

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

RSA-5701-2019 (O&M)
Date of decision : 20.09.2022

Om Parkash @ Satpal

... Appellant(s)

Versus

Topan Dass and Another

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Saurabh Bajaj, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

The present regular second appeal has been preferred against the judgments and decrees dated 30.03.2018 and 02.09.2019 passed by both the Courts below dismissing the suit of the plaintiff-appellant.

The brief facts relevant to the present *lis* are that the plaintiff-appellant challenged the sale deed bearing Vasika No.2363/1 dated 24.02.1987 whereby he and his father purportedly sold their land comprised in Khewat No.311, Khatoni No.558, Rect. No.150, Killa No.6 (7-11), new Khewat No.378/311, Khatoni No.593, Rect. No.150, Killa No.6 (7-11), situated in Village Sadarpur, Tehsil and District Karnal as per jamabandi for the year 1982-83 to the defendant-respondents. The challenge was on the ground that the plaintiff-appellant was a minor at the time of execution of the sale deed and that no permission was sought from the Court to sell his share. It was further pleaded that the father of the plaintiff-appellant hatched a conspiracy with the defendant-respondents and got the sale deed executed

knowing fully that the plaintiff-appellant was a minor and his father was not competent to execute the sale deed. The suit was contested by the defendant-respondents on the ground of limitation, maintainability, jurisdiction and valuation. On merits, it was denied that the plaintiff-appellant was a minor at the time of execution of the sale deed.

On the basis of the pleadings, the following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction, as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has suppressed the true and material facts from the court? OPD
4. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD
5. Whether the plaintiff has got no locus standi as well as cause of action to file and maintain the suit? OPD
6. Relief.

The Trial Court vide judgment and decree dated 30.03.2018 dismissed the suit holding that the plaintiff-appellant had failed to show that he was a minor at the time of execution of the sale deed. It was further held

that the suit was barred by limitation. Aggrieved by the said judgment and decree, an appeal was preferred which was also dismissed vide judgment and decree dated 02.09.2019 passed by the lower Appellate Court. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant would contend that the minority of the plaintiff-appellant stood duly proved by way of Ex.P2 which is a certificate issued by the school showing his date of birth as 21.05.1972 and since the sale deed was executed on 24.02.1987, therefore, it is apparent that the plaintiff-appellant was 14 years of age and hence, the sale deed could not have been executed without the permission of the Court. Learned counsel for the plaintiff-appellant has further contended that the suit was also dismissed on the ground of limitation, however, the contention is that there would be no limitation as the document under challenge was null and void.

Heard.

In the present case the plaintiff-appellant challenged the sale deed dated 24.02.1987 on the premise that he was a minor on the date the said sale deed was executed and the same could not have been executed without prior permission of the Court. It has been contended by learned counsel for the plaintiff-appellant that the date of birth of the plaintiff-appellant was 21.05.1972 as per his school certificate (Ex.P2). The only document to prove the date of birth of the plaintiff-appellant is a certificate alleged to have been issued by the school which has been written on a plain piece of paper and not even on the letter head of the school. Further, PW2

Surinder Malik, Head Teacher, Government Primary School, Sadarpur (Karnal) had stated that the document was not prepared by him. He further deposed that in the original register the name of the mother of Om Parkash had not been mentioned and the same had been mentioned in Ex.P2 on the asking of the plaintiff-appellant. He further deposed that the plaintiff-appellant had not been admitted in the school by him nor had he issued the certificate. There is no other document which has come on the record to show the date of birth of the plaintiff-appellant. A perusal of the said document (Ex.P2) reveals that the same has been written on a plain piece of paper and though it bears the signatures and stamp of the Head Master, however, none has come forward to identify the said signatures. Surinder Malik, Head Teacher, Government Primary School, Sadarpur, who appeared in the witness box as PW2, also did not identify the signatures. The argument of learned counsel for the plaintiff-appellant that by producing the said certificate in evidence the plaintiff-appellant had discharged his onus and that the onus had shifted on the defendant-respondents to prove otherwise, cannot be accepted inasmuch as the certificate cannot be relied upon since none has proved the signatures of the person who signed the said certificate. Further the said certificate has been written on a plain piece of paper and not on the letter head of the school and it's evidentiary value is extremely low.

The argument raised by learned counsel for the plaintiff-appellant that the suit has wrongly been dismissed being barred by limitation, also deserves to be rejected inasmuch as a perusal of the plaint

reveals that though it had been alleged that the plaintiff-appellant was 14 years of age at the time of execution of the sale deed, however, despite having turned 18 in the year 1991 the suit had been filed in the year 2012. There is not even an averment as to when the plaintiff-appellant came to know of the said sale deed. There is a simpliciter statement in para 4 of the plaint that the plaintiff-appellant on coming to know of the fraud played by the defendant-respondents upon the plaintiff-appellant, requested the defendant-respondents to get the sale deed declared illegal, null and void. As per Article 59 of the Limitation Act, 1963, the limitation to set aside an instrument or decree or for cancellation of the same is 03 years which is counted from the date of knowledge of the plaintiff-appellant. A perusal of the plaint, as noticed earlier, reveals that it is totally silent as to when the plaintiff-appellant came to know of the said alleged fraud.

In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present appeal. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.09.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO