

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

**RSA No.2069 of 1988 (O&M)
Date of Decision: 10.04.2015**

Surjit Singh and othersAppellants
Versus
Ajmer Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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. H.S.Tuli, Advocate with
Mr. S.S.Rangi, Advocate for appellants.

Mr. Amit Saini, Advocate,
for respondent Nos.4 to 6.

SHEKHER DHAWAN, J

The present Regular Second Appeal against judgment and decree dated 08.02.1988 passed by Additional District Judge, Ludhiana whereby appeal against judgment and decree dated 20.07.1985 passed by Sub Judge First Class, Samrala was dismissed.

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

3. The detailed facts of the case already recapitulated in the judgment of Courts below. Relevant facts for the decision of present Regular Second Appeal that plaintiffs-appellants Surjit Singh and his brother had filed suit for ignoring/cancelling sale deeds dated 25.10.1976, 27.10.1976, 06.07.1977 and 20.07.1977 and mortgage deed dated 8.02.1977 executed by their father Buta Singh in favour of defendants No.2 to 8.

Plaintiffs also sought declaration to the effect that above said sale deeds are

illegal, fictitious, without authority, without necessity and benefit of the family whereas the property was Joint Hindu Family/ancestral property of the plaintiffs and defendants No.1 Buta Singh. As per plaintiffs, the suit property was ancestral property in the hands of defendant No.1 Buta Singh and he was karta of Joint Hindu Family. He was victim of bad habits including drinking, spendthrift and did not care of the welfare of the family and sold his entire land within short period of 10 months. The said sale deeds were without legal necessity and were not act of good management in any way. Defendants No.2 to 8 were aware of the said factual position and still got executed sale deeds from defendant No.1 and as such the said sale deeds are liable to be set aside.

4. Defendant No.1 i.e. Buta Singh failed to put in appearance before the Courts below and was proceeded against ex parte. However, defendants No.2 to 8 contested the case thereby taking the pleas that the sale deeds and mortgage deed in question were for consideration, were for legal necessity and act of good management on the part of defendant No.1. Defendant No.1 had purchased a tractor and land in the name of his wife and other relatives and also repaid the loan to the Government and land mortgaged them and had borne other expenses of farming and for that purpose he had executed the sale deeds and as such the suit filed by plaintiff-appellants is result of convenience between plaintiffs and defendant No.1 and otherwise without any merit and same be dismissed.

5. On these facts issues were framed by Court of first instance and parties were put to trial.

6. On the basis of oral as well as documents adduced by both the parties the Court on first instance decided issue No.1 in favour of plaintiffs

that suit property was ancestral property and Joint Hindu Family property qua the plaintiffs however issue No.2 was decided against the plaintiffs and in favour of the defendants that sale deeds in question were legal necessity, issue No.3 was decided against defendants No.2 to 8 whereas issue No.4 was decided in favour of defendants, Issue No.5 was also decided in favour of defendant and consequently the suit of plaintiffs was dismissed. plaintiffs challenged the said judgment and decree before Court of First Appeal and remained unsuccessful. Hence present Regular Second Appeal before this Court.

7. At the time of admission of appeal no substantial question of law was framed.

8. Mr. H.S.Tuli, Advocate learned counsel for the appellants took the plea that the present controversy involves substantial question of law and such substantial question of law can be raised at any point i.e. even during the course of arguments of second appeal before this Court. Learned counsel for appellants took the plea that both the Courts below have misappreciated and misread the evidence which resulted into miscarriage of justice and said substantial question of law be answered in favour of the appellants-plaintiffs and present appeal be accepted and judgments and decrees passed by both the Courts below be set aside and suit of the plaintiffs before Court of First instance be decreed.

9. As per learned counsel for appellants, Court of first instance has held the suit land to be ancestral and Joint Hindu Family property while recording findings under issue No.1 and in para No.12 of judgment of Court of first instance, specific findings were recorded that defendants No.2 to 8 failed to prove that mortgage deed was for legal necessity. However, the

Court of first instance finally concluded the matter that sale was for legal necessity. These findings based on oral and documentary evidence available on the file are certainly result of misappreciation of evidence resulting into miscarriage of justice and are liable to be set aside. Learned counsel for appellants also took the plea that defendant No.1 was having sufficient income from the total land in his name to earn his livelihood and to purchase the tractor as well. There was absolutely no legal necessity for him to execute four different sale deeds resulting into sale of entire agriculture land. Rather the same was result of bad habits including drinking, spendthrift by defendant No.1 and the same being in the knowledge of defendants No.2 to 8. As such the said findings are liable to be reversed.

10. While arguing on these points Mr. Amit Saini, Advocate learned counsel for the respondent took the plea that appellants have challenged four different sale deeds as detailed above. Courts below have discussed the oral as well as documentary evidence available on file. All the four sale deeds were for sale consideration and entire evidence was discussed in detail and findings were returned that all the four sale deeds for legal necessity. Defendants had gone a step further to prove that the sale consideration was actually used by the vendor for payment of loan, repayment of loan with the mortgage Bank purchase of tractor and purchase of land. That way the findings recorded by both the Courts below are based on evidence available on the file and it is not a case of misappreciation of evidence at all. Merely saying that the sale deeds were without legal consideration does not make out a case to set aside the registered sale deeds after lapse of considerable period.

11. Having considered the rival contentions of learned counsel for the parties, this Court is of the considered view that in the present case there is absolutely no substantial question of law involved in this Second Appeal because in this case both the Courts below have recorded findings based on facts of the case and evidence available on file. Plaintiffs-appellants remained unsuccessful before both the Courts below and the concurrent findings recorded by both the Courts below that suit land is ancestral property qua plaintiffs and defendant No.1 and all the sale deeds were executed for legal necessity and were for good management. The detailed findings recorded by learned Courts below do not call for any interference as the present controversy does not involve any substantial question of law.

12. This being the Regular Second Appeal against concurrent findings of both the Courts recorded on the basis of facts and evidence available on file and as such, the same is not maintainable. There is absolutely no substantial question of law involved in this case. Such a law was laid down in **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., 2001(2) JT 407.**

13. However coming to the facts and evidence available on file in the case in hand, both the Courts below have recorded the concurrent findings of the facts that all the four sale deeds were executed for consideration and the same for legal necessity. The Court of first appeal had discussed in detail all the four transactions involving different sale deeds and dealt with differently giving details of sale consideration and the amount having been actually spent by the vendor for legal necessity to conclude the Court of first appeal recorded findings that a total consideration of ₹1,20,825/- was received by defendant No.1 on the basis of sale deeds Ex.D-3, D-4, D-5 and

D-7. Out of that a sum of ₹81,136/- was actually used for legal necessity including purchase of tractor, repayment of loan with the mortgage bank and purchase of land.

14. Law on the point is settled that it is required to prove that there was actually some legal necessity for the vendor to execute the sale deed and he is not required to prove the actual utilization of the amount whereas in the case in hand respondent-defendant have been able to prove the actual utilization of substantial amount in this case. Such a law was laid down by Hon'ble Supreme Court in case Easwari Vs. Parvati 2014 AIR (SCW) 4406. Identical view was taken by this Court in case titled as Shankar Lal and others Vs. Lakhbir Singh and others (1968)70PLR26.

15. The sale deeds in question were executed in 1976 and 1977 whereas the said sale deeds were challenged by way of civil suit in 1982 i.e. after lapse of five years. Law on the point is also settled that after lapse of considerable period, vendees are not required to prove the legal necessity of vendor in strict sense because that is practically not possible. Such a law was laid down by Hon'ble Supreme Court of India in case titled as Easwari Vs. Parvati and others (supra).

17. In view of the above, the present appeal being without any merit, stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

April 10, 2015
msd