

*RSA-1843-1989 (O&M)
and other connected cases*

132 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-1843-1989 (O&M)

Dalip Singh and others ...Respondents..

2. RSA-1844-1989 (O&M)

Umrao Singh (deceased) thr. His Lrs and others ...Respondents..

3. RSA-1845-1989 (O&M)

Ram Avtar and othersRespondents.

4. RSA-1945-1989 (O&M)

Umrao Singh (deceased) thr. his Lrs and othersRespondents.

5. RSA-1946-1989 (O&M)

Ajit SinghRespondent

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate,
for the appellant.

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HARKESH MANUJA, J. (Oral)

1. This common judgment of mine shall dispose of above mentioned five appeals as they all involve common question of law and facts, besides it all the appeals have been filed by appellant-Nirmal Kumar, challenging the different sale deeds, being null and void.

For convenience, the facts are being taken from RSA-1843-1989 (O&M).

2. By way of present appeal, challenge has been laid to the judgments and decrees dated 03.04.1987 and 27.03.1989, dismissing the suit for declaration and possession, filed at the instance of appellant-plaintiff.

3. Briefly stating, appellant -plaintiff filed a suit for declaration and possession qua land measuring 38 kanals & 03 marlas situated in the revenue estate of village Gumina, Tehsil Rewari, District Mohidergarh, while claiming that the same was alienated by his mother Savitri Devi in favour of respondent No.1-defendant No.1 vide registered sale deed dated 28.04.1972 when the appellant-plaintiff was minor with his date of birth as 11.05.1960. It was also pleaded that the appellant-plaintiff was also known as Nirmal Kumar @ Kirat Pal Singh (Kratpal). It was further pleaded that no permission as required under Section 8 of the Hindu Minority Guardianship Act, 1956 (for short, "1956 Act") was ever obtained from the competent court before effecting alienation qua the property owned by appellant-plaintiff(minor) besides the same been dealt with by the mother while his father was still alive again resulting into violation of Section 11 of 1956

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Act. A consequential challenge was also laid to the alienation made by respondent No.1-defendant No.1 in favour of respondents No.2 to 8 vide two subsequent sale deeds dated 24.02.1975 i.e. one by respondent No.1-defendant No.1 to respondents No.7 & 8/defendant No.7 & 8, and another sale deed dated 28.05.1976 by defendant No.1 in favour of defendants No.2 to 6; being illegal null and void and also not binding upon his rights. The delivery of vacant possession from respondent-defendant was also prayed for by the appellant-plaintiff.

4. In response, written statement was filed on behalf of respondents No.2 to 6/defendants No.2 to 6, wherein, the date of birth of the appellant-plaintiff being 11.05.1960 was specifically disputed besides even disputing- stating that appellant-plaintiff was never known as Kirat Pal Singh (Kratpal). It was also pleaded that respondents No.1 to 8/defendants No.1 to 8 were bonafide purchasers against valuable consideration and the suit filed at the instance of appellant-plaintiff was beyond limitation.

5. The trial Court vide judgment and decree dated 03.04.1987, dismissed the suit filed at the instance of appellant-plaintiff while holding that the sale deed dated 28.04.1972 executed by the mother of appellant-plaintiff in favour of respondents No.1-defendant No.1 was voidable document, the same having been assailed beyond a period of 3 years of attaining his age of majority by appellant-plaintiff, the suit was hit by limitation.

6. Aggrieved thereof, appellant-plaintiff filed first appeal, but the same also came to be dismissed vide judgment and decree dated 27.03.1989. Along with first appeal, appellant-plaintiff also filed an application under Order 41 Rule 27 CPC seeking permission to lead

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additional evidence in the form of producing his father as a witness besides relying upon a judgment dated 17.10.1987 passed in an appeal arising in case of “*Nirmal Kumar vs. Ramji Lal*” as well as for summoning and production of Admission and Withdrawal Register of Rashtriya School etc.. The said application was also dismissed by the first appellate Court.

7. Impugning the aforementioned judgments, learned Senior counsel representing the appellant submits that the Courts below went wrong while discarding the birth certificate (Ex. PW-5/A) which was produced and proved by appellant-plaintiff, wherein his date of birth was recorded as 11.05.1960. He also points out that there was no rebuttal to the said certificate from the side of respondents-defendants and the certificates of all his other siblings were also produced and proved on record as Ex.PW-5/B to Ex.PW-5/F and thus, there was no point in raising any kind of suspicion for discarding the certificate Ex.PW-5/A which recorded his date of birth as 11.05.1960.

Learned Senior counsel for the appellant also points out that appellant-plaintiff was also known as Kirat Pal Singh and this fact was established on record through evidence in the shape of deposition of his brother-Krishan Pal Singh (PW-1) and maternal uncle-Mahender Partap Singh (PW-2), which were wrongly ignored by the Courts below. No other argument has been addressed.

8. On the other hand, learned counsel for the respondents submits that upon proper appreciation of evidence available on record, a positive finding of fact was recorded by the Courts below and the appellate Court rightly disbelieved Ex.PW-5/A in the absence of the Chowkidar having

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been produced to prove the same besides relying upon the admission made by appellant-plaintiff himself in his own affidavit Ex.DW-10/D filed before the authorities under the Haryana Ceiling on Land Holdings Act, 1972 wherein, he admitted that as on 20.02.1978, his age was 19 years and thus, the suit was rightly dismissed being barred by limitation.

9. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellant.

10. For the determination of the present appeal, the short point professed on behalf of the parties before this Court is as to whether the suit filed at the instance of appellant-plaintiff on 01.04.1981, assailing the alienation made by his mother on 28.04.1972 was barred by limitation or not having been filed beyond three years of his attaining the age of majority.

11. In the given facts and pleadings besides the evidence available on record, in the humble opinion of this Court, the date of birth of appellant-plaintiff cannot be ascertained as 11.05.1960. In this regard, the only evidence produced is the certificate Ex.PW-5/A, which in fact pertains to one Kirat Pal Singh and that too has not been proved either by the Chokidar of the village or the authority which prepared it or maintained it in its proper custody. Though, the case set-up is that appellant-plaintiff- Nirmal Kumar was earlier known as Kirat Pal Singh, however, besides oral deposition in the shape of PW-1 and PW-2, who happened to be the brother and maternal uncle of appellant-plaintiff, no other document to this effect has been produced on record. Moreover, the deposition of PW-1 who happens to be the brother of appellant-plaintiff cannot be of much help in this regard as he

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himself was of 5-6 years of age when the name of appellant-plaintiff was changed from Kirat Pal Singh (Kratpal) to Nirmal Kumar. Even the parents of appellant-plaintiff have not deposed in support of the aforesaid that he was ever known as Kirat Pal Singh (Kratpal) and later changed to Nirmal Kumar.

12. Besides it, while appearing as PW-5, appellant-plaintiff specifically deposed that he was having matriculation certificate, wherein his date of birth was recorded as 11.05.1960, however, no such document was ever produced on record and the Courts were well within their right to draw adverse inference against him for not having produced the best available documentary evidence to prove his date of birth as 11.05.1960. Thus, no illegality can be found in the findings recorded by the Courts below that the appellant-plaintiff failed to prove his date of birth as 11.05.1960, especially, when the burden to prove the fact that the date of birth of appellant-plaintiff was 11.05.1960, was upon him.

13. In addition, positive evidence in the shape of an affidavit of appellant-plaintiff dated 20.02.1978 as Ex. DW-10/D was proved on record from the side of respondents-defendants, wherein appellant-plaintiff admitted himself to be of 19 years of age, thus, at best even if the appellant-plaintiff was considered to have become major on the date of filing of the affidavit dated 20.02.1978, the suit could have been filed within 3 years thereafter i.e. 19.02.1981 and in the present facts, the suit having been filed on 01.04.1981 was clearly barred by limitation. The factum of majority of appellant-plaintiff as admitted in the affidavit dated 20.02.1978 (Ex.DW-10/D) further finds corroboration from the following three sale deeds

Sr. No.	Exhibited documents	Date of sale deed
1	Ex.DW1/3	03.06.1977
2	Ex.DW1/4	08.06.1977
3	Ex.DW3/1	12.09.1977

14. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, all the above mentioned appeals being devoid of merits are thus **dismissed**.

Pending application, if any, shall also stands disposed of.

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No