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

**RSA-3276-2016 (O&M)
Reserved on: 13.08.2025
Pronounced on:18.08.2025**

Suraj Bhan

.....Appellant

VERSUS

Dharmender and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Sumit Sangwan, Advocate for the appellant.

Mr. Ajay Vijarania, Advocate for the respondents.

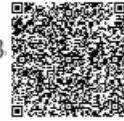
MANDEEP PANNU, J

1. The present Regular Second Appeal has been filed by the appellant/plaintiff Suraj Bhan, challenging the judgment and decree dated 16.11.2015 passed by the learned Additional District Judge, Bhiwani, whereby the First Appellate Court partly allowed the appeal, reversed the findings of the learned trial Court to the extent of the share of the minor defendant, and modified the decree accordingly.

FACTUAL BACKGROUND

2. The appellant/plaintiff filed a suit for specific performance of an agreement to sell dated 18.09.2006 regarding the suit land as detailed in the headnote of the plaint.

3. The case of the plaintiff was that defendants No. 1 to 3 were owners in possession of the suit property. They entered into the said agreement to sell for a total sale consideration of ₹3,50,000, which was paid in full by the plaintiff.



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Defendant No. 3, Brijesh, was a minor at that time, and the consideration on his behalf was received by his father, defendant No. 4.

4. Defendant No. 1 was proceeded ex parte, whereas defendants No. 2 and 4 contested the suit, alleging that the agreement was false and fabricated. They further contended that defendant No. 4 was not competent to deal with the share of his minor son/defendant No.3.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether on 18.09.2006, the defendants No.1 to 3 had executed an agreement to sell the suit land in favour of the plaintiff? OPP
2. If issue no.1 is proved, whether the plaintiff is entitled to specific enforcement of the agreement in question, as prayed for in the plaint? OPP
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Relief.

FINDINGS OF THE TRIAL COURT

6. The learned trial Court decreed the suit, holding the agreement to sell to be a valid document, recording findings of readiness and willingness in favour of the plaintiff. It was observed that defendant No. 4 had executed the agreement on behalf of his minor son, and during the pendency of the suit, the said minor attained majority. Despite being aware of the litigation for several years, he neither repudiated the agreement nor initiated any legal proceedings to have it cancelled. The trial court treated his conduct as ratification of his father's act.

**FIRST APPELLATE COURT'S FINDINGS**

7. In appeal by defendants No. 2 and 3, the learned First Appellate Court held that it is a settled principle of law that a minor cannot enter into a contract, and any such agreement has no sanctity or validity in the eyes of law. Accordingly, the appellate court held that the agreement could be specifically enforced only to the extent of the shares of the major defendants, namely Dharminder and Somveer, and not against the share of the minor, Brijesh. The decree of the trial court was modified accordingly.

SUBMISSIONS OF COUNSEL FOR THE PARTIES

8. Learned counsel for the appellant argued that the agreement entered into on behalf of a minor is not void ab initio but merely voidable. The minor, after attaining majority, did not repudiate the agreement but elected to continue with the suit. A guardian's contract on behalf of a minor, if for his benefit, can be binding, and in the present case, execution and receipt of consideration were duly proved. He has relied upon **Vishwambhar Vs. Laxminarayana (dead) through LRs. [2001(6) SCC 163].**

9. Learned counsel for the respondents, on the other hand, contended that the father had no authority to execute an agreement to sell in respect of the minor's share without prior permission of the court. The agreement was void ab initio as against the minor. He has further contended that defendant Brijesh specifically pleaded that the agreement was against his interest, hence unenforceable against him.

FINDINGS

10. I have considered the respective contentions of the learned counsel for the parties and gone through the record with the able assistance.



11. It is undisputed that Brijesh was minor at the time of execution of the agreement. The agreement itself stipulated that prior permission of the competent court was required before executing the sale deed on behalf of the minor, a step admittedly never taken.

12. The law on this point is well-settled. In *Mohori Bibee v. Dharmodas Ghose*, [(1903) 30 Cal 539 (PC)], it was held that a contract entered into by a minor is void ab initio.

13. In the present case, the agreement to sell was executed by a minor through his father (claimed to be natural guardian). The minor, upon attaining majority, did not institute a separate suit to set aside the agreement, but raised objections in the suit for specific performance filed by the purchaser. The core issue is whether such an agreement is void ab initio (as per Mohori Bibi) or voidable at the instance of the minor (as suggested in Vishwambhar).

14. In *Mohori Bibi v. Dharmodas Ghose* (1903) 30 Cal 539 (PC), the Privy Council held that a contract by a minor is void ab initio and cannot be ratified even after attaining majority. It is further held that any agreement executed by or on behalf of a minor has no binding force in law qua minor.

15. In *Vishwambhar v. Laxminarayan* (2001) 6 SCC 163, Hon'ble Supreme Court was dealing with alienation of immovable property by a natural guardian without prior permission of the Court under Section 8(2) of the Hindu Minority & Guardianship Act, 1956. It was held that such alienation is not void ab initio, but voidable at the instance of the minor or any person claiming under him. The minor must file a suit to set aside the alienation if he seeks to avoid it and recover possession.



16. There is distinction between the two in the nature of transaction. As per *Mohori Bibi's case (supra)* a contract executed directly by a minor (or through no lawful guardian) is void ab initio and no question of setting aside arises. On the contrary, as per *Vishwambhar's case (supra)* an alienation executed by a natural guardian in contravention of Section 8(2) is not void, but voidable. Until set aside, it remains valid and enforceable.

17. Thus, an agreement to sell executed on behalf of a minor, being a contract, squarely falls under *Mohori Bibi's case (supra)* and is void and unenforceable, whereas a sale deed/alienation of immovable property executed by the guardian without sanction under Section 8(2) falls under *Vishwambhar's case (supra)* is valid until avoided by the minor.

18. In the case of a void contract (agreement to sell by minor), the minor need not file a separate suit; he can simply resist enforcement (e.g., in a specific performance suit).

19. In the case of a voidable alienation (sale deed by guardian), the minor must file a separate suit to set it aside, failing which the transaction stands.

CONCLUSION

20. The agreement to sell in question, executed on behalf of the minor, is governed by *Mohori Bibi's case (supra)* and is void ab initio. The minor was entitled to resist its enforcement in the specific performance suit without filing a separate suit.

21. The ratio in *Vishwambhar v. Laxminarayan (supra)* applies to completed alienations (sale deeds), not to mere executory contracts like agreements to sell.



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22. Thus, there is a clear distinction contracts by minors are void, while alienations by natural guardians without sanction are voidable

23. In view of the above, I find no reason to interfere with the impugned judgment and decree dated 16.11.2015 passed by the First Appellate Court. Accordingly, the present Regular Second Appeal stands dismissed.

24. Pending application(s), if any, also stand disposed of.

August 18, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No