

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

1. R.S.A. No. 9707 of 2018

Bachna Ram and anr. ...Appellants

Versus

Sukhpreet Kaur and anr. ...Respondents

2. R.S.A. No. 9709 of 2018

Bachna Ram and anr. ...Appellants

Versus

Karandeep Singh and anr. ...Respondents

Date of decision:- 16.09.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Avnish Mittal, Advocate
for the appellants in both the appeals.

Mr. D.S. Adalakha, Advocate
for the respondents in both the appeals

RITU BAHRI J.

This order shall dispose of the above two appeals as the above appeals have been filed against concurrent finding of facts recorded by both the Courts below whereby suit filed by plaintiffs/appellants for possession by way of specific performance of agreement to sell dated 24.05.2004 and 31.08.2005 against defendants/respondents has been dismissed, vide judgment and decree dated 04.03.2016 and 24.08.2018 and suit filed by Karandeep Singh-respondent No. 2 for declaration to the effect that agreement to sell dated 24.05.2004, 26.04.2005 and 31.08.2005 executed by respondent No. 1 in favour of appellants are null and void, has been

decreed to the effect that appellants were directed to hand over the peaceful possession of the suit property to the plaintiff/respondent No. 1, vide judgment and decree dated 20.01.2017 and 24.08.2018.

In brief, the facts of the case of the appellants are that the defendant No.2, through his mother and natural guardian defendant No.1 agreed to sell the land measuring 36 kanals 01 marlas (fully detailed in the head note of the plaint), vide agreement to sell dated 24.05.2004 and received Rs.2,00,000/- as earnest money. The land was sold at the rate of Rs.2,45,000/- per acre. The balance sale consideration was to be paid at the time of registration of the sale deed. An agreement dated 24.05.2004 was duly executed in writing and 31.12.2004 was fixed as the date of execution and registration of the sale deed. It was further agreed that in case the defendants failed to execute the sale deed as per agreement dated 24.05.2004, the plaintiffs will be free to get the sale deed executed through the process of the Court. It was also agreed that the defendant no.1 through his mother will get the permission from the Court for sale of the suit land. The possession of the land was also delivered to the plaintiffs. It is further pleaded that on 16.11.2004, the defendant No.2 received another sum of Rs.3,00,000/- from the plaintiffs. Defendant No.2 through his mother (defendant No.1) signed on the back on the agreement dated 24.5.2004. As on 16.11.2004, total sum of Rs.5,00,000/- was paid to the defendant. On 26.04.2005, the date for Bachna Ram and other Versus Sukhpreet Kaur and another till execution and registration of the sale deed was extended upto 10.11.2005, and the plaintiffs paid an amount of Rs.50,000/- to the defendant as earnest money. Again on 31.08.2005, another agreement was executed and date for execution and registration of sale deed was extended

upto 30.04.2006. The plaintiffs paid a further sum of Rs.5,50,000/- as earnest money to the defendants. In this way, the defendants received Rs.11,00,000/- and only a sum of Rs.4,031.25/- had been left, which was to be paid at the time of registration of the sale deed in favour of the plaintiffs by the defendants. The plaintiffs have always been ready and willing and even now is ready and willing to perform their part of the contract. Since 30.04.2006 was a holiday, the plaintiffs went to the office of Sub-Registrar, Naraingarh on 01.06.2006 with the balance sale consideration and the amount to meet the expenses of stamps, execution and registration etc. of the sale deed to get the sale deed executed and registered. They waited for the defendant No.1 for whole of the day but she did not turn up and the plaintiffs got their presence recorded. It is further pleaded that after 30.04.2006, the plaintiffs met the defendant No.1 and requested her to get the sale deed executed and registered in their favour as per agreement. She informed that she had already applied permission to sell the land in the Court of Guardian Judge, Ambala and as soon as the permission is granted, the sale deed will be executed. The plaintiffs have always been ready and willing to perform their part of contract. When the plaintiffs requested defendant No.2 to get the permission as early as possible, he replied in rude manner that his mother will sell the suit land to some other person. It is further pleaded that on 24.05.2006, the defendant tried to dispossess the plaintiffs from the suit land.

Both the Courts below dismissed the suit of the appellants keeping in view the fact that Karandeep Singh was minor at the time of execution of agreement to sell. This fact has also been mentioned in the agreement to sell. Reference has been made to cross examination of Bachna

Ram P.W.1 who stated that he was aware about the minority of Karandeep Singh on the day of execution of agreement to sell. It was the responsibility of respondent No. 1 to obtain the prior permission from the Guardian Court to sell the land of the minor. It has not been mentioned that any application under Section 8 of the Guardianship Act seeking permission to sell the land of the minor was instituted or pending on that day. Ex.P-14 is copy of petition under Section 8 of the Hindu Minority and Guardianship Act,1956 for permission to sell the share of the minor. The date of institution of the said application was 26.09.2005. Here, it is apt to note that the alleged agreement to sell in favour of defendants no.2 and 3 was executed on 31.08.2005 i.e. much before the filing of the said application . Thus, it was held that appellants have taken a calculated risk of their own for entering into the agreement to sell with defendant No. 1 being acted on behalf of minor without any authority to do so. However, the appellants were held to alternative relief to get refund of Rs.11,00,000/- along with interest @ 8 % per annum from the date of filing of the suit till actual realization from respondent No. 1.

The second suit filed by respondent No. 1 seeking declaration to the effect that agreement to sell dated 24.05.2004, 26.04.2005 and 31.08.2005 executed by respondent No. 2 in favour of appellants are null and void, has been decreed on the ground that respondent No. 2 unauthorizedly executed the agreements to sell dated 24.05.2004, 20.04.2005 and 31.08.2005 in favour of the appellants, as respondent No. 1 was minor at the time of agreement to sell and this fact has been mentioned in the agreement to sell. ***The agreements were held to be non-enforceable, keeping in view the fact that suit filed by appellants for specific***

performance of agreement to sell was dismissed vide judgment and decree dated 04.03.2016.

Learned counsel for the appellants has argued that finding on Issue No. 1 has been wrongly given by the trial Court that the agreement to sell qua plaintiff-minor Karandeep is void, as the plaintiff-Karandeep was required to file cross objection in the appeal filed by the defendants-appellants.

This argument is liable to be rejected, as the agreement to sell was void, has attained finality as in para No. 14 of the trial Court judgment dated 20.01.2017, the learned trial Court has held that as permission was not granted and therefore, such agreements have become non-enforceable and not void ab initio. In para No. 15, it has further been held that the suit for specific performance filed by appellants in respect of such agreements to sell has already been dismissed, vide judgment dated 04.03.2016. Such judgment itself validates the agreements to sell as the appellants were granted an alternative relief. Therefore, any declaration of such agreements to sell as void ab-initio would be contrary to the observations made by such Court of competent jurisdiction on such agreements to sell. Even if the plaintiff-respondent No. 2 did not file any cross objection in the appeal filed by the appellants, the agreements to sell were rightly held to be non-enforceable.

Learned counsel for the appellants further submits that plaintiff-respondent No. 2 after attaining the majority has entered into agreement to sell dated 14.12.2011 with one Jagdev Singh and the said Jagdev Singh has also filed suit for specific performance of agreement to sell, which was decreed on 04.09.2017. This conduct of respondent No. 1

shows that he is in collusion with his mother and is playing fraud upon the people.

This argument is liable to be rejected as the plaintiff/respondent No. 2 has entered into agreement to sell after attaining the majority and the judgment and decree dated 04.09.2017 has no concern with the present case. The onus to lead evidence on issue No. 2 to 8 was upon the appellants but no evidence was led by the appellants. Thus, the argument that Karandeep and his mother are in collusion with each other cannot be gone into at this stage in regular second appeal.

The judgment referred to by learned counsel for the appellants in a case of ***D. Anjappa vs. Marappa, 2014 (52) R.C.R (Civil) 160***, is not applicable to the facts of the present case, as in that case, the suit was filed by the plaintiffs for declaration and permanent injunction without impleading the actual owner of the property i.e Government. In these circumstances, the suit was held to be not maintainable.

The 2nd judgment cited by learned counsel for the appellants in a case of ***Tapinderjit Kaur Grewal and others vs. Rattanjit Kaur and others, 2015 (8) R.C.R (Civil) 682*** is also not applicable to the facts of the present case, as in that case it has been held that no decree passed against minors shall be set aside merely on the ground that guardian or next friend for the minor has interest in the suit matter adverse to the minor until prejudice has been caused to the interest of minor by such adverse interest of guardian or next friend. In para 22, it has been observed as under:-

22. At last, learned counsel submitted that Order 32 Rule 3 CPC in the context of minors provides that if minor attains majority on date when no decree was passed against the minor or their

*interest and the minors do not opt to get it annulled, rather showed their willingness to adopt it, the other defendants have no grouse qua the interest of the then minors. No decree passed against the minor shall be set aside merely on the ground that next friend or the guardian for the suit of the minor has an interest in the subject matter of the suit adverse to that of minor, but such decree could be set aside only if by reason of such adverse interest of the guardian or the next friend, prejudice has been caused to the interest of the minor. Reference can be made to the aforesaid proposition in the light of observation made by this Court in **Bharpur Singh vs Paramjit Kaur and others 2010 (2) RCR (Civil) 85.***

In the present case, respondent No. 1 at the time of execution of agreement to sell was required to take the permission of the Guardian Court and she filed the application as well seeking permission from the Court but she did not pursue the application and the application was dismissed in default on the ground of non-appearance of respondent No. 1. Hence in this case, the interest of the minor will be adversely affected.

Accordingly, the concurrent findings of facts recorded by both the Courts does not require any interference by this Court

No substantial question of law arises for adjudication by this Court.

The appeals stand dismissed.

16.09.2019

G Arora

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No