

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6341 of 2013.

Decided on:-February 11, 2015.

Sher Singh.

.....Petitioner.

Versus

Hari Chand and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. S.M. Sharma, Advocate
for the petitioner.

Mr. Manoj Bajaj, Advocate
for respondents No.1 to 3.

Dr. Bharat Bhushan Parsoon, J.

A suit for declaration that the plaintiffs are owners in equal shares of the suit land and further that sale deed dated 3.9.2008 is fraudulent and forged document and thus, the said sale deed as also mutation dated 22.9.2008 are liable to be ignored, is pending adjudication before the lower court since 1.12.2008. During the pendency of the suit, an application was moved by the plaintiffs for framing an additional issue.

2. Notwithstanding the contest made by the defendants, such application of the plaintiffs was allowed on 6.11.2012 whereby additional issue regarding sale deed dated 3.9.2008 was framed but onus to prove the issue was put on the plaintiffs. A fresh application was moved under Order

XIV Rule 5 CPC for changing the onus of proof. It was claimed that the additional issue regarding sale deed dated 3.9.2008 is to be proved by the defendants and not by the plaintiffs. Similarly, it is claimed that the onus of proving the Will propounded by the defendants has wrongly been put on the plaintiffs, whereas it should have been on the defendants and thus, order dated 24.9.2012 is also wrong to that extent.

3. The defendants contested the application and claimed that the burden to prove that the sale deed was for legal necessity and for valid consideration is not on the defendants but since the sale deed has been challenged by the plaintiffs, the burden of proof that it was without necessity and without valid consideration, was upon the plaintiffs.

4. While deciding this application, the lower court came to the conclusion that as regards the sale deed, since it has been challenged as null and void by the plaintiffs, the onus of proof has rightly been put on the plaintiffs to establish its validity and legality. So far as the Will propounded by the defendants is concerned, accepting the application of the plaintiffs, onus was shifted on the defendants to prove the same, as the same had been propounded by them.

5. In this revision petition, plaintiff No.1, petitioner herein, is aggrieved of the onus of proof regarding sale deed dated 3.9.2008 having been placed on the plaintiffs.

6. Counsel for the respondents, on the other hand, has urged that since the sale deed has been challenged in its validity and legality by the plaintiffs, it is for them to establish their averments and onus has rightly been placed on the plaintiffs. So far as the Will is concerned, there is no dispute that the same is to be established by the defendants as the same has been set up by them.

7. During the hearing provided to the counsel for the parties, it has transpired that sale deed dated 3.9.2008 though was challenged by the plaintiffs, it is propounded by the defendants and since the suit land involved therein is joint Hindu family coparcenary property, the defendants are required to prove that the sale deed was for legal necessity and was executed for consideration.

8. Issue No.1 as it stands today reads as under:

“1. Whether the sale deed dated 3.9.2008 has been executed by Des Raj in favour of defendants against legal necessity and proper consideration? OPP”

9. Reference may be made to authority ***Inderjit Singh and others Versus Randhir Singh and others 1989(1) PLR 164 (P&H)***. In this authority, a co-ordinate Bench of this Court had clearly held that in case of a joint Hindu family property, sale deed propounded by the defendants is to be proved by them to be one which is for legal necessity and that it was for consideration and not otherwise. In this authority, reference was also made to an authority ***Pandurang Mahdeo Kaveds (dead) by his LRs & others Versus Annaji Balwant Bokil AIR 1971 SC 2228*** and a Division Bench judgment of this Court in ***Bhagwan Dass Versus Bishan Chand AIR 1971 Punjab & Haryana 7***.

10. No law contrary to this, has been produced by the counsel for the respondents. It is, thus, clear that onus of issue No.1 regarding sale deed is to be on the defendants and issue is also re-framed as under:

“1. Whether the sale deed dated 3.9.2008 is for legal necessity and for valid consideration? OPD”

11. Sequelly, finding merit in the revision petition, setting aside the impugned order dated 16.9.2013 (Annexure P-4) to the extent as above, the

revision petition is disposed of in the above terms.

February 11, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes