

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

REGULAR SECOND APPEAL No.2766 of 1988
Date of Decision 28.10.2015

Satyawan

..Appellant

versus

Gordhan 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 sale deed dated 05.3.1980, executed by his father, Manga, in favour of Gordhan, is null and void, for want of legal necessity. The appellant invoked custom and pleaded that as the property is ancestral, it cannot be sold without legal necessity. Gordhan, respondent No.1, filed a written statement denying that the land is ancestral and apart from referring to the legal necessity recited in the sale deed, pleaded that upon inquiry, he was told by Manga (the vendor) that he had to discharge debts, purchase bullocks, agricultural implements, instal a tubewell and had to construct a pucca house. The land

owned by Manga was of inferior quality. He, therefore, sold a part of his land to improve the quality of his remaining land.

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

- “1 Whether the suit property is ancestral, undivided coparcenary, J.H.F. 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 this 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 custom but as the appellant has failed to prove the ancestral nature of the property and the respondent has proved from recitals in the sale deed and the deposition by DW1 Gordhan and his witnesses that the land was sold for legal necessity, 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 as it is admitted by Gordhan, respondent no.1, that customary law prohibits alienation of such land, 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 is uneven. The vendor, therefore, wants to sell the land to purchase better quality land. A perusal of the deposition of DW1 Gordhan, 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 purchasing bullocks, for discharging his debts 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 plea that the land is 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, thereby proving the ancestral nature of the property. Counsel for the appellant submits that the following substantial 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 the questions framed by counsel for the appellant. The question 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, are contrary to the depositions by DW1 Gordhan and his witnesses regarding legal necessity, the oral evidence has to be discarded. The argument, in my considered opinion, is 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 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 make the land cultivable, 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 were, by themselves, sufficient to prove legal necessity. The respondent has, in addition to the legal necessity recounted in the sale deed, deposed that the vendor told him that he was, in debt, wanted to reconstruct his house etc. It is true that the legal necessity narrated by DW1 Gordhan is different from the legal necessity set out in the sale deed but as both set of facts have not been rebutted by the appellant even if the deposition by Gordhan is discarded, recitals in the sale deed are sufficient to prove legal necessity. It would also be appropriate to point out that the deposition by DW1 Gordhan finds support from the deposition of DW4 Ram Lal, Accounts Clerk, in the office of the BDO, who stated that on 31.3.1978 Mange Ram, took a loan of Rs.5,000/- for installing a tubewell. The loan was taken in year 1978 and land was sold in year 1980, thereby proving that Mange Ram was in debt. The other witness DW6 Ram Lal has supported the deposition by Gordhan.

DW9 Dharam Singh has deposed that on an application filed on 05.12.1980, an electricity connection for a tubewell was released to Mange Ram on 26.11.1982. This apart, the appellant has himself admitted that instalments of loan were due requiring the sale of the land. PW2 Molu, the witness produced by the appellant, also admitted that the tubewell was installed and admitted that Mange Ram converted his kacha house into a pucca one. The fact that Manga, father of the appellant, did instal a tubewell, also constructed a pucca house, having been proved, in my considered opinion, leaves no ambiguity as to the correctness of findings of fact recorded by courts below that Manga executed the sale deed dated 5.3.1980 for Rs.17,500/- with legal necessity. Consequently, the first two questions are answered against the appellant.

As regards the third question, both courts have recorded concurrent findings of fact that the land is non-ancestral. 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 claim 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 having been answered against the appellant by both courts below and as their findings do not suffer from any error, as a consequence, question nos. 1, 2, 3 and 4 are answered

against the appellant.

In view of answers to the substantial questions of law against the appellant, the appeal is dismissed. No order as to costs.

28.10.2015
VK

(RAJIVE BHALLA)
JUDGE