

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

**RSA No.86 of 2021
Reserved on : 26.02.2021
Pronounced on : 10.03.2021**

Bir Singh and others

... Appellants

Versus

Brij Kishore

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Sanjay Vij, Advocate for the appellants.

Mr. Raj Kumar Gupta, Advocate
for the caveator/respondent.

(The proceedings have been conducted through
video conferencing, as per instructions.)

G.S. Sandhawalia, J.

Challenge in the present regular second appeal, which has been filed by the defendants, is to the concurrent findings recorded by the Courts below, whereby suit for specific performance has been decreed. Permanent injunction was also granted by restraining the defendants from alienating the suit land in favour of any other person except the plaintiff.

2. Mr. Sanjay Vij, learned counsel for the appellants has mainly raised the argument for admission of the appeal to submit that the case further requires consideration. It has been submitted that there was no proof of readiness and willingness of the plaintiff to perform his part of the agreement and whether he had the financial capacity to pay the balance sale consideration. It is further submitted that the agreement in question itself was inadmissible as per Section 35 of the Indian Stamp Act, 1899 (for

short 'the Act') and, therefore, liable to be impounded. The argument that the appellants NO.4, 5 & 7 being minors as such at the time of the agreement was also raised to submit that the suit would not be maintainable in the present form.

3. The argument has been rebutted by the learned counsel for the caveator/plaintiff Mr. Raj Kumar Gupta, by referring to the facts and circumstances and how the conduct of the plaintiff shows that he was always ready and willing. He rather had kept serving notices upon the appellants asking them to execute the sale deed in his favour. The fact that they had obtained a stay against their father from alienating the land in question and, therefore, it would not lie in their mouth that the plaintiff did not have the financial means and was not ready and willing to perform his part of the agreement. It is further submitted that no objection had been taken at the time of the exhibition of the agreement to sell (Ex.P6) and, therefore, no objection can be raised at this point of time. Even otherwise, it was not to be impounded for penalty, as per Schedule 1A of the Act, as applicable to the State of Haryana, since Rs.2.25 was the requisite stamp required at that point of time and the agreement was got stamped for Rs.4/-.

4. Regarding the issue of the minority, it is submitted that it had been noticed by the Courts below that the appellants as such had been sued through their mother initially. The written statement had been filed on 25.08.2014 when they all had become major and the issues had been framed thereafter on 04.09.2014 and they were in position to defend the

Court proceedings and no benefit as such can be given to them on that account.

5. A perusal of the record would go on to show that the dispute pertains to the 8 kanal 9 marlas out of 33 kanals 16 marlas of land falling in village Badha, District Gurgaon, which was agreed to sold by late Harbir Singh, father of appellants No.1 to 7 and husband of appellant No.8. As per the agreement dated 30.09.2005 (Ex.P6), the last date was 30.10.2005 and Harbir Singh had received a sum of Rs.3 lakhs as earnest money out of Rs.25 lakhs fixed as sale consideration, for the land which was to be sold. Before the last date itself, the major sons and wife had filed civil suit on 15.10.2005 (Ex.P8) wherein challenge had been made to the agreement to sell being without consideration and legal necessity. The defence was also taken in the written statement which led the Trial Court as such to come to the rightful conclusion that the agreement as such was duly admitted and therefore by placing reliance upon judgment passed by a Three Judge Bench of the Apex Court in '**Nagindas Ramdas vs Dalpatram Ichharam @ Brijram and others**', 1974 Current Law Journal, SC 57, it was held that no further proof was required with regard to the admissibility of the agreement.

6. The property as such had devolved upon by Harbir Singh on the death of his father Dalip Singh, who had died intestate on 30.12.1999 and it was held that it was self acquired property and not ancestral property. Thus, Harbir Singh had absolute ownership over the suit property and had the right to dispose of the same, as per his own wish. It

was noticed that Harbir Singh had died on 03.07.2007 and the suit had been filed on 12.08.2008 and there was a interim order for maintaining status quo in the suit filed bearing CS No.290 dated 15.10.2005, which was eventually dismissed in default on 12.12.2013 (Ex.P9).

7. The plaintiff's readiness and willingness stood proved in as much as he had appeared before the Sub-Registrar, Gurgaon on 31.10.2005 (30.10.2005 was a holiday) and the said presence had been duly proved by the witness PW-5 Mahender Singh Thakran, from the office of the Sub-Registrar, Gurgaon. It was noticed that late Harbir Singh did not turn up and the said conduct showed the plaintiff's readiness and willingness to perform his part of the agreement. It was also noticed that appellant No.1 had admitted that even after the death of Harbir Singh, plaintiff had approached them several times for execution of sale deed, after offering the balance sale consideration and there was an admission that he was ready and willing to execute the sale deed in favour of the plaintiff, if the plaintiff was ready to pay the current market rate.

8. Thus, the issues No.1 to 3 had been decided in favour of the plaintiff and the argument that the document was not admissible was rejected on the ground that there was an admission regarding the execution of the agreement as such which had been challenged itself by the major sons and the wife of late Harbir Singh. Similarly, qua the issue of minority it was noticed that on the date of filing of the written

statement on 25.08.2014 after six years of institution of the suit, the defendants No.4, 5 and 7, were already major, while noticing their dates of birth and rejecting the defence under issue No.4.

9. The Appellate Court has also upheld the order justifiably, keeping in view the background of the controversy as such.

10. In the opinion of this Court, it does not lie in the mouth of the appellants to submit that the plaintiff was not ready and willing to execute the sale deed and that there was no necessary proof that he had the financial capacity to pay the balance Rs.22 lakhs, keeping in view their conduct itself. It is to be noticed that the agreement was entered on 30.09.2005 with Harbir Singh. Immediately thereafter the suit was filed on 15.10.2005 as noticed, on the ground that there was no legal necessity as such to sell the land and the stay was obtained on 21.10.2005 in the form of status quo regarding alienation. The plaintiff as noticed had appeared before the Sub-Registrar on 31.10.2005 (Ex.P5) and had thus shown he was ready and willing as such to perform his agreement. Thereafter, on 23.11.2005 (Ex.P1) he had served legal notice upon Harbir Singh to come forth to execute the sale deed qua the suit property, in pursuance of the agreement. The defence taken by Harbir Singh by way of reply dated 29.11.2005 (Ex.P4) was regarding the pendency of the civil suit filed none else by his major sons and wife, the present appellants also and the grant of interim injunction and that he had become handicapped till the decision of the civil suit. The said request was followed up on 04.06.2008 (Ex.P10) by serving the legal notice, by the plaintiff after the

death of Harbir Singh and, thereafter, the suit was filed on 12.08.2008 before the period of limitation expired as such to file the suit.

11. Before the filing of the civil suit, since Harbir Singh had died on 03.07.2007 and, therefore, his minor children were sued through their mother. The suit filed by the appellants was got dismissed in default on 12.12.2013 (Ex.P9) and eventually the written statement was filed on 25.08.2014 on behalf of these appellants. By that time the minors had attained majority and their interest was being looked after by their mother before that and issues were framed on 04.09.2014. Therefore, they cannot now contend that they were minor and the suit could not be defended by their mother, who was also a party alongwith her sons.

12. It is the settled principle of law that the land can only be held to be ancestral if it had come down by three generations in the hands of Harbir Singh and the Appellate Court has rightly noticed that the challenge to the sale of the ancestral land on account of lack of legal necessity could be raised subsequently and not that the agreement as such could be challenged. The Courts below have also noticed that the conduct as such of the appellants is that they had admitted the fact that the plaintiff had asked them time and again to transfer the land, after receiving the balance sale consideration. The defence of the appellants was that the permission should have been sought from the Court regarding their other minor brothers and sister and that they would have executed the sale deed, had permission been taken from the Court. It was also put to appellant No.1 that whether they ever had asked for balance

sale consideration, which was not answered in the positive and the admission was noticed that they were ready to execute the sale deed, which was, however, to be done at the prevailing market rate.

13. Once the appellants themselves had got an order of status quo prior to the last day, in which suit even the plaintiff as such was a defendant, it cannot be expected of the plaintiff also to be carrying the balance sale consideration knowing that there is an order of status quo against him. Therefore, the argument as such which is raised that there was no such proof of specific averment that he should have been carrying the balance sale consideration by the time he had put in appearance on 31.10.2005 before the Sub-Registrar, Gurgaon, cannot be accepted in the facts and circumstances. In such circumstances, the argument as such which is raised by Mr. Vij that the respondent-plaintiff was not having the remaining sale consideration on the day he had put in appearance before the Sub-Registrar, is not liable to be accepted. The conduct of the parties is an important aspect which has to be kept in mind and appellants cannot take advantage of their own acts as they had ensured that the plaintiff was estopped from getting the sale deed executed, on account of the status-quo order against their father and husband.

14. Counsel for the caveator-plaintiff has also brought to the notice of the Court that under Section 3 of the Indian Stamp Act (as applicable to the State of Haryana) and as per Schedule 1A (5) (d) for an agreement or memorandum of an agreement, appropriate stamp of

Rs.2.25 was to be affixed at that point of time and, therefore, it cannot be said that the agreement which was stamped with Rs.4 value was under valued in any manner. Even otherwise the said agreement which was executed on 30.09.2005, had not been as such objected to when it was exhibited. The Apex Court in '**P.C. Purushothama Reddiar Vs. S. Perumal**', 1972 (1) SCC 9, has held that once the document is admitted and contents of the document are also admitted in evidence, the issue of inadmissibility in evidence cannot be acceptable, specially once the said document was marked without any objection.

15. Similarly, the Apex Court in '**Smt. Dayamathi Bai Vs. K.M. Shaffi**', 2004 AIR (SC) 4082, has held that objection had to be taken there and then, while relying upon judgments passed in '**Gopal Das Vs. Sri Thakurji**', AIR 1943, PC 83 and '**R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple**', (2003) 8 SCC 752. It is not the case of the appellants that an objection was raised regarding the admissibility of the document. In such circumstances, objection of stamping on account of insufficient stamp duty on the agreement is not made out.

16. In '**Himanshu Steel Ltd. Vs. M/s Dillip Construction Co.**', 1969 (1) SCC 597, the inadmissibility of the Award of the Arbitrator was sought to be raised before the Three Judges Bench of the Apex Court on the ground that the Award was unstamped and on that ground it was invalid and illegal. The District Judge had directed that the Award be

impounded and the Collector had levied stamp duty and penalty and the respondents had been called to pay the appropriate stamp duty on the Award. The same had been challenged on the ground it was not liable to be put in evidence and could not be acted upon. Keeping in view the provisions of Section 35 and 36 of the Indian Stamp Act, 1899, it was held the Stamp Act was a fiscal measure enacted to secure revenue for the State on certain classes of instruments, but not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent and the provisions of the Act were conceived in the interest of revenue. Resultantly, the appeal as such was dismissed. The same principle thus has to be kept in mind also.

17. The issue of minority of some of the appellants has already been dealt with above, showing that their interest was being looked after not only by their major brothers, but also by their mother by filing a separate suit and the said appellants had also filed their written statement when they had attained majority.

18. Keeping in view the above, no substantial question of law arises for admitting the appeal. The same is dismissed in limine.

10.03.2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No