

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.781 of 2022(O&M)
Date of decision: 05.04.2022

Ranjeet Kaur and another

...Appellants

Versus

Harmandeep Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Chetan Bansal, Advocate
for the appellants.**

ANIL KSHETARPAL, J (Oral)

While assailing the concurrent findings of fact arrived at by the courts below, defendant no.1 and 3 have filed the present regular second appeal. In substance, the plaintiffs are two minor children of defendant no.1(Sohna Singh son of Gurmail Singh), whereas plaintiff no.3-Jaswinder Kaur is former wife of Sohan Singh. Ranjit Kaur-defendant no.3 is the sister of Sohan Singh, whereas defendant no.2 is Sohan Singh's father.

The plaintiffs' suit for fixation of amount of maintenance and creating a charge of maintenance on the property of Sohan Singh with a relief of declaration that the alleged sale deed executed by Sohan Singh in favour of his sister is hit by the provision of Section 53 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the 1882 Act') has been decreed.

The trial Court as well as the First Appellate Court has held that plaintiff no1 and 2 are entitled to maintenance @ Rs.3000/- per month each whereas plaintiff no.3, the former wife of Sohan Singh, is entitled to

maintenance @ Rs.1500/- per month from the date of filing of the suit till the date of her re-marriage.

This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paper book.

The learned counsel representing the appellants contends that the payment of sale consideration has been proved and therefore, the sale deed could not be declared null and void. He further contends that it is the plaintiffs who had gone back from the compromise which was arrived at between the parties and therefore, the suit filed by the plaintiffs is liable to be dismissed. While challenging the judgments of the Courts below, he stated that there is no challenge to the sale deed dated 08.10.2012 and therefore, the Court cannot make out a new case for the plaintiffs.

The inter-se relationship between the parties is not in dispute. It is also not in dispute that on the complaint filed by the former wife of appellant no.2 under Sections 12,17,18,19,20,22, and 28 of the Protection of Women from Domestic Violence Act, 2005, the Court assessed the amount of interim maintenance @ Rs.5000/- payable by appellant no.2 to his former wife-Jaswinder kaur. A revision petition filed challenging the correctness of that order was dismissed by the Sessions Court, on 08.10.2010. Sohan Singh's petition under Section 482 Cr.P.C., before the High Court was also dismissed on 19.07.2012. Sohan Singh allegedly executed the sale deed in favour of his sister-Ranjit Kaur on 08.10.2012. Sohan Singh claims that he borrowed a sum of Rs.3,90,000/- from his sister in order to construct a separate house for the plaintiffs. Both the Courts on appreciation of evidence have found that such sale deed was only to ward off the claim for maintenance to be filed by plaintiff no.1 to 3. It has been held that no receipt

of the payment or detail of the bank account has been produced to prove that in fact she paid the amount to Sohan Singh. She has further failed to prove her financial capacity to pay the amount.

Both the Courts have held that the sale deed is hit by Section 53 of the 1882 Act. The Courts have relied upon the judgment passed by the Madras High Court in *Meenakshi Ammal vs. Ammini Ammal* AIR 1927 Madras 657. Wherein the Court held that once a demand for maintenance has been made by the wife or the children before the husband sold the property, then she falls within the definition of creditor within the meaning of Section 53 of the 1882 Act. The liability to pay for past maintenance is a legal liability and it falls within the scope of a debt. It is the responsibility of the father to maintain his children and his wife.

Keeping in view the relationship between the appellant no.1 and 2, it was incumbent on the appellants to lead evidence to prove that the transaction between them was genuine and the consideration amount equivalent to the market value was paid.

As regards the second argument that the plaintiffs went back from the compromise i.e. they did not abide by the compromise, there is no evidence to that effect. No doubt, there is some evidence to the effect that Sohan Singh raised some construction. However, that is not sufficient to hold that the plaintiffs had gone back from the settlement/compromise. In absence of evidence, both the courts have correctly held that Sohan Singh failed to prove his plea.

The last argument of the learned counsel representing the appellants is to the effect that the plaintiffs did not challenge the sale deed and therefore, the courts erred in setting aside the sale deed.

It may be noted here that the plaintiffs have sought a decree of declaration that the alleged mutation no.3781 based on alleged sale deed dated 08.10.2012 is hit by the provision of Section 53 of the 1882 Act and hence it is null and void and ineffective against the rights of the plaintiffs. The plaintiffs are not party to the alleged aforesaid sale deed. Hence, they were not required to pray for its annulment. They have already filed a suit for declaration that such sale is hit by Section 53 of the 1882 Act and therefore, not binding on their rights. Hence, the plaintiffs have already sought relief to which they were entitled to.

Keeping in view the aforesaid facts, the appellants have failed to make out a case for interference in exercise of appellate jurisdiction

Hence, the appeal is dismissed.

April 05, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No