

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1039-1992 (O&M)

Krishan and another

.....Appellants

Vs.

Ramesh and others

.....Respondents

Reserved On: 11.03.2024
Pronounced On: 04.04.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal and Mr. Karan Singla, Advocates
for the appellants.

Mr. Abhinav Sood and Mr. Satpal Bhasin, Advocates
for respondent No.1.

DEEPAK GUPTA, J.

This Regular Second Appeal has been filed by unsuccessful defendants against the concurrent judgments of the Courts below, whereby the suit filed by the plaintiffs for possession of the suit land was decreed by the Trial Court on 17.05.1990 and appeal against that judgment filed by the defendants was dismissed by the Appellate Court on 09.01.1992.

2. Trial Court record was called and the same has been perused. In order to avoid confusion, parties shall be referred as per their suits before the Trial Court.

3. Suit was filed by sole plaintiff Ramesh (*respondent N: 1 herein*) through his next friend, as he was minor at the time of filing of the suit. There

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was only one contesting defendant namely Karan Singh, who expired during pendency of the suit and was replaced by his widow and children (*appellants and respondent Nos.2 to 8 herein*). Defendant No.2 Smt. Prem Kaur (*respondent No.9 herein*) is the mother of minor plaintiff Ramesh.

4. Admittedly, plaintiff was owner of 41 Kanal 19 Marla of land situated in Revenue Estate of Village Parnala, Tehsil Bahadurgarh, District Jhajjar, as per Jamabandi for the year 1976-77, as detailed and described in para No.1 of the plaint. Defendant No.2 i.e. mother of the plaintiff was granted permission to sell the suit land in a petition filed under Section 8 of the Hindu Minority and Guardianship Act, 1956 vide order dated 22.04.1974, subject to the condition that sale price of the land will be deposited in some nationalized bank or post office in the name of the minor, which said minor will not be permitted to withdraw till attaining the age of majority. Instead of selling the suit land, defendant No.2 i.e. mother of the minor plaintiff, exchanged the suit land of the plaintiff, with 16 Kanal of land belonging to defendant No.1 Karan Singh. As per the exchange deed dated 20.05.1974, plaintiff through his mother got land comprised in Rectangle No.29, Khasra No.9 (8-0) and Khasra No.12 (8-0), in lieu of his 41 Kanal 19 Marla of the suit land.

5. By way of present suit, plaintiff challenged the exchange deed dated 20.05.1974 to be illegal, void and not binding on his rights, as defendant No.2 was not competent to give the suit land in exchange to defendant No.2, contrary to the order passed by the Guardian Court. Possession of the defendant over the suit land was alleged to be forcible and illegal. Plaintiff prayed for a decree of possession of the suit land and also a decree for recovery

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of mesne profit from Kharif 1978 onwards.

6. Defendant No.2, i.e., mother of the plaintiff filed written statement admitting the claim of plaintiff.

7. Suit was contested by defendant No.1 Karan Singh, who claimed the impugned exchange to be legal and valid and that the said exchange was for the benefit of the minor plaintiff. It was pleaded that at the time of exchange, suit land was not fit for cultivation and that plaintiff was not deriving any benefits therefrom. In additional pleas taken by the defendant, it was submitted that father of the plaintiff had earlier sold 48 Kanal of land, which included the suit land for an amount of ₹30,000/-. By filing a suit, plaintiff pre-empted the sale after paying sale price and other expenses amounting to ₹31,925/-. Out of the total land so pre-empted by the plaintiff, 7 Kanals was acquired by the State Government for construction of the drain, for which plaintiff received compensation. The remaining land in dispute was often sub-merged with the water and so, plaintiff exchanged the same with the defendant. Defendant submitted further that after getting the suit land, plaintiff mortgaged Killa No.19/20 and 11/2 to one Prabhu son of Puran for ₹11,000/-. It is defendant No.1, who after exchange, paid the amount of ₹11,000/- to the mortgagee. Besides ,plaintiff was not having any money for pre-empting the land and so, had obtained loan of ₹10,000/- from one Mange Ram. Suit for recovery filed by Mange Ram was decreed. Plaintiff later on carved out plots from Killa No.29/9 and sold the same through defendant No.1 for an amount of ₹34,000/-, out of which plaintiff paid decretal amount of ₹13,000/- to Mange Ram, whereas balance was used for construction of his house and for payment

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of other creditors. As the land received by the plaintiff in exchange had come within the limits of Municipal Committee, Bahadurgarh, so plaintiff through his mother also sold land of Killa No.29/12 for an amount of ₹40,000/-, though fictitiously, the amount of ₹20,000/- was inserted in the sale deed. Defendant pleaded further that after getting the suit land in exchange, he installed tube well and improved the same by spending ₹50,000/- and as the prices of the suit land considerably increased with the passage of time, so suit has been filed by the plaintiff out of greed. He prayed for dismissal of the suit.

8. In re-joinder, plaintiff denied to have ever mortgaged any land to any person and pleaded that he was not even competent to do so. He denied to have carved out any plots or to have sold the same to anybody or to have constructed any house or that he had to pay any debt to anybody. He further pleaded that he is not bound by any sale made by his mother, if there is any. He reiterated his prayer.

9. Following issues were framed for adjudication:-

1. Whether plaintiff is owner of the agricultural land as alleged in para No.1 of the plaint? OPP
2. Whether any order dated 22.4.74 was passed by learned Senior Sub Judge, Rohtak, as alleged. If so to what effect ? OPP
3. Whether exchange deed dated 20.5.74 regarding suit land is illegal, void and not binding on the rights of the plaintiff, as alleged? OPP
4. Whether defendant No.1 has obtained possession of the suit land forcibly and illegally as alleged. If so its effect? OPP
5. Whether the plaintiff is entitled to mesne profit as alleged? OPP
6. Whether any suit for pre-emption was filed by the plaintiff as alleged in additional plea no.1 in the written statement of defendant no.1. If so its effect?OPD(1).

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7. Whether land in dispute was inferior and no crop was grown on it as alleged. If so its effect?OPD

8. Whether land given in exchange came in the limit of Municipal Committee, Bahadurgarh, as alleged in additional plea no.6 of the written statement. If so its effect?OPD

9. Whether any fictitious sale deed was prepared as alleged in additional plea no.6 of the written statement. If so its effect?OPD

10. Whether defendants installed a tube well and improved the land received in exchange and spent the amount of Rs.50000/- as alleged? OPD

11. Whether the plaintiff derived any benefit out of the exchange as alleged?OPD.

12. Whether plaintiff is estopped from filing the present suit?OPD

13. Whether alleged guardian is not competent to file the present suit as alleged?OPD

14. Relief.

10. After taking evidence produced by parties on record and hearing both the sides, trial Court held under issue No.1 that plaintiff was owner of the suit land prior to its exchange. Under issue No.2, it was found that defendant No.2 was permitted only to sell the suit land vide order dated 22.04.1974 by learned Senior Sub-Judge, Rohtak. The finding on issue No.3 also went in favour of the plaintiff by holding that transaction of exchange made by defendant No.2 on behalf of minor was voidable and that plaintiff was entitled to the possession of the suit land. However, issue No.5 was decided against the plaintiff by holding that he was not entitled to any mesne profit. Under issue No.10, it was held that defendant No.2 had not spent any amount in improving the suit land. Consequent to the findings on all these material issues, suit was decreed for possession of the suit land but the claim of the plaintiff for

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recovery of mesne profit was declined.

11. In the appeal filed by defendant No.1 (through two of his sons), the Appellate Court affirmed the findings of the Trial Court and dismissed the appeal.

12. Two fold submissions have been made before this Court by learned senior advocate for the appellants, while assailing the judgments of the Courts below. It is contended that action of the mother of the plaintiff in exchanging the suit land was an act of good management for the benefit of minor and so, it was legal and valid. The second contention raised by learned counsel is that suit could not be decreed without restituting all the benefits derived by the plaintiff in pursuance of the exchange. To support this contention, learned counsel has relied upon “**P.V. Madhavi v. P.V. Balakrishnan**”, 2010 AIR (Kerala) 111 & “**Sri Chandra Prabhuji Jain Temple v. Harikrishna**” 1973 AIR (Supreme Court) 2565.

13. Refuting the aforesaid contentions, learned counsel for respondent No.1 submits that since the specific permission to the mother of the plaintiff was only to sell the suit land, so exchange is clearly illegal. It is then pointed out that there is neither any pleading nor any prayer nor any counter-claim on the part of the defendant seeking restitution and therefore, the authorities cited by Ld. counsel for the appellants are not applicable to the facts of this case. Still further, learned counsel points out towards the finding of fact as recorded by the Courts below to the effect that defendant failed to prove that plaintiff derived any benefit pursuant to the exchange. Prayer is accordingly made for dismissal of the appeal.

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14. I have considered submissions of both the sides and have perused the record.

15. It is not in dispute that by virtue of the order dated 22.04.1974 passed by learned Senior Sub-Judge, Rohtak in suit No.21 of 1974 titled 'Ramesh through his mother Smt. Prem Kaur v. General Public' (Copy Ex.P2), permission to sell the suit land was granted to the mother of the plaintiff subject to the specific condition that sale proceeds shall be deposited in respect of the land of the minor in some nationalized bank or post-office in the name of the minor, which shall not be permitted to be withdrawn till the minor comes of age.

16. In view of the aforesaid specific order, there can be no dispute in holding that exchange deed dated 20.05.1974 (copy Ex.P1) as executed by mother of the plaintiff on his behalf with defendant No.1 was illegal and void. The direction given by the Court vide order dated 22.4.1974 Ex.P2 was meant to ensure that neither the property nor the income derived therefrom could be utilized by anybody else except the true owner i.e. the minor plaintiff. In case of sale of the land, the money if deposited in the bank would have earned interest and thus, interests of minor, the owner of the land would have been protected. However, on exchange of the suit land, the said purpose was not achieved and thus, the exchange of land defeated the very object of the order dated 22.04.1974 (Ex.P2) passed by the Court.

17. Coming to the second issue as raised by learned senior counsel for the appellant regarding the restitution of the land by the plaintiff, which he allegedly got in exchange, it is important to notice that no such claim was ever

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raised by the defendant before the trial Court. Not only this, it has been found by the first Appellate Court on the basis of evidence on record that in fact, defendant failed to prove that plaintiff actually derived any benefit out of the exchange. In this regard, it will be apposite to reproduce the findings of the First Appellate Court, which read as under:-

“11. The controversy on which arguments are addressed before me is regarding the liability of the plaintiff to restore the benefit received by him in the transaction. Learned counsel for the appellants, has contended that the plaintiff can avoid the transaction after restoring the benefits received by him under the same. According to him, there must be restitution of the benefits received by the minor before the transaction is set aside. In this regard, he has referred me to a case reported as Srichandra Prabhuji Jain Temple and others Vs. Harikishan and another AIR 1973 SC 2565. This case is decided in view of the provisions of Section 30 of the Guardians and Wards Act 1980 and it is held that a disposal of immovable property made in contravention of section 28 or Section 29 is only voidable by virtue of section 30 and it is just that there must be restitution of the benefits received before the transaction is set aside. According to him, this authority applies to any transaction entered into by the guardian on behalf of the minor in contravention of section 8 of the Act.

12. Learned counsel for the respondent no.1 has contended that no benefit was received by the plaintiff under the transaction in question. According to him, whatever is shown to have come to the plaintiff was sold by defendant no.1 by carving out plots on the same. He has also contended that the defendant no.1 has not specifically claimed restitution of the land which is shown to be given to the plaintiff under the impugned exchange deed.

13. It is undisputable that land measuring 16 Kanals situated in the revenue estate of Parnala was given to the plaintiff in the impugned exchange for the suit land. The defendant no.1 has nowhere claimed its restitution before setting aside the transaction. The defendant no.1 has

admitted in para no.5 of the additional objections taken in his written statement that the land of Killa no.9 of rect no.29 was sold by the plaintiff through he himself. He has claimed in para no.6 of the said additional objections that the land of the other Killa bearing no.12 of rect no.29 was sold by the mother of the plaintiff. The defendant no.1 has not put on the record any such deed, whereby the mother of the plaintiff sold the land of Killa no.12 of rect. no.29. There are numerous sale deeds on the file starting from Ex.DW3/1 to Ex.DW11/1. These are sale deeds in respect of plots carved out in the land of Killa no.9 and 12. A number of witnesses have appeared in the evidence to prove these sale deeds. If the land of kills no.29/12 was sold by the mother of the plaintiff, then the defendant would have been able to put on record the said sale deeds or any other evidence to prove any such sale of Killa no.29/12 by the mother of the plaintiff.

14. The defendant no.1 has alleged that the plaintiff pre-empted sale of the suit land and other land and he had to pay the loans raised by him from different persons and also had to satisfy a money decree passed in favour of Mange Ram. The defendant no.1 has alleged that the land of Killa no.29/9 was sold by him for the plaintiff for Rs.34000/-, which was utilized for payment to the creditors and construction of house by the plaintiff. There is no such evidence on file worth belief that any such amount raised by defendant no.1 by sale of the sold land was used for the benefit of the plaintiff.

15. In these circumstances, the land received by the plaintiff in exchange is not with him and it is sold by defendant no.1 himself. Thus, the defendant no.1 cannot claim its restitution to him as a pre-condition for setting aside the transaction of exchange.”

18. The aforesaid finding as recorded by the First Appellate Court is a finding of fact based upon the evidence on record. This Court also finds on perusal of copies of the sale deeds Ex.DW3/1 to Ex.DW11/1 that none of these have been executed by the plaintiff through his mother. These sale deeds appear to have been executed by third party in respect of the plots carved out

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of Khasra No.29/9 or 29/12, though there is a reference of previous transactions. The contention of learned counsel for the appellants to the effect that mother of the plaintiff had appointed defendant No.1 as General Power of Attorney and then the plots were carved out and sold by the plaintiff through his mother by him (defendant N: 1) as GPA, is found to be not only beyond pleadings but also without any support from any evidence on record.

19. The legal proposition to the effect that in order to avoid a transaction, the benefit received must be restored before the transaction is set aside, as held in *Sri Chandra Prabhuji Jain Temple's case (supra)* and *P.V. Madhavi's case (supra)*, relied by counsel for the appellants cannot be disputed, these are not applicable to the facts of present case, as it has already been found that defendants did not lay any foundation to claim any restitution and more importantly, defendants- appellants failed to prove on record that plaintiff derived any benefit out of the transaction of exchange.

20. Consequent to the entire discussion as above, this Court finds no merit in the present appeal. As such, the same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

April 04, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No