

2024:PHHC:094647



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1859-2024 (O&M)
Date of Decision: 24.07.2024

PARVEEN AND ANOTHER

.... APPELLANTS

Vs.

KANIKA AND ANOTHER

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present:- Mr. Shubham Sagar, Advocate, for the appellants.

DEEPAK GUPTA, J.

Civil Suit No.459-2019 [CNR No. HRPPA0-000586-2019] filed by the plaintiffs (*respondents herein*) for possession with consequential relief of permanent injunction in respect of the property in dispute, was decreed by trial court on 18.01.2024. Civil Appeal No.64 of 2024 [CNR No. HRPP01-001340-2024] filed by the defendants (*appellants herein*) was dismissed by Id. Additional District Judge, Panipat on 16.04.2024. Against the concurrent findings of the Courts below, defendants have approached this Court.

2.1 Parties are closely related to each other, inasmuch as one of the plaintiffs Pardeep and one of the defendants Parveen are real brothers. Plaintiff No.1-Kanika is daughter of Pardeep, whereas defendant No.1- Sweety is the wife of Parveen. Plaintiffs sought possession of the suit property by pleading that plaintiff No.1-Kanika is the owner of the same by virtue of registered sale deed dated 24.03.2004 executed by Smt. Bhateri Devi. The said suit property, which is a house, was given on request to the defendants being their near relatives till the plaintiffs' shift from their rental accommodation at Delhi to Samalkha. Later on, defendants started claiming to be owner in possession of the suit property.

2.2 The stand of the defendants was that in an oral family settlement of 2005, plaintiff No.2-Pardeep had relinquished his rights regarding suit property in favour of defendant No.1-Parveen and at that time an amount of ₹1 lakh was given to him. Because of the close relationship, no formal writing was done. Subsequently, plaintiff No.2-Pardeep had executed an agreement dated 25.09.2017 (Ex.D1).

2.3 Necessary issues were framed and after taking evidence produced

by the parties, suit was decreed. As already noticed that the findings of the trial Court have been affirmed by the First Appellate Court. Both the Courts below have reached to the conclusion that plaintiff No.1-Kanika is the owner of the suit property by virtue of sale deed dated 24.03.2004 and that defendants cannot claim any right on the basis of the agreement dated 25.09.2017.

3. The only issue raised before this Court by ld. counsel for the appellants-defendants is that at the time of execution of the sale deed dated 23.04.2004, plaintiff No.1-Kanika was minor and therefore, no sale deed could have been executed in her favour.

4. Ld. counsel has referred to a judgment rendered by Hon'ble Supreme Court in *SLP(C) No.23655 of 2019* titled as **Krishnaveni Vs. M.A. Shagul Hameed and another**, decided on 15.02.2024, so as to contend that an agreement with a minor was not enforceable, even if it was for his benefit.

5. In the abovesaid judgment, Hon'ble Supreme Court has referred to a case of **Mathai Mathia Vs. Joseph Mary alias Marykutty Joseph**, (2015) 5 SCC 622, wherein it had been observed as under: -

“18. ... Many courts have held that a minor can be a mortgagee as it is transfer of property in the interest of the minor. We feel that this is an erroneous application of the law keeping in mind the decision of the Privy Council in **Mohori Bibee case [Mohori Bibee v. Dharmodas Ghose, (1902-03) 30 IA 114 : ILR (1903) 30 Cal 539]**. 19. As per the Contract Act, 1872 it is clearly stated that for an agreement to become a contract, the parties must be competent to contract, wherein age of majority is a condition for competency. A deed of mortgage is a contract and we cannot hold that a mortgage in the name of a minor is valid, simply because it is in the interest of the minor unless she is represented by her natural guardian or guardian appointed by the court. The law cannot be read differently for a minor who is a mortgagor and a minor who is a mortgagee as there are rights and liabilities in respect of the immovable property would flow out of such a contract on both of them. Therefore, this Court has to hold that the mortgage deed, Ext. A-1 is void ab initio in law and the appellant cannot claim any rights under it. Accordingly, the first part of first point is answered against the appellant.”

6. On the basis of the aforesaid observations of Hon'ble Supreme Court, it is contended by ld. counsel that even if the sale deed dated 23.04.2004 was executed in favour of minor Kanika, the same is a void document.

7. I am afraid that the said contention is without any merit. A complete sale cannot be compared with an agreement of mortgage or lease or agreement to sell. As has been observed by the First Appellate Court that sale deed dated 23.04.2004, in favour of plaintiff No.1-Kanika, was duly proved on record. It was concluded that sale was executed in favour of Kanika. Nothing was left to be enforced in future on the part of the buyer (minor) and as such, the cited authority is not applicable to the facts and circumstances of the present case.

8. To a pointed query raised by this Court, *as to whether any permission is required to purchase immoveable property in the name of a minor, just like such a permission of the Guardian Court is required to sell the property of a minor*, ld. counsel for the appellants fairly conceded that no such permission of the Guardian Court was required so as to purchase the immoveable property in the name of minor.
9. In view of the aforesaid facts and circumstances, this Court does not find any reason to interfere in the well reasoned concurrent findings of facts as recorded by the Courts below. No substantial question of law is found to be involved.
10. As such, present appeal is hereby dismissed.

24.07.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No