

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

**SAO No.52 of 2014 (O&M)
Date of Decision: March 20, 2019**

Nirmal Singh and another

.....APPELLANTS

VERSUS

Hakam Singh and another

...RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajiv Kataria, Advocate
for the appellants.

Mr. M.J.S. Bedi, Advocate
for the respondents.

SURINDER GUPTA, J.(Oral)

Heard.

The plaintiff/appellant Nirmal Singh through his guardian Jaswant Singh filed suit challenging the sale deed Nos.374 and 375 dated 13.06.2007 executed by him on the ground that he was an unsound mind at the time of execution of the sale deeds, which were obtained by defendants in connivance with others by taking advantage of his mental condition. The suit was decreed and sale deed Nos.374 and 375 dated 13.06.2007 were set aside holding the plaintiff to be owner of ½ share of the suit property.

The defendants filed appeal and learned Ist Appellate Court remanded the case to the trial Court with the observations as follows:-

“For the discussion made above, the present appeal stands accepted and the case is remanded back to the learned trial Court to Ist hold an inquiry as per law laid down by various Hon'ble High Courts and after

conducting inquiry to the fact whether Nirmal Singh is of unsound mind, then proceed with the case.”

Learned counsel for the appellants has argued that the trial Court while recording findings on issue No.1 has observed that Nirmal Singh is of unsound mind and his brother Jaswant Singh was competent to file the suit on his behalf. He further argued that the Ist Appellate Court may differ with the findings recorded by the trial Court on appraisal of evidence but could not remand the case for fresh decision on this sole ground.

Learned counsel for the respondents has drawn my attention to the observations of Ist Appellate Court in para 27 of the judgment, which reads as follows:-

“The present case has been filed by Nirmal Singh through his next friend his brother Jaswant Singh, on the ground that Nirmal Singh is of unsound disposing mind and they have challenged the sale deeds Ex.P2 and Ex.P3 alleged to have been executed by Nirmal Singh in favour of defendants No.1 and 2. In the present case, it is mentioned that Nirmal Singh was unmarried and issueless and he was mentally unsound. As already stated above, Jaswant Singh has tendered his affidavit Ex.PW1/A. In the cross examination he has stated that they are six brothers and sisters. His sisters are married and living in their in laws houses and they all the brothers are living separately. He has admitted that Nirmal Singh got married in 1970-72 and there was a Panchayati divorce with Nirmal Singh. In the plaint, it is mentioned that Nirmal Singh was issueless and unmarried. Now, in the cross examination he has

admitted that Nirmal Singh was married. So, he concealed the material facts from the court. He further stated that his father is having 8 acres of land and his father has given the land to all his brothers. He has admitted that his father was given share to Nirmal Singh and Karamjit Kaur through Will on 21.06.1996 which is Ex.D1 and this Will is correct. He has admitted that his father has not got recorded in the Will Ex.D1 that Nirmal Singh was not well. He has admitted that the amount of consideration has been deposited in Punjab & Sind Bank, Bhagta Bhai Ka. He admitted that Nirmal Singh was owner of 1/2th share. He further stated that Nirmal Singh was living at village Dialpura. They were joint till 1980. After that they came at village Rampura and till then they are living separately continuously. So, it is clear that from the deposition the contents mentioned in the plaint are falsified as Jaswant Singh has stated that they were looking after Nirmal Singh. It has come that both are living separately since 1980. He has stated that they are in possession of the disputed property.”

Learned counsel for the respondents has further argued that the trial Court has not taken note of the fact that have come on record while arriving at the conclusion that he was of unsound mind.

On giving a careful thought to the submissions of learned counsel for the parties and going through the observations of Ist Appellate Court in para 27 and also in other paras of the judgment, I find that the Ist Appellate Court appears to be referring to the mental state of Nirmal Singh at the time of execution of the sale deeds. On appraisal of evidence on record, the Ist Appellate Court is competent to agree with the findings as recorded by the trial Court and affirmed the same or set aside

the same being not in accordance with law or evidence on record. However, remand of the case on the sole ground that the Court should hold inquiry about the mental condition of Nirmal Singh and then decide the case afresh, is not in accordance with the spirit of provisions of under Order 41 Rule 23, 23-A and 25 of Code of Civil Procedure. Instead of adopting a shortcut method, the Ist Appellate Court should have proceeded further to decide the case on merits on appraisal of the evidence on record.

Learned counsel for the respondents has further argued that where a person has been alleged to be of unsound mind, the Court should call that person, examine him and then record its findings.

Without commenting on the submissions of learned counsel for the appellants, it is ordered that the appellants will be at liberty to move application before the appropriate authority and application if so filed, will be disposed of by the Ist Appellate Court, in accordance with law.

As a sequel of above my discussions, the appeal is accepted. Parties are directed to appear before the Ist Appellate Court/Successor Court on 10.04.2019, on which date, the file of the appeal bearing C.A.D. No.144 dated 14.12.2011 shall be taken on Board and the Ist Appellate Court will proceed and decide the same on merits.

March 20, 2019

Jyoti-II.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No