

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.5204 of 2018 (O&M)
Date of Decision : 10.04.2024

Bela Singh

....Appellant

VERSUS

Jaswant Kaur

....Respondent

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Arora, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-14262-C-2018

This is an application for condonation of delay of 03 days in re-filing the present appeal.

For the reasons stated in the application, the same is allowed.
The delay of 03 days in re-filing the present appeal is condoned.

CM stands disposed off.

RSA-5204-2018 (O&M)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees dated 02.09.2016 and 20.03.2018 passed by the Trial Court and the First Appellate Court, respectively.
2. The brief facts relevant to the present case are that the plaintiff-appellant filed a suit for mandatory injunction for directing the defendant-respondent to obtain Guardianship Certificate qua her minor son, namely, Angrej Singh, from the Court of competent jurisdiction and to execute the

sale deed in favour of the plaintiff-appellant as per the terms and conditions of the agreement to sell dated 22.09.2009 alleged to have been executed by the defendant-respondent in favour of the plaintiff-appellant for a total sale consideration of Rs.10,25,000/- per acre having received Rs.3,00,000/- as earnest money. The land involved in the present case is 09 kanals 09 marlas, which is standing in the name of the son of the defendant-respondent, namely, Angrej Singh. It was averred that the original agreement had been lost on 04.11.2010 and a *rapat roznamcha* was also recorded qua the same on 08.11.2010. It was further the case set-up that the defendant-respondent had agreed to obtain the requisite certificate from the Guardianship Court on or before 25.03.2010 and after obtaining the certificate had settled to sell the land. Since the certificate had not been obtained, the sale deed could not be executed and the present suit was filed. Upon notice the defendant-respondent appeared and filed her written statement taking preliminary objection of *locus standi* and concealment of material facts from the Court. On merits it was stated that the plaintiff-appellant had hatched a conspiracy against the family of the defendant-respondent by obtaining the thumb impression of the defendant-respondent and forged the agreement to sell. It was further the stand taken that the defendant-respondent was neither the owner nor competent to enter into an agreement regarding the property. It was further the stand taken that the property belonged exclusively to the minor son, who was not even impleaded as a party. Even the receipt of earnest money was denied. It was further the case that FIR No.259 dated 13.11.2010 had been registered under Sections 420, 467 and 468 IPC against the plaintiff-appellant for the fraud committed by him by forging the

agreement to sell dated 22.09.2009. Replication was not filed by the plaintiff-appellant.

3. On the basis of pleadings of the parties the following issues were framed :

- (1) Whether the plaintiff has entered into an agreement to sell dated 22.09.2009 with defendant for the sale of suit land for a sale consideration of Rs.10,25,000/- and paid Rs.3,00,000/- as advance money ? OPP
- (2) Whether the plaintiff has been ready and willing and is still ready and willing to perform his part of agreement to sell in question ? OPP
- (3) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ? OPP
- (4) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
- (5) Whether defendant can be directed to get permission for sale of suit property from the guardian court to sell the land in question which is in the name of minor son of defendant ? OPP
- (6) Whether the suit of the plaintiff is legally maintainable in the present form ? OPP
- (7) Whether the agreement to sell is bogus document if so its effect on the suit land ? OPD
- (8) Whether the plaintiff has no locus-standi to file the present suit ? OPD

(9) What facts have been suppressed by the plaintiff and whether those facts are material for just decision of the suit ? OPD

(10) Who are necessary parties and who are not necessary party to the suit and how the suit is bad for non-joinder of necessary party and how the suit is bad for mis-joinder of parties ? OPD

(11) Whether the suit is an abuse of the process of law ? OPD

(12) Relief.

4. The Trial Court dismissed the suit vide judgment and decree dated 02.09.2016. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which was also dismissed vide judgment and decree dated 20.03.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the defendant-respondent failed to get the requisite certificate from the Guardianship Court and that she had infact filed a petition under Section 8 of the Hindu Minority and Guardianship Act, 1956 which was later withdrawn by her. Learned counsel for the plaintiff-appellant would further contend that the defendant-respondent herself had stepped into the witness-box and was partially cross-examined and thereafter gave a power of attorney in favour of her husband. In her partial cross-examination she admitted having filed the petition under Section 8 of the Hindu Minority and Guardianship Act, 1956, however, her husband denied the same. It is argued that the fact that a petition under Section 8 of the Hindu Minority and Guardianship Act, 1956 was filed by the defendant-appellant proved that she had entered into the

agreement to sell with the plaintiff-appellant and thus the suit ought to have been decreed.

6. Heard.

7. In the present case learned counsel for the plaintiff-appellant has not been able to convince this Court that the defendant-respondent, at the first instance, had the right to enter into an agreement to sell qua the property which was exclusively owned by her minor son without there being any permission from the concerned Court. Both the Courts have concurrently held and it is an admitted fact that the property was owned by the minor son of the defendant-respondent. Further still, it has concurrently been held that the suit for mandatory injunction would not be maintainable as an equally efficacious remedy to file a suit for specific performance was available with the plaintiff-appellant but he chose not to avail the said remedy. Learned counsel for the plaintiff-appellant has not addressed any argument qua the said finding of both the Courts. The argument of learned counsel for the plaintiff-appellant that a petition has been filed under the Hindu Minority and Guardianship Act, 1956 which was later withdrawn and which was admitted by the defendant-respondent in her partial cross-examination would be of no avail inasmuch as she was admittedly not the owner of the property and hence she had no right, title or interest to enter into the alleged agreement to sell dated 22.09.2009 to sell the land of her minor son without obtaining requisite permission from the concerned Court. No other point was argued.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises

in the present case. The present appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

10.04.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO