

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

REGULAR SECOND APPEAL No.2675 of 1988
Date of Decision 28.10.2015

Satyawan

..Appellant

versus

Om Parkash and another

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Amit Jain, Advocate, for the appellant.

None for the respondents

RAJIVE BHALLA, J. (ORAL)

The appellant challenges judgments and decrees dated 26.7.1986 and 8.8.1988 passed by the Additional Senior Sub Judge, Panipat and the Additional District Judge, Karnal, respectively.

A brief factual narrative would be appropriate.

The appellant filed a suit for declaration that the sale deed dated 05.3.1980, executed by Manga, his father, in favour of Om Parkash is null and void, for want of legal necessity. The appellant invoked custom and pleaded that as property is ancestral, it can not be sold without legal necessity. Respondent No.1 filed a written statement controverting pleadings in the plaint and apart from referring to the legal necessity recited in the sale deed, pleaded that upon inquiry, he was told by Manga that he had to discharge debts, purchase bullocks, construct a pucca house and improve the quality of his land.

The learned trial court, after considering the pleadings, framed the following issues:-

- “1 Whether the suit property is ancestral, undivided coparcenary, Joint Hindu Family Property? If so, to what effect and whether the impugned sale deed No.6184 registered on 5.3.80 is null and void?OPP
- 2) Whether the plaintiff has no locus standi to bring the present suit? OPD
- 3) Whether the plaintiff is estopped from instituting the present suit?OPD
- 4) Whether the suit is not maintainable?OPD
- 5) Whether the vendor sold the property in dispute to defendant No.1 for legal necessity?OPD
- 6) Relief.”

After considering the evidence, the trial court dismissed the suit by holding that though parties have admitted that they are governed by customs but as the appellant has failed to prove the ancestral nature of the property and the respondent has proved legal necessity from recitals in the sale deed and the deposition by DW1 Om Parkash and his witnesses, the appellant is not entitled to any relief.

Aggrieved by the aforesaid judgment, the appellant filed an appeal, which was dismissed by the Additional District Judge, Karnal, on 8.8.1988.

Counsel for the appellant submits that the land in dispute was ancestral coparcenary property and it is admitted by respondent

no.1 that customary law prohibits alienation of such property, except for legal necessity, the courts below have not only erred in holding that the appellant has not proved that the land in dispute is ancestral but have also erred in holding that respondent no.1 has been able to prove legal necessity. Counsel for the appellant further submits that a perusal of the sale deed reveals that it contains a recital that the land is “Banjar and Barani Thur” and uneven. The vendor wanted to sell the land to purchase better quality land. A perusal of the deposition of DW1 Om Parkash, the vendee and his witnesses, reveals that they have referred to an entirely different set of facts in support of the plea of legal necessity, namely, the vendor, wanted to sell his land to instal a tubewell, for arranging the marriage of his daughter and for construction of a pucca house. The facts, recited in the sale deed being contrary to the deposition by respondent no.1 and his witnesses, the courts below have committed a serious error in holding that the land was sold for legal necessity.

As regards the finding that the land is not ancestral, counsel for the appellant submits that even the revenue excerpt produced by Gordhan respondent No.1, before the trial court, proves that the land was received by Manga from his ancestors. Counsel for the appellant submits that the following questions of law arise for adjudication:-

“ (i) Whether in the facts and circumstances of the instant case, the approach of the learned courts in misreading and misinterpreting the material oral and documentary evidence on record is not perverse?

(ii) Whether in the facts and circumstances of the instant case the approach of the learned courts below in upholding the sale deed which was without any legal necessity, can be sustained in law?

(iii) Whether in the facts and circumstances of the instant case, the reasoning adopted by the courts below in holding the property to be non ancestral can be sustained in law in view of revenue excerpt Ex.PW5/A?

(iv) Whether in the facts and circumstances of the instant case, the reasoning adopted by the courts below can be sustained in law being based on conjectures and surmises?

No one is present on behalf of the respondents.

I have heard counsel for the appellant, perused the impugned judgments, appraised the record, but am unable to record an opinion that the impugned judgments suffer from any error of fact or of law that gives rise to any substantial question of law, much less questions framed by counsel for the appellant. The questions nos.1 and 4 are general in nature and shall be answered along with question nos. 2 and 3.

The second question, as framed, relates to the legality of concurrent findings of fact recorded by courts below that the land was sold for legal necessity. The appellant urges that, as recitals in the sale deed setting out legal necessity, are contrary to the deposition by DW1 Om Parkash and his witnesses, the oral evidence has to be discarded. The arguments, in my considered opinion, are

fallacious as not only has Manga, the vendor (father of the appellant) referred to a legal necessity in the sale deed but informed the respondent of other reasons for selling the land. A perusal of the sale deed, Ex.D2, reveals that it contains a recital that the land, subject matter of the sale deed, is uncultivated "Banjar and Barani Thur" and is undulating. The sale deed also records that in order to improve his other land, he would have to spend about Rs.8000/- to 10,000/-. The recitals in the sale deed, which have not been rebutted by the appellant are by themselves, sufficient to prove legal necessity, but as the trial court had also placed reliance upon legal necessity deposed to by respondent no.1, the vendee, namely, Om Parkash, it would be appropriate to make a brief reference to these facts. Om Parkash stepped into the witness box and deposed that when he made an inquiry from the vendor, he was informed that he had to instal a tubewell, construct a house and purchase bullocks. The appellant has not adduced any evidence to rebut the statement by Om Parkash. It would also be appropriate to point out that the deposition by DW1 Om Parkash finds support from DW4 Ram Lal, Accounts Clerk, in the office of the BDO, who stated that on 31.3.1978 Mange Ram was in debt. The other witness DW5 Ram Pal has supported the deposition by DW1 Om Parkash. DW9 Dharam Singh has deposed that an electricity connection for a tubewell was released to Mange Ram on 26.11.1982 and he installed a tubewell and also constructed a pucca house. thereby, in my considered opinion, leaving no ambiguity as to the correctness of the opinion recorded by courts below that Manga executed the sale deed

dated 5.3.1980 with legal necessity. A due consideration of the record, i.e., the pleadings and the depositions, do not indicate any misreading or misinterpretation of the material on record whether oral or documentary. Consequently, the first two questions are answered against the appellant.

As regards the third question, both courts have recorded a finding that the land is non-ancestral as the excerpt produced by respondent no.1 proves that Manga, the vendor, (father of the appellant) received property both ancestral and non-ancestral from various sources. The appellant was unable to prove that the property which is non-ancestral, is linked to his ancestors from whom he or his father claims descendant. Even otherwise, the question whether property is ancestral or non ancestral is academic, as the main issue, that required an answer was, whether the sale deed had been executed without legal necessity. The question has been answered against the appellant by both courts below. I find no error in the opinion recorded by courts below, whether in fact or in law and consequently, answer question nos 3 and 4 against the appellant.

In view of answers of substantial questions of law against the appellant, the appeal is dismissed.

28.10.2015
VK

(RAJIVE BHALLA)
JUDGE