

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1474 of 1990 (O&M)

Date of Order:13.02.2024

Jai Pal and another

.Appellants

Versus

Ram Avtar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Puneet Jindal, Sr. Advocate, with
Mr. Shashi Kumar, Advocate and
Mr. Arshnoor Singh, Advocate
for respondent no.2 to 6.

ANIL KSHETARPAL, J

1. In this regular second appeal, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the courts below while dismissing their suit for grant of decree of declaration that they along with proforma defendants are owners in possession of 1/4th share in the land comprised in khewat no.98, measuring 143 kanals and 13 marlas.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Sh. Dharampal, Sh. Shiv Lal, Sh.Jaipal and Sh. Mahabir, sons of Sh. Gopal jointly purchased a parcel of land from Sh. Bishamber Dayal alias Basasar Lal Mahajan vide registered sale deed dated 14.08.1978. Sh. Ram Avtar, defendant no.1, brother of Sh. Bishamber Dayal alias Basasar

Lal Mahajan filed a suit for pre-emption to pre-empt the sale deed dated

14.08.1978, against all the four brothers. Sh. Dharampal contested the suit, whereas remaining three brothers did not contest the suit, which was decreed on 01.05.1981. Thereafter, Sh. Jaipal and Sh. Mahabir filed first appeal on 28.05.1981, against the judgment and decree passed on 01.05.1981. During this time, Sh. Ram Avtar sold the property vide registered sale deed dated 13.06.1981 in favour of Sh. Sri Ram, defendant no.4. The appeal filed by Sh. Jaipal and Sh. Mahabir was dismissed in default on 16.09.1981. However, before dismissal of the appeal, Sh. Jaipal and Sh. Mahabir filed a fresh suit for grant of decree of declaration. In substance, the plaintiffs claim that they had not attained the age of majority and the decree dated 01.05.1981, passed without appointing their guardians is illegal.

4. The defendants contested the suit claiming that the plaintiffs were not minor. Both the courts also found that one of the elder brother Sh. Dharampal who has identical interest did contest the suit. The First Appellate Court also found that the plaintiffs have failed to prove that they had not attained the age of majority on the date the suit was filed.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with requisitioned record which is in digital form.

6. The learned counsel representing the appellants submits that both the courts have erred in dismissing their suit particularly when it is proved that the plaintiffs (appellants) herein had not attained the age of majority. He relies upon the matriculation certificate, Ex.P7, to prove the same.

7. On the other hand, the learned senior counsel representing the respondents submits that in fact the appellants are playing hide and seek

with the Court. In the first instance, three brothers, namely, Sh. Shiv Lal, Sh. Jaipal and Sh. Mahabir did not contest the suit. He submits that in the sale deed dated 14.08.1978, all the four brothers, namely, Sh. Dharampal, Sh. Shiv Lal, Sh. Jaipal and Sh. Mahabir, were not reflected minors. He further submits that on 04.07.1981, the plaintiffs also filed yet another suit for grant of decree of permanent injunction without stating that they are minor.

8. This court has considered the submissions of the learned counsel representing the parties.

9. It is evident that the interest of Sh. Dharampal who contested the suit was identical with his three other brothers, namely, Sh. Shiv Lal, Sh. Jaipal and Sh. Mahabir. It is also evident that the appellants did file an appeal which was ultimately dismissed for non-prosecution. The appellants elected their remedy, however, subsequently abandoned it. Similarly, on perusal of the sale deed dated 14.08.1978, it is evident that the plaintiffs were not reflected that they have not attained the age of majority. Sh. Dharampal also never disclosed this fact while contesting the previous suit. It was a common sale deed executed in favour of all the four brothers. Sh. Dharampal was one of the natural guardian. Even otherwise, as per the findings of fact arrived at by the First Appellate Court, the plaintiffs have failed to prove that they had not attained the age of majority on the date the suit of pre-emption was filed.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

11. Dismissed.

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

February 13, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO