

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

RSA No.2678 of 1986 (O&M)

1)

Pirithi Singh (since deceased) through LRs & othersAppellants

Versus

Satish Kumar (since deceased) through LRs & othersRespondents

2)

RSA No.3321 of 1986 (O&M)

Satish Kumar (since deceased) through LRs & othersAppellants

Versus

Pirithi Singh (since deceased) through LRs & othersRespondents

Date of Decision: 19.08.2015

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. S.D.Bansal, Advocate,
for appellants.

Mr. Bhag Singh, Advocate,
for respondents.

SHEKHER DHAWAN, J

Both the present regular second appeals against judgment and
decree dated 25.08.1986 whereby Court of first appeal accepted the appeal
and judgment and decree dated 20.02.1985 passed by learned Sub Judge

was set aside.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Detailed facts of the case have already been recapitulated in the judgments of both the Courts below. However relevant facts for the purpose of decision of appeals that parties to the litigation are Brahmins by caste and they constituted joint Hindu family and are governed by Mitakshara School of Hindu Law. Ram Phal defendant had executed registered mortgage deed Exhibit D-3 in respect of the suit land for a sale consideration of ₹7,000/-. On 04.06.1970 the same land was agreed to be sold by him to the mortgagee Pirthi Singh vide agreement Exhibit D-2 for total sale consideration of ₹17,500/- and ₹8,250/- were received by Ramphal as earnest money. Later on Ram Phal executed sale deed Exhibit D-4 of the same land for a total consideration of ₹17,500/- on 26.05.1971 out of which only ₹2250/- were received before Sub-Registrar adjusting balance of ₹7,000/- being mortgaged consideration of the mortgage deed Exhibit D-3 and ₹8,250/- as earnest money received vide agreement Exhibit D-2 against the sale consideration. Ram Phal also executed agreement Exhibit D-8 dated 13.10.1972 to sell the suit land detailed in head note in favour of Pirthi and Ram Mehar for ₹21,000/- and received ₹8,000/- as earnest money. Later on he had executed sale deed Exhibit D-6 in respect of land measuring 24 kanals by receiving ₹13,000/- before the Sub-Registrar. Ram Phal further sold the land detailed in head note C of the plaint measuring 12 kanals in favour of defendant No.3 vide sale deed Exhibit D-7. Satish Kumar plaintiff had taken the plea that land in dispute was ancestral/coparcenary property of the plaintiff and Ram Phal and the

same was not liable to be sold without consideration and legal necessity but Ram Phal alienated the same without any consideration as legal necessity and declaration be granted accordingly.

4. Defendant contested the suit taking the plea that in fact sale was for legal necessity as the vendor required money for construction of 'pucca' house and to perform marriage of his sister Om Pati had actually constructed the house and performed the marriage of his sister. Ram Phal was a licensed driver. Suit land was of no use for him as he had no means of cultivation. He purchased a truck which he used to ply for about two years and thereafter sold the truck and purchased a car so as to operate the same as Taxi to discharge the debt. As such sale deeds were act of good management and was for legal necessity and suit deserves to be dismissed.

5. Court of first instance after appreciating the evidence returned the findings that sale deeds were executed for legal necessity and as such suit of the plaintiff was dismissed. Court of first appeal accepted the appeal partly. Alienations vide sale deeds Exhibits D-6 and D-7 for suit property detailed in head note B and C were not been made by Ram Phal without any legal necessity. Whereas the sale relating to land detailed in head note A of the plaint was held to be valid and suit filed by plaintiff qua that property was dismissed. Being aggrieved of the same, the appellant-defendant are in appeal before this Court.

6. Learned counsel for appellants placed reliance upon judgment from Hon'ble Lahore Court in case **Girdhari Lal and others Vs. Mehr Din and others AIR 1935 Lahore 42** wherein it was held that alienation by either of the family property requires bona fide inquiries by purchaser so as to see whether any legal necessity in fact existed or not. Otherwise

alienation is not binding on other members. That has not been done in the present case. On the same point reliance was placed upon judgments from this Court in case Hem Raj and others Vs. Mehtab Singh and others 1983, PLR 641 and Sital Singh Vs. Jamna Bai and others 2004(3) PLR 565.

7. At the time of arguments learned counsel for defendant-appellant mainly took the plea that Ram Phal had sold land vide sale deeds Exhibit D-4 dated 26.05.1971, Exhibit D-6 dated 07.06.1973 and Exhibit D-7 dated 09.08.1973. The said sale deeds were challenged by the plaintiff on the ground that the same were without consideration and without legal necessity and not for better management. In fact the land was earlier mortgaged in 1970 and the same could not be redeemed. Recitals in the sale deed Exhibit D-6 and D-7 makes it ample clear that the land was sold for construction of 'pucca' house and for marriage of daughter. As far as sale deed Exhibit D-3 is concerned the findings are concurrent that sale deed was for legal necessity and consideration as regard to the sale deeds Exhibit D-6 and D-7. The same were for consideration. Court of first appeal erroneously recorded the findings that sale deed Exhibits D-6 and D-7 was not for consideration and better management of the family and the said findings are liable to be reversed.

8. While arguing on these points learned counsel for the plaintiff submits that entire controversy is to be seen in the light that entire land measuring 7 acre was sold during a short span of two years. The same was belonging to a joint Hindu family and undisputedly the same could not be sold except for legal necessity and better management of the family affair.

Good management and legal necessity has not been proved. There is

absolutely no document available on file that sale deeds were executed for legal necessity. Land which was the subject matter of sale deeds Exhibit D-6 and D-7 were not mortgaged. The sale deeds were not executed for legal necessity and for better management. The Court of first appeal rightly returned the findings whereby challenge to the sale deeds Exhibit D-6 and D-7 were turned down. Whereas the findings were also required to be returned that sale deed which was relating to suit property detailed in head note A of the plaint were also liable to be set aside and the appeal filed by defendant be accepted and the judgment and decree dated 25.08.1986 to that extent be set aside.

9. Having considered the submissions made by learned counsel for appellant this Court is of the considered view that Court of first appeal has rightly recorded the observation in this case while appreciating the oral as well as documentary evidence minutely, available on file. It was established on the file that the land was sold for legal necessity and for better management of the family. DW Pirthi who appeared as DW-3 had deposed that sale deed Exhibit D-4 was made by Ram Phal at the time of marriage of sister and for construction of pacca house and the amount of sale consideration was actually utilised by him. Similarly sale deed Exhibit D-6 was for purchase of truck by Ram Phal. DW-4 Taley Ram also deposed that sale deed Exhibit D-7 in his favour was made by Ram Phal as he required the money for purchase of truck. Ram Phal had already purchased the truck and after selling the truck he had purchased a car which he used to ply as taxi. On the basis of said evidence of DW-3 and DW-4 first Appellate Court returned the findings. At the same time sale deed Exhibit D-4 was held to be validly executed and plaintiff has no ground to assail the

said sale deed.

10. Court of first appeal rightly placed reliance upon judgment of this Court in case **Rulia and others Vs. Jagdish and other AIR 1973 P&H 335** wherein it was held that ancestral land may be sold for marriage of a son. The marriage of the member of joint family particularly of family member is the issue which cannot be avoided by male coparcener particularly by Karta.

11. The findings recorded by learned Court of first Appeal are based on facts of the case in hand and evidence available on file and correct proposition of law and the said findings are affirmed.

12. Resultantly both the appeals filed by Pirthi Singh (since deceased) through LRs & others Vs. Satish Kumar (since deceased) through LRs & others (RSA No.2678 of 1986) and Satish Kumar (since deceased) through LRs & others Vs. Pirthi Singh (since deceased) through LRs & others (RSA No.3321 of 1986) being without any merit, stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 19, 2015

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