

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3600 of 1987(O&M)
Date of Decision:-18.03.2015.

Dharm Singh and others

.....Appellants

Versus

Krishni Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Santosh Sharma, Advocate for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Parveen Chander Goyal, Advocate for
the respondents.

SHEKHER DHAWAN, J.

The present Regular Second Appeal is against the judgment and decree dated 11.05.1987 passed by the Court of Additional District Judge, Ambala dismissing the appeal against judgment dated 07.03.1981 passed by the Court of Sub-Judge, First Class, Jagadhari.

For the sake of convenience, the parties are being referred to as per their status before the Court of First Instance.

Detailed facts of the case have already been recapitulated in the judgments of the Courts below. However, the

relevant facts for the purpose of decision of present appeal are that plaintiff Dharam Singh and others had filed suit for declaration on the ground that the land was earlier owned by Mansha Ram and after his death, the same inherited by his grand-son Raghbir Singh. The suit land was ancestral property in the hands of Raghbir Singh who is otherwise *Jat* by caste and governed by Customary Law of Punjab and Haryana in the matters of alienation and succession as per which the ancestral property cannot be alienated except for legal necessity. Raghbir Singh was having sufficient means and had no necessity to alienate the ancestral land in dispute. He was addicted to drinking, opium and sulfas etc. and was a man of bad character as he used to visit the houses of ladies of ill-fame. Defendants were fully aware that Raghbir Singh had no legal necessity for alienation of suit land and still got executed four sale deeds from without any consideration. As such, the sale deeds in question are without consideration and legal necessity and the same are liable to be set aside.

Defendants contested the suit controverting the averments thereby taking the plea that Raghbir Singh was heavily burdened with debt as the suit land was not giving much yield and income. He was to make the payment of *tacavi* and wanted to redeem his land. He was to raise construction of house for his second wife. He was also to purchase bullock and buffaloes and also want to instal tubewell and all these were legal necessities qua

him. Plaintiff had no locus standi to file a suit and challenge such alienation and prayed that suit be dismissed. Plea was also taken that suit is otherwise barred by law of limitation.

The trial Court settled the following issues and put the parties to trial.

1. Whether the property in suit was ancestral qua the plaintiff and their father Raghbir Singh? OPP.
2. Whether the sale of the suit land was for consideration and legal necessity and for the benefit of the family and estate? OPD.
3. Whether the suit is barred by time in relation to plaintiff No.1 as alleged and if to what effect? OPD.
4. Whether plaintiffs No.3 and 4 have no locus standi to file the suit in view of addl. Plea No.1 OPD.

However, the learned trial Judge, after considering the material and evidence available on file decided issue No.1 in favour of the plaintiff. However, issue No.2 was decided in favour of the defendant and against the plaintiff. Issue No.3 was decided in favour of the plaintiff. Issue Nos.3 and 4 also decided in favour of the defendant and consequently, the suit of the plaintiff was dismissed. Appellants preferred appeal against the said judgment and remained unsuccessful and as such, the present appeal before this Court.

At the time of arguments, Mr. Santosh Sharma, learned counsel for the appellant took the plea that plaintiff had challenged 4

different sale deeds executed on 28.02.1957, 05.02.1959, 25.02.1959 and 14.04.1959. The suit land has rightly been held to be ancestral property because undisputedly, Mansha Ram was the owner of the property who was grand-father of plaintiff. Raghbir Singh was owner of the property who had inherited the same from his grand-father Mansha Ram. The same is evident from *Jamabandi* of the year 1941-42 (Exhibit P-1). As the suit land was ancestral property, the onus of issue No.2 was rightly placed upon the defendant to prove that the sale of the suit land was for consideration and legal necessity. The same has not been proved on the file but the Courts below have misappreciated the evidence and recorded the findings against the appellant. The Courts below placed reliance on testimony of PW-5 Shekhar Chand who was an interested witness as he had also filed suit for recovery against the plaintiff and he was bound to depose against the plaintiff. Otherwise, there was nothing on record that Raghbir Singh was indebted. On this point, reliance was placed on the judgment of this Court in case **Nachhittar Kaur Vs. Kehar Singh** 2006(3) RCR (Civil) 805, wherein, this Court was of the view that vendee is required to show a bona fide enquiry made qua the existence of actual legal necessity of the HUF. It is not necessary for him to prove actual investment of the funds generated from the sale of such property for the same legal necessity which existed at the time of sale. Learned counsel for the appellant also took the plea that DW-5 Shekhar Chand was not the witness on the

point of legal necessity and the said witness could not be relied upon but the Courts below fell in error while placing reliance upon the testimony of such entrusted witness and returned the findings against the appellant on the basis of said testimony. As such, it is a case of misreading and misappreciation of evidence and present Regular Second Appeal be accepted and the judgment and decree of both the Courts below be set aside and the suit of the plaintiff before the trial Court be decreed.

While arguing on these points Mr. Arun Jain, learned Senior Counsel for the appellant took the plea that the present Regular Second appeal is not maintainable because both the Courts below have already appreciated the evidence based on facts no substantial question of law involved in this case and as such, the appeal is liable to be dismissed. Learned senior counsel for the respondent also took the plea that both the Courts below have considered the pleadings of the parties and evidence available on file that there was ample evidence regarding legal necessity of the vendor. There were recitals in the sale deed regarding legal necessity as well. The sale deeds have been challenged after lapse of 8 years and strict proof of legal necessity is not required in such like cases. Hence, the present Regular Second Appeal is not maintainable and on merits the same is liable to be dismissed.

Having considered the rival contentions raised by learned counsel for both the parties, this Court is of the considered view that

the present Regular Second Appeal is challenge to the judgments of both the Courts below who have recorded concurrent finds of facts that the suit land was ancestral in nature and there was absolutely no legal necessity for the vendors in respect of the four sale deeds.

Otherwise also there is no substantial question of law involved in this case calling for interference of this Court by way of present Regular Second Appeal and as such, the present Regular Second Appeal is not maintainable before this Court. Such a law was laid down by Hon'ble Supreme Court in case titled as **Easwari Vs. Parvathi and others**, 2014 (3) RCR (Civil), 955, wherein it has been observed as under:-

“In light of the above decisions we are of the opinion that the High Court cannot be precluded from reversing the order and judgment of the Lower Appellate Court if there is perversity in the decision due to mis-appreciation of evidence. This holds good especially in light of the principle that even when both the Trial Court and the lower court have given concurrent findings, there is no absolute ban on the High Court in second appeal to interfere with the facts.”

On facts, the cause of action in this case had arisen during the period from 1957 to 1959, as detailed in para 13 of the plaint itself. Thereafter, the suit was filed in this case on 12.06.1973 i.e. after 16 years. The conduct of the parties is subject matter of

challenge in the registered sale deeds after 15-16 years. It is a matter of common knowledge that prices of agricultural land increased considerably during the period and had gone up. The same gave a reason to the appellant-plaintiff to challenge the said sale deed and the law does not permit the same. Both the Courts below have discussed in detail that there was legal necessity for the vendor to execute the sale deed. Moreover, there are recitals in the sale deed regarding legal necessity.

Law on the point is also settled. Vendee is not required to prove by leading strict proof of legal necessity after lapse of considerable period. Such a view was earlier expressed by this Court in case **Abhe Ram Vs. Ram Dewari and others** 1983 CLJ (C&Cr) 423, wherein, identical facts were before this Court and sale deeds were challenged after lapse of 8 years and this Court expressed the view that alienee is not responsible for the actual application of money if he had satisfied himself that money was required for legal necessity.

Identical matter was before the Hon'ble Supreme Court in case **Smt. Rani and another Vs. Smt. Santa Bala Debnath and others** AIR Supreme Court 1028 and the Hon'ble Supreme Court observed that the burden of proving that the consideration was not received by the vendor, however, lay upon the plaintiffs.

More so if the recitals in the sale deed are supported by the testimony of witnesses, it cannot be concluded that the sale deed

was not supported by full consideration or the same was not for legal necessity.

In view of the above, the present Regular Second Appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

March 18, 2015.

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