

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 1076 of 2019 (O&M)
Date of Decision: 21.2.2019

Angoori Devi and another

.....Appellants

Versus

Dalbir Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rishab Lohan, Advocate
for the appellants.

Mr. Rajesh Khandelwal, Advocate
for the caveators/respondents.

HARNARESH SINGH GILL, J.

CM-2616-C-2019

The application is allowed for the reasons stated therein.

Delay of 12 days in re-filing the appeal is condoned.

CM-2617-C-2019

For the reasons mentioned in the application, the same is allowed.

The appellant is granted exemption from paying *ad valorem* Court fee.

RSA-1076-2019 (O&M)

The present appeal arises from the judgment and decree dated 23.10.2010 passed by Civil Judge (Senior Division), Jind and against the judgment and decree dated 17.9.2018 passed by Additional District Judge, Jind vide which suit for declaration and permanent injunction preferred by

Dalbir Singh son of Ajit Singh (insane and feeble minded person through his maternal uncle Mahavir Singh as guardian appointed by Additional District Judge, Jind vide judgment dated 28.2.2009 (Ex. P2) was decreed.

The facts of the present case are that plaintiff/respondent No. 1 Dalbir Singh through his maternal uncle/guardian Mahavir Singh had sought declaration to the effect that the sale deed dated 25.2.2008 (Ex. P-7) and subsequent mutation sanctioned on the basis of the said sale deed are illegal, null and void. The plaintiff-respondent No. 1 had also sought declaration that the mortgage deed dated 3.4.2008 (Ex.P-8) and Rapat No. 363 dated 3.4.2008 are also illegal, null and void and are not binding on his rights as after executing the sale deed dated 25.2.2008, the suit property stands mortgaged by the appellants/defendants No. 1 and 2 with Haryana Gramin Bank, Jind, respondent No. 2. Respondent No. 1-plaintiff is a person of sub normal mind residing under the custody of his maternal uncle Mahavir Singh. Respondent No. 1/plaintiff is the owner in possession of total 28 kanals 16 marlas of land. On 8.3.2008, it came to the knowledge of respondent No. 1-plaintiff that his land has been transferred in the name of appellants by misrepresentation and fraud by executing a sale deed which is illegal and liable to be set aside. It is the further case of respondent No. 1/plaintiff that on 2.2.2008, his maternal uncle Randhir Singh along with his son- in-law came to his village and took him along on the pretext of medical check up. Respondent No. 1/plaintiff was not competent to execute and register the sale deed being sub-normal mind person.

As per the stand of the appellants/defendants No. 1 and 2, they had purchased the land vide sale deed dated 25.2.2008 (Ex. P-7) by paying the consideration amount of ₹ 18 lakhs and thereafter mutation was

sanctioned. It has been denied by the appellants/defendants No. 1 and 2 that respondent No. 1/plaintiff is of insane mind person and he had sold this property after the death of his parents.

Defendant No. 3-Haryana Gramin Bank, Jind through its Manager had pleaded that the suit of respondent No. 1/plaintiff against them has become infructuous as the appellants/defendants No. 1 and 2 had applied for tractor loan of ₹ 3.00 lakhs and Kisan Credit Card of ₹ 1,50,000/- and had, thus, mortgaged the land vide mortgage deed dated 3.4.2008 and mutation has been sanctioned in favour of the bank.

On the pleadings of the parties, following issues were framed by the trial Court on 27.8.2008:-

1. *Whether the impugned sale deed No. 5385 dated 25.2.2008 and consequent mutation No. 1337 dated 28.2.2008 alleged to have been executed by plaintiff in favour of defendants pertaining to the suit land is illegal, null and void, result of fraud, mis-representation, undue influence, coercion and is paper transaction and is liable to be set aside and is not binding on the rights of plaintiff? OPP*
2. *If issue No. 1 is proved, whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP*
3. *Whether the suit of the plaintiff is not maintainable? OPD*
4. *Whether the suit is bad for want of proper court fees? OPD*
5. *Whether the suit has been filed by Mahavir Singh who is the real beneficiary of the suit, if so to what extent? OPD*
6. *Relief.*

On 14.9.2010, following additional issues were framed by the trial Court:-

1. *Whether defendants No. 1 and 2 have taken the*

possession of suit land illegally and forcibly and during the pendency of the suit ? OPP

2. *Whether the plaintiff is entitled for possession of the suit land ? OPP*
3. *Whether defendant No. 3 is a bonafide mortgagee and has acted upon in good faith by advancing the loan to the defendants No. 1 and 2 by mortgaging the land in dispute vide mortgage deed No. 43 dated 3.4.2008 as a collateral security of the due payment of loan availed by defendants No. 1 and 2 ? OPD*

After taking into consideration the evidence on record, the trial Court vide judgment and decree dated 23.10.2010 decreed the suit of respondent No. 1/plaintiff. The appeal filed by the appellants/defendants No. 1 and 2 against the said judgment and decree, was dismissed by the first Appellate Court vide judgment and decree dated 17.9.2018. Hence, the present appeal by the appellants-defendants No. 1 and 2.

I have heard the learned counsel for the appellants and the counsel for the caveator/respondent No. 1.

Learned counsel for the appellants has argued that the sale deed was executed after the appellants/defendants No. 1 and 2 paid the valuable consideration of ₹ 18 lakhs to respondent No. 1/plaintiff in the presence of the attesting witnesses which was duly scribed at the instance of Dalbir Singh. It has been further argued that the sale deed being a registered document carries presumption of genuineness and at the time of executing of sale deed and after paying the consideration amount, the possession of the suit land was handed over to the appellants/defendants No. 1 and 2. It has been also argued that the sale deed dated 25.2.2008 (Ex.P7) was executed on the request of the relatives of respondent No. 1/plaintiff. In

reliance on ***Vimal Chand Ghevar Chand Jain and others vs Ramakant Eknath Jajoo 2009 (3) CCC 220 (SC)*** wherein it has been held that the registered sale deed carries a presumption that the transaction is a genuine one. Learned counsel for the appellants has further argued that Dalbir Singh had not stepped into the witness box and the suit had been filed through Mahavir Singh, who is the real beneficiary. It has been further argued by the learned counsel for the appellants that Mahavir Singh was appointed guardian of Dalbir Singh on 28.2.2009 whereas the sale deed was executed much prior i.e. 25.2.2008.

Per contra, learned counsel for respondent No. 1/plaintiff-caveator has argued that it has been established on record that respondent No. 1/plaintiff is a special person who lost his mother when he was a child and his father became ascetic (sadhu) whose whereabouts are not known and the present suit had been filed through Mahavir Singh who is the maternal uncle of Dalbir Singh and he was appointed legal guardian vide judgment dated 28.2.2009 passed by Additional District Judge, Jind. No consideration amount was paid to Dalbir Singh while alienating 28 *kanals* 16 *marlas* of land in favour of appellants/defendants No. 1 and 2. It has been argued that respondent No. 1-plaintiff is suffering from severe sub-normality of mind and is unable to formulate or rational consequences of his own and thus, the sale deed dated 25.2.2008 (Ex. P7) is outcome of misrepresentation, coercion and fraud which has been committed by the appellants/defendants No. 1 and 2 in collusion with Randhir Singh, maternal uncle of Dalbir Singh and Ranbir Singh (son-in-law of Randhir Singh).

It is a case where it has been established on record that respondent No.1/plaintiff Dalbir Singh falls under the definition of term of

'idiocy'. The term 'idiocy' has been explained by **Professor Modi's Medical Jurisprudence and Toxicology - 19th Edition, Page 388** as follows:-

Idiocy – This is a congenital condition due to defective development of the mental faculties. All grades of this condition exist from the helpless life of a mere vegetable organism of one which can be compared with the life of young children, as far as mental development is concerned. An idiot is wanting in memory and will power is devoid of emotion who has to initiative of any kind, is unable to fix attention of any subject and is unable to guard himself against common physical danger. He is usually quite, gentle and timid.

To my mind, the sale deed dated 25.2.2008 (Ex. P7) is an act of non-free mind, non-consent, under the influence of fraud and misrepresentation. Respondent No.1/plaintiff-Dalbir Singh had not stepped into the school premises at any stage nor he had an expose to the outly world and is an illiterate, unmarried, issueless and hapless man of age of 29 years. He lost his mother when he was a child and his father deserted him. The person like him always remain under the influence of his relatives either under maternal uncles or paternal uncles. As in the case of respondent No.1/plaintiff-Dalbir Singh, he is a dependant person and cannot think right or wrong and cannot think about his future life. It has come on record that his maternal uncle Randhir Singh and Ranbir Singh (son-in-law of Randhir Singh) took him on the pretext of his medical check up and got executed the sale deed in question. It has also come on record that Randhir Singh and Ranbir Singh had suffered a disclosure statement before the police in a criminal case titled 'State versus Randhir Singh etc.' under Sections 420, 467, 468, 471,120-B IPC registered at Police Station City Jind vide FIR No. 204 dated 8.4.2008 that both of them had received consideration

amount of Rs. 10,70,000/- from Angoori Devi and Santosh appellants/defendants No. 1 and 2 which they had distributed among themselves, out of the sale consideration of Rs. 18.00 lacs as cost of sale deed (Ex. P7). Thus, it is a clear case where respondent No.1/plaintiff Dalbir Singh was never handed over the sale consideration.

To draw conclusion regarding the fate of the sale deed dated 25.2.2008 (Ex. P-7) , it will be relevant to discuss Sections 7, 10, 13 and 14 of the Indian Contract Act, 1872 which read as under:-

7. Acceptance must be absolute.—*In order to convert a proposal into a promise the acceptance must:-*

- (1) *be absolute and unqualified;*
- (2) *be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.*

X X X X

10. What agreements are contracts.—*All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in 1[India], and not hereby expressly repealed, by which any contract is required to be made in writing 2 or in the presence of witnesses, or any law relating to the registration of documents.*

X X X X

13. 'Consent' defined.—*Two or more persons are said to*

consent when they agree upon the same thing in the same sense.

14. 'Free consent' defined.—*Consent is said to be free when it is not caused by—"*

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

After going through the above Sections, it is clear that a valid contract is always by a free consent of the parties competent to contract for lawful consideration and with lawful object and not expressly declared to be void. Meaning thereby, the consent of the parties must be free along with the consent of the two or more persons and for execution of the instrument i.e. sale deed, voluntary deposition is essence of such a deed.

In the present case, respondent No.1/plaintiff Dalbir Singh who had remained under the influence of persons so as to was unable to formulate any independent decision of his own and is unable to formulate the rational consequences of his own act. The other factor which has also come to the mind of this Court that after execution of the sale deed dated 25.2.2008 (Ex. P7), the appellants/defendants No. 1 and 2 did not waste any time and mortgaged the suit land in favour of defendant No. 3-bank vide mortgage deed dated 3.4.2008 (Ex. P8) for obtaining the tractor loan. It has also come on record that the defendant No. 3 had filed a recovery suit of the outstanding amount against the appellants/defendants No. 1 and 2. This fact also clearly shows that immediately after execution of the sale deed, the

appellants rushed to the bank for obtaining a loan on the property which had been allegedly purchased from respondent No.1/plaintiff Dalbir Singh who is a person of 'idiocy' and had never been handed over the consideration amount by the appellants. It is clear that if any of the contracting party does not have the capacity, then the said contract is void. The unsoundness of mind is one of the circumstance which renders the contract void. As a logical corollary of the Privy Council decision in ***Mohori Bibi versus Dharmodas Ghose (1930) 30 Cal 539*** case of a minor's incompetency it is naturally follows that a lunatic's contract must always be void under the Indian law. Thus, the Indian law regarding the contractual capacity of mentally disorder persons provides that where a person imbalanced in mind executed a sale deed, the transferee cannot acquire any right, title or interest.

In ***Kamola Ram and others versus Kaura Khan, 1912 Punjab Records, No. 41***, it was opined that a contract entered into by a person of unsound mind being void under Section 12 of the Contract Act, the claim of the plaintiffs for refund of sums advanced to the defendant-lunatic is not entertainable and must fail.

The judgments passed by the Courts below are well reasoned and are affirmed. No substantial question of law arises in this case which would warrant interference by this Court.

The appeal is dismissed.

(HARNARESH SINGH GILL)
JUDGE

February 21, 2019

Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes