estate of the minor and on satisfying those requirement, he is to enter into and have the sale deed from the guardian or manager of the estate of the minor. It was

further observed that under the Guardian and Wards Act, the estate of the minor cannot be alienated unless a specific permission in that behalf is obtained from the District Court. Learned District Judge has observed that no such permission was ever obtained in the instant case by brother of the minor to alienate the share of the minor in the property in dispute. Therefore, sale of the share of the minor respondent, made by his brother vide impugned sale deed Exhibit P-3 is void ab initio and not binding upon the rights of the respondent and sale deed is liable to be set aside to the extent of share of minor plaintiff Vikas.

The judgments passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Learned counsel for the appellant has referred to judgment **Madan Mohan Singh and others vs. Rajni Kant and another 2010 Civil Court Cases 347** by the Apex Court, wherein it was observed that an entry made in an official record by the concerned official in the discharge of his official duty, must have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. Therefore, the standard of proof required herein is the same as in other civil and criminal cases. It was further observed that the best evidence to prove age of a person is of his/her parents, if it is supported by un-impeachable documents. This authority does not come to the help of the appellant in any manner

due to different facts and circumstances and the context in which such observations were made. In the present case, the plaintiff has proved in evidence birth certificate of Vikas Exhibit P-1 as well as his Middle School Certificate Exhibit P-5, showing his date of birth as 31.7.1989.

In addition to that, Devender an elder brother of the plaintiff appearing as PW-2 in his affidavit Exhibit PW 2/A has categorically stated that date of birth of Vikas is 31.7.1989 and he was a minor at the time of execution of the sale deed. The plaintiff appearing as PW-1 in his affidavit Exhibit PW 1/A has stated so. PW-5 Raj Kumar, Health Inspector, PHC, Halalpur, had brought the summoned record and stated that as per their record, date of birth of plaintiff is 31.7.1989. He had proved the certificate in that regard as Exhibit P-4. Thus there is overwhelming evidence both oral as well as documentary, to prove the date of birth of the plaintiff to be 31.7.1989. The defendant has not led even an iota of evidence in rebuttal and its evidence was closed by order of the Court. It has come on record that mother of the plaintiff has died and father of the plaintiff has remarried, going to some other place leaving the plaintiff behind, thus the plaintiff could not possibly have examined his mother or father to prove his date of birth. Similarly, the other authority, referred by learned counsel for the appellant i.e. M/s A.S. Motors Pvt. Ltd. vs. Union of India and others 2013 (2) RCR (Civil) 323, is not applicable to be present case.

I do not find any illegality or infirmity in the judgments

passed by the Courts below. Furthermore, no substantial question of law arises in the present appeal

The appeal is found to be without any merit and is dismissed accordingly.

31.7.2019
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(H.S. Madaan)
Judge

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