

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-7220 of 2019(O&M)
Date of Order: 06.05.2022

Geeta Devi and another

..Petitioners

Versus

Mahesh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate, for the petitioners.
Mr. Rajesh Malik, Advocate, for the respondents.

ANIL KSHETARPAL, J(Oral)

The learned First Appellate Court, after noticing that the respondent no.1 was a minor on the day on which he was proceeded against ex-parte and the court failed to appoint a guardian ad litem in terms of Order 32 Rule 3 CPC, has set aside the ex-parte decree. The dispute is with regard to immovable property.

The learned counsel representing the petitioners contends that, in fact, defendants no.2 and 3 have used the shoulder of defendant no.1 to get the ex-parte decree set aside. He submits that there are two sale deeds in favour of defendant no.1, 2 and 3 and there is no justification for their non-appearance.

Per contra, the learned counsel representing the respondents submits that Mahesh (son of Sh. Ramesh) is proved to be a minor on the day on which the suit was instituted as well as on the day on which he was proceeded against ex-parte. He submits that without appointment of a guardian ad litem, the decree passed ex-parte is a nullity. He draws the attention of the Court to Order 32 Rule 3 CPC which mandates the Courts to

appoint a guardian in case the defendant-minor is not represented by a natural guardian.

The defect in passing the ex-parte decree goes to the root of the case. Such a defect is not curable except on setting aside of the decree itself. Since the sale deeds in favour of defendant no.1, 2 and 3 are common, therefore, the decree could not be set aside in part and has, rightly, been set aside against all of the defendants.

In view thereof, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 06, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No