
(1995) 09 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 395 of 1982

Kumari Kanwal Kanta

APPELLANT

Vs

Abhimanya Ansal (Deceased) and Others

RESPONDENT

Date of Decision : 11-09-1995

Acts Referred:

Specific Relief Act, 1877 — Section 41

Citation : (1996) 112 PLR 260

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : Anil Khetarpal, for the Appellant; Balraj Behl, for the Respondent

Judgement

N.K. Kapoor, J.—This is defendant's regular second appeal against the judgment and decree of the Additional District Judge affirming in appeal the judgment and decree of the trial Court whereby the suit filed by the plaintiff has been decreed.

2. Plaintiff filed a suit for declaration that sale deed executed on 8.5.1971 and registered on 10.5.1972 in favour of defendant No. 1 was void, without consideration and sham and the plaintiff is owner in possession of the suit land with a consequential relief in the form of permanent injunction restraining the defendants from interfering with the possession of the suit land or from transferring the same in any manner. The basis of the suit of the plaintiff is that he was minor at the time of sale and so the sale deed executed by him was void and sham transaction and also without consideration and so no title pass to the defendants.

3. Defendants 1 and 2 in their written statement resisted the suit of the plaintiff on a number of grounds, that the suit of the plaintiff is not within time; that the suit has not been properly valued for the purposes of Court fee and jurisdiction; that the plaintiff was estopped from filing the suit by his act and conduct; and that the suit is bad for mis-joinder of parties and causes of action. On merits, it was stated that sale deed was duly executed for consideration. Out of Rs.

30,000/-, a sum of Rs. 5,000/- was paid in advance and Rs. 20,000/- was paid before the Sub Registrar.

4. Defendant No. 3 in separate written statement almost admitted the averments made by the plaintiff in the plaint. According to defendant No. 3 even the amount which was paid before the Sub Registrar was infact given by Shri Tek Chand Ansal, father of the plaintiff, to him outside the office of the Sub Registrar. This way, he supported the stand of the plaintiff.

5. On the pleadings of the parties, a number of issues were framed. In essence, it was held that the plaintiff was minor at the time of execution of the sale deed. So, any such sale deed does not bind the plaintiff in any manner. In respect of issue with regard to the consideration, if any payed, at the time of execution of the sale deed, the Court came to the conclusion that sale consideration to the extent of Rs. 25,000/- is proved i.e. Rs. 20,000/- paid before the Sub Registrar and another sum of Rs. 5,000/- admitted to have been received by the vendor prior to the registration of the sale deed. With regard to the remaining amount of Rs. 5,000/- the version of the defendant was not accepted. Resultantly, declaration was granted in favour of the plaintiff to the effect that sale deed dated 8.5.1972 in favour of defendant No. 1 was void and without consideration to the extent of Rs. 5,000/-. Consequently, the relief of permanent injunction was allowed. This way, the suit of the plaintiff was partly decreed.

6. The lower appellate Court on re-considering the matter found no ground to vary the judgment of the trial Court. Consequently, appeal too was dismissed.

7. At the motion hearing, the appeal was admitted only regarding the right of appellant-vendee to receive back the amount allegedly paid by him to the plaintiff-respondent as the sale price of the suit property. Thus, the ambit of the regular second appeal was confined to the above noted issue only. The learned counsel, for the appellant, however, argued that despite the specific observation of the Court at the time of admission of the appeal, there is no bar in law to address the Court on all such issues which arise or otherwise essential for complete and effectual decision of the case. Reference was made to the decision of the apex Court in Ramji Bhagala Vs. Krishnarao Karirao Bagra and Another, . This decision supports the contention raised by the learned counsel for the appellant and so the counsel has been permitted to argue other points as well.

8. With a view to seek the reversal of the findings of the Courts below to the effect that the plaintiff was minor at the time of execution of the sale deed, the counsel placed reliance upon the declaration submitted by the plaintiff in the year 1973 under the Punjab Land Reforms Act showing himself to be major on the date when such declaration was filed. According to the counsel, this declaration was submitted in the form of an affidavit which was duly attested by a Magistrate I Class. This precise plea has been considered by the Courts below but Courts for valid reason declined to place reliance upon such a declaration and on the contrary placed implicit reliance upon the entry in the hospital record showing his

date of birth to be 9.12.1954. Oral evidence led by the plaintiff in support of this view has also been found to be reliable. Thus, I find no merit in this plea of the appellant.

9. It was next argued by the learned counsel for the appellant that the trial Court after carefully considering the evidence with regard to the payment of consideration in respect of the sale deed has reached the conclusion that out of sale consideration of Rs. 30,000/-, Rs. 25,000/- was proved to have been paid by the defendant to the plaintiff, which issue has also been affirmed in appeal. This being the position, even when a sale is made by a minor (though he never disclosed his minority) the appellant is entitled in law as well as in equity for return of the amount alongwith interest. Counsel cited *Raghubir Singh v. Smt. Gian Devi* and Anr. ILR 1963 P S 22 to support his above plea.

10. Counsel for the respondents on the other hand argued that Courts below on carefully considering the matter in issue have come to the conclusion that sale was void and so rightly declined to pass any order for return of the amount. Sale having been declared to be void no such amount could be ordered to be returned in law. The counsel further argued that since the appeal too had been dismissed by the Additional District Judge the respondent-plaintiff had no occasion to assail the correctness of the view taken by the trial Court while deciding issue with regard to the consideration of the amount. Otherwise too, such a decision cannot be construed as *res-judicata* also. Counsel further argued that perusal of the statement of the witnesses amply prove the assertion of the plaintiff that money shown to have been paid by the vendee at the time of execution of the sale deed before Sub Registrar infact was handed over by father of the plaintiff outside the office of the Sub Registrar and so the sale deed was nothing but a sham transaction and so the appellant is not entitled to the return of the amount either in law or in equity.

11. Having heard the learned counsel for the parties and on perusal of the judgments of the Courts below as well as statement of the witnesses referred to by the counsel for the respondents, I am of the view that the appellant is entitled to the return of amount which he paid before the Sub Registrar at the time of execution of the sale deed. Admittedly, the sale consideration was Rs. 30,000/- out of which Rs. 5,000/- was paid before the execution of the sale deed and another sum of Rs. 20,000/- was paid at the time of registration of sale deed. As regards the remaining sum of Rs. 5,000/- same was to be paid lateron. The trial Court on the basis of evidence has come to the conclusion that there has been payment of Rs. 25,000/- i.e. Rs. 5,000/- before the execution of the sale deed and Rs. 20,000/- which was paid before the Sub Registrar. Thus, the Court held that the consideration to the extent of Rs. 25,000/- is proved. There is no receipt forth coming with regard to the payment of Rs. 5,000/- before the execution of the sale deed. However, there is a reference in the sale deed itself with regard to this amount. Since, there is no clear proof available on the record, I dis-allow this amount as well. Factum of payment of Rs. 20,000/- before Sub Registrar

stands duly proved. The ipse dixit statement of Manmohan Singh cannot be taken to be a gospel truth that this amount was handed over by father of the plaintiff to be shown before the Sub Registrar. Otherwise too, no evidence has been led by the plaintiff that his father withdrew this amount from any source on that particular date for this very purpose. Version set up with regard to the payment of this amount by the father of the plaintiff, is a sheer concoction. The counsel for the respondent yet argued that since the contract is void the plaintiff cannot be burdened to pay back the amount. Reliance was placed upon the decision on Khan Gul and Anr. v. Lakha Singh and Anr. (1929)30 P.L.R.60 (F.B.). On perusal of this judgment it has been found that the view canvassed by the counsel for the respondents is infact a minority view. Rather as per this judgment it has been specifically held that where the result of minor's representation has been passing of money as opposed to goods that a minor who has entered into a contract by means of false representation as to his age, though not liable under contract may in equity be required to return the benefit he has received by making a false representation as to his age whether he be a defendant or plaintiff. This Court in Raghbir Singh's case (supra) after examining the full Bench judgment in Khan Gul's case (supra) and the decision of Allahabad High Court in Ajudhia Prasad and Another Vs. Chandan Lal and Another held as under:-

"That a minor, who by falsely representing himself to be a major has induced a person to enter into a contract, is not estopped from pleading his minority to avoid the contract. But a minor, though not liable under the contract, may, in equity, be required to return the benefit he has received by making a false representation as to his age. "The equitable jurisdiction is founded upon the desire of the Court to do justice to both the parties by restoring them to the status quo ante, and there is no real difference between restoring the property and refunding the money, except that the property can be identified but cash cannot be traced." The minor who has been instrumental in bringing about a void contract is liable for restitution by payment of compensation, having regard to the principle embodied in Section 41 of the Specific Relief Act, 1877. It matters not whether the plea is taken in the form of an attack or as a shield in defence for the granting of an equitable remedy does not depend upon a mere accident, namely, whether it is the minor of his adversary who has taken the initiative in bringing the transaction before the Court."

No decision taking contrary view has been cited by the learned counsel for the respondents. Respectfully following the ratio of the division Bench Judgment in Raghbir Singh's case (supra), I held that the plaintiff is bound in equity to return back the amount received by him at the time of registration of the sale deed in this case Rs. 20,000/-. Accordingly, I partly accept the appeal and modify the judgments and decrees of the Courts below only to the extent that plaintiff shall pay the defendant-vendee a sum of Rs. 20,000/- against a valid receipt or deposit the same before the Registrar within four months from the passing of this order to be paid to the defendant-appellant.

12. In the peculiar facts of the present case, the parties shall bear their own costs.