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

RSA-1894-1991 (O&M)

Date of decision: 16.10.2024

Raj Kishan and another

...Appellants

Versus

Chauhal Gir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. G.S. Jaswal, Advocate for the appellants.

Mr. Pritam Singh Saini, Advocate and
Ms. Parul Saini, Advocate for the respondents.

VIKAS BAHL, J. (ORAL)

1. Defendant Nos.2 and 3 have filed the present Regular Second Appeal under Section 41 of the Punjab Courts Act, 1918, in which challenge is to the judgment dated 30.05.1991 passed by the First Appellate Court vide which the appeal filed by the respondents-plaintiffs against the judgment and decree dated 25.07.1987 had been partly allowed and the plaintiffs namely Chauhal Gir (respondent No.1) and Rishi Pal Gir (respondent No.2) have been granted the relief of possession with respect to 2/3rd share of the suit property measuring 1 bigha 9 biswas. The suit of the plaintiff-Satpal Gir for 1/3rd possession of the suit land had however been dismissed. No cross-appeal has been filed



on behalf of the plaintiffs.

2. Brief facts of the present case are that the three plaintiffs i.e. Satpal Gir, who was a major, Chauhal Gir and Rishi Pal Gir who were minors had filed a suit for possession of land measuring 1 bigha 9 biswas out of Khasra No.92, khewat No.130 situated in village Garhi Gosain, as per the jamabandi for the year 1979-80 on the averments that their father defendant No.1-Dharamgir was owner of land measuring 2 bighas 13 biswas comprised in Khasra No.92 Khewat No.130 in village Garhi Gosain and out of the said area, he had sold 1 bigha 9 biswas to Gian Chand, Kehar Singh of Village Sukhdaspur in the year 1976 and the said sale was pre-empted by the plaintiffs who had got a decree dated 03.10.1978 in their favour. It was further averred that defendant No.1 was left with an area of 1 bigha 4 biswas in the said Khasra No.92 but however, the said defendant No.1 on 23.10.1978 had sold the entire field to Sh. Bhanu Mal of Mustafabad and the said sale deed was mutated in the revenue records on 21.04.1979 and after the death of Bhanu Mal, Sh. Om Parkash, who was his successor, had also sold the entire land to defendant Nos.2 and 3 (present appellants) on 12.12.1984 by virtue of registered sale deed and that defendant Nos.2 and 3 were claiming themselves to be owners of the entire land.

3. It was averred in the plaint that defendant Nos.2 and 3 were asked to acknowledge the plaintiffs title to the extent of 1 bigha 9 biswas and put them in possession but the said defendants did not agree. It would be relevant to note that no declaration for setting aside the sale deed dated



23.10.1978 as well as the sale deed dated 12.12.1984 in favour of the present appellants/defendant Nos.2 and 3 was sought in the said suit and a simplicitor suit for possession was filed.

4. A written statement was filed on behalf of the defendant Nos.2 and 3 (present appellants) and in the said written statement, preliminary objection was taken to the effect that the suit was hopelessly time barred and that the plaintiffs had no *locus standi* to file the suit and other material averments in the plaint were denied. It was specifically stated that the defendant Nos.2 and 3 had become owners of the land in question by virtue of the registered sale deed dated 12.12.1984 and that the plaintiffs had no right to request the defendants to hand over the possession of the suit land. It was further averred that defendant Nos.2 and 3 were *bona fide* purchasers, who had purchased the property in good faith through a registered sale deed, for a valuable consideration of Rs.10,000/- and as such, the sale in favour of the answering defendants was protected under the Transfer of Property Act. An objection with respect to non-joinder of necessary parties was also raised. A replication was filed by the plaintiffs to the said written statement filed by defendant Nos.2 and 3 and from a bare perusal of the said replication, it is apparent that no specific challenge to the abovesaid sale deeds dated 23.10.1978 and 12.12.1984 was made nor any declaration regarding the same was sought.

5. The trial Court vide judgment and decree dated 25.07.1987 dismissed the suit of the plaintiffs. Aggrieved against the said judgment



and decree, the plaintiffs had filed an appeal and the First Appellate Court vide judgment and decree dated 30.05.1991 had partly allowed the appeal and decreed the suit of two plaintiffs i.e. Chauhal Gir and Rishipal Gir with respect to 2/3rd of the suit land measuring 1 bigha and 9 biswas whereas had dismissed the appeal filed by Satpal Gir and thus, the suit qua the said Satpal Gir with respect to 1/3rd share was dismissed. A perusal of the judgment of the First Appellate Court would show that it was stated in paragraph 10 of the judgment that one of the issues which arose for consideration in the case was as to whether the sale made by the father of the plaintiffs in favour of Bhanu Mal in the year 1978 was a void sale and was thus, a nullity or was voidable at the instance of the plaintiffs. It was observed that under the Hindu Minority and Guardianship Act, 1956 a father is the natural guardian of a person and the sale of the suit land by the father of the plaintiffs in favour of Bhanu Mal would be deemed to be voidable and would not be void/nullity. The appellants in the present Regular Second Appeal have relied upon the said finding of the First Appellate Court and the said finding is not under challenge.

6. In paragraph 11 of the judgment of the First Appellate Court, it was observed that the sale which was a voidable sale, can be avoided by the minor if he brings out a suit to set aside the sale within a period of 3 years after attaining majority but in case, he does not challenge the same within the said period, then the sale becomes absolute and binding upon the minor. Further in paragraph 12 of the judgment, it was observed



that since the suit for possession had been filed in February, 1985 whereas Satpal Gir in view of the provisions of Article 60 of the Limitation Act, had to file the same within a period of 3 years from the date of attaining the majority, which he had attained somewhere in November 1980 and thus, the suit qua Satpal was held to be barred by limitation and accordingly, the suit with respect to Satpal Gir was dismissed. The present appellants are also relying upon the said finding and it would be relevant to note that there is no cross appeal filed by the plaintiffs to challenge the said finding.

7. With respect to the rights of plaintiff Nos.2 and 3 i.e. Chauhal Gir and Rishi Pal Gir, it was observed that since, the suit had been filed before attaining the majority, thus, the same was within limitation and accordingly, their suit was decreed. In paragraph 13 of the judgment of the First Appellate Court, the objection raised by the present appellants/defendant Nos.2 and 3 with respect to the maintainability of the suit on the ground that no relief of declaring the sale deeds dated 23.10.1978 or 12.12.1984 to be illegal, null and void, had been prayed in the suit and thus, the suit was required to be dismissed on the said ground alone, was noticed by the First Appellate Court and the said objection was rejected by observing that once the suit for possession had been filed, then the challenge to the sale deed shall be deemed to be implicit in the said suit and for the said purpose, reliance was placed upon the judgment of the Division Bench of this Court in the case of **Pran Nath and others Vs. Bal Kishan and others** reported as **1959 PLR 394**. In view of the



abovesaid facts and circumstances, the appeal of the plaintiffs was partly allowed. It is the said judgment which has been challenged in the present Regular Second appeal.

8. Learned counsel for the appellants has submitted that the present Regular Second Appeal deserves to be allowed on a very short point inasmuch as a perusal of the plaint would show that no challenge has been laid by the plaintiffs to the sale deed dated 23.10.1978 executed by their father in favour of Bhanu Mal and also to the sale deed dated 12.12.1984 executed by the successor-in-interest of the said Bhanu Mal in favour of defendant Nos.2 and 3 i.e. the present appellants. Learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in case titled as **Murugan and others Vs. Kesava Gounder (Dead) through LRs and others** reported as **2019(20) SCC 633** in support of his arguments to contend that the sale deeds are required to be specifically challenged and in case, the same are not challenged and no declaration qua the same is sought, then the suit filed by the plaintiffs deserves to be dismissed on the said ground alone. It is further submitted that the present appellants are *bona fide* purchasers of the property in question and in a dispute between *bona fide* purchasers and a person seeking to exercise the right of pre-emption, the balance should always tilt in favour of the bona fide purchaser as a right of preemption, moreso, that of a son has been repeatedly held to be archaic. It is argued that the findings with respect to the sale being voidable and not void and also the fact that the minor sons were required to challenge the same within a



period of 3 years of their attaining the majority have been given in favour of the present appellants/defendant Nos.2 and 3 by the First Appellate Court and no cross appeal on the said aspect has been filed. It is submitted that on the said short ground alone, the present appeal deserves to be allowed and the suit of the plaintiffs deserves to be dismissed.

9. Learned counsel for the respondents, on the other hand, has submitted that once the plaintiffs had filed a suit for possession of the land measuring 1 bigha 9 biswas and in the said suit, reference was made to all the facts including the fact that two sale deeds were executed by their father then in such a situation, challenge to the said sale deeds is implicit and there was no need for the plaintiffs to specifically challenge the said sale deeds. Learned counsel for the respondents has submitted that the First Appellate Court has rightly relied upon the judgment of the Division Bench of this Court in the case of ***Pran Nath and others*** (Supra) with respect to the said aspect and it is prayed that the appeal filed by the present appellants be dismissed.

10. This Court has heard learned counsel for the parties and has perused the paper book as well as the record of the trial Court.

11. The substantial question which arises for consideration in the present appeal is as follows:-

“Whether the simplicitor suit for possession of land filed by the plaintiffs without seeking any declaration with respect to the sale deeds dated 23.10.1978 and 12.12.1984 could be decreed and the possession could be ordered to be delivered to the plaintiffs without setting aside the said sale deeds?”



12. The abovesaid substantial question which arises for consideration in the instant case is no longer res integra and is squarely answered by the judgment of the Hon'ble Supreme Court in the case of ***Murugan and others*** (Supra). In the said case, the Hon'ble Supreme Court had noted three issues which arose for consideration and issue No.2 in the said case was as to "Whether without praying for setting aside the sale deeds, the suit for declaration and possession was maintainable or not"?. After considering all the aspects and law on the point, the Hon'ble Supreme Court observed that the alienations, which were voidable, at the instance of the minor or on his behalf, were required to be set aside before relief for possession could be claimed by the plaintiffs and a suit filed on behalf of the plaintiffs without seeking a prayer for setting aside the said sale deeds was, thus, not properly framed and could not have been decreed. In the abovesaid case also, the case set up by the plaintiffs therein was that one Balaraman had no authority to execute the sale deed on behalf of his minor son. One of the pleas raised to oppose the said suit by the defendants therein was to the effect that the plaintiffs could not file a suit for declaration without praying for setting aside the sale deeds and in view of the abovesaid facts, the issue as has been noticed hereinabove was framed by the Hon'ble Supreme Court and after considering the law, the said issue was decided in favour of the defendants therein.

13. In the abovesaid case, the Hon'ble Supreme Court had also considered the provisions of Article 60 of the Limitation Act which provided that a period of three years for setting aside the transfer of



property made by the guardian of a ward, was to start from the day the ward attains majority. Even the provisions of Hindu Minority and Guardianship Act, 1956 more so Section 8(3) which provides that any disposal of immovable property by a natural guardian, in contravention of subsection (1) or sub-section (2) of the said Act was voidable at the instance of the minor or any person claiming under him, were also considered and it was observed that in case the transfer of immoveable property is made by the natural guardian then in such a situation, the same was voidable at the instance of the minor and in order to avoid the same, the minor was required to specifically seek declaration for setting aside the said sale deeds within a period of three years from the date of his attaining majority. Relevant portion of the judgment passed by the Hon'ble Supreme Court in the case of ***Murugan and others*** (Supra) is reproduced hereinbelow:-

“1 to 5 xxx xxx

6. From the submissions of the learned counsel for the parties and pleadings on record, following are the issues, which arise for consideration in this appeal:-

- 6.1 (i) Whether the suit filed by the plaintiffs-appellants was barred by limitation?*
- 6.2 (ii) Whether without praying for setting aside the sale deeds executed by Balaraman, the suit for declaration and possession was maintainable?*
- 6.3 (iii) Whether the plaintiffs can successfully contend that by execution of release deed dated 24.03.1986 by Lakshmi Ammal, sale deeds executed by Balaraman were successfully repudiated?*



7 to 12. xxx xxx

Issue No.2

13. In the present case, there is no dispute that sale deeds executed by Balaraman on behalf of himself and his minor son Palanivel were executed without obtaining permission of the Court. **Section 8 of the Hindu Minority & Guardianship Act, 1956, which is relevant is as follows:-**

8. Powers of natural guardian.- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of subsection (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) **The Guardians and Wards Act, 1890** (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects



as if it were an application for obtaining the permission of the court under [section 29](#) of that Act, and in particular-

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof.

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of [section 31](#) of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "Court" means the city civil court or a district court or a court empowered under [section 4A](#) of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate."

14 to 19. xxx xxx

20. The alienations, which were voidable, at the instance of minor or on his behalf were required to be set aside before relief for possession can be claimed by the plaintiffs. Suit filed on behalf of the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed.

21. to 27. xxx xxx

28. This Court time and again held that setting aside of a sale which is voidable under [Section 8\(3\)](#) is necessary for avoiding a



registered sale deed.....We in the present case are concerned with disposal of immovable property by natural guardian of minor by a registered sale deed, hence, we are confining our consideration and discussion only with respect to transfer of immovable property by a registered deed by a natural guardian of minor.

29. [The Limitation Act, 1963](#) has been enacted by the Parliament after the enactment of [Hindu Minority and Guardianship Act, 1956](#). [Article 60](#) of the [Limitation Act, 1963](#) which provides for limitation “suits relating to decrees and instruments”. [The Limitation Act](#) contemplates suit to set aside a transfer of property made by the guardian of a ward for which limitation is contemplated as three years. [Article 60](#) of the [Limitation Act](#) although provides for a limitation of a suit but also clearly indicates that to set aside a transfer of property made by the guardian of a ward a suit is contemplated.

30. to 34 xxx xxx

*35. We are, thus, of the considered opinion that in the present case it was necessary for the person claiming through minor to bring an action within a period of three years from the date of the death of the minor to get sale deed executed by Balaraman set aside. **We, thus, conclude that the sale deeds executed by Balaraman were not repudiated or avoided within the period of limitation as prescribed by law.** Issue No.3 is answered accordingly.*

36. In view of the foregoing discussions, we do not find any merit in this appeal. The appeal is dismissed accordingly.”

14. In the present case, it is not in dispute that the plaintiffs had filed a simplicitor suit for possession and no declaration with respect to the sale deeds dated 23.10.1978 and 12.12.1984 has been sought. It is also not in dispute that the first sale deed dated 23.10.1978 was entered



into by the father of the plaintiffs, who was their natural guardian and thus, the sale made by the father was at best voidable at the instance of the plaintiffs and was neither void nor a nullity and was thus, required to be specifically challenged. The First Appellate Court had found that the sale was made by the father who was their natural guardian and had further observed that the said sale was only voidable and not a nullity and the said finding in favour of the present appellants/defendant Nos.2 and 3 is not the subject matter of challenge in the instant lis nor has been shown to be perverse or illegal. The finding of the First Appellate Court to the effect that there was no requirement to seek relief of declaration with respect to the sale of the suit land by the father of the plaintiffs in favour of Bhanu Mal in the year 1978 and also to the subsequent sale in favour of defendant Nos.2 and 3 by the successor of the said Bhanu Mal in the year 1984 is against the law laid down by the Hon'ble Supreme Court in the case of ***Murugan and others*** (Supra) and thus, deserves to be set aside. On the said ground alone, the judgment of the First Appellate Court dated 30.05.1991 deserves to be set aside and the suit filed by the plaintiffs deserves to be dismissed in toto. It would be relevant to note that defendant Nos.2 and 3 i.e, the present appellants are bona fide purchasers of the property in question and had purchased the same in the year 1984 after paying valuable consideration of Rs.10,000/- and had purchased it from the successor-in-interest of Bhanu Mal who had purchased the property from the father of the plaintiffs in the year 1978.

On the other hand, the plaintiffs are claiming their rights on the basis of



the right to pre-emption being sons of the vendor. In a dispute between the bona fide purchasers and a person seeking the right to get the sale deed set aside by exercising the right of pre-emption, the Court would always lean in favour of the bona fide purchasers and thus, both in law as well as on equity, the suit filed by the plaintiffs deserves to be dismissed in toto and the sale deed in favour of the defendant Nos.2 and 3 deserves to be upheld.

15. The substantial question of law as framed in para 11 of this judgment is thus, answered in favour of defendant Nos.2 and 3 and against the plaintiffs and it is held that a simplicitor suit for possession of land filed by the plaintiffs without seeking any declaration with respect to the sale deeds dated 23.10.1978 and 12.12.1984 is not maintainable and could not be decreed and the possession of the suit land could not be ordered to be delivered to the plaintiffs without setting aside the said sale deeds and accordingly, the present Regular Second Appeal filed by defendant Nos.2 and 3 is allowed and the judgment of the First Appellate Court dated 30.05.1991 is set aside and the suit filed by the plaintiffs is dismissed in toto.

16. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

16.10.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No