

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

(1)

**RSA No.4552 of 2010 (O&M)
Decided on : November 26, 2015**

RATTAN LAL

....Appellant

VERSUS

BABU LAL AND OTHERS

....Respondents

(2)

**XOBS-19-C of 2015 IN
RSA No.4552 of 2010
Decided on : November 26, 2015**

RATTAN LAL

....Appellant

VERSUS

BABU LAL AND OTHERS

....Cross Objectors

(3)

**RSA No.4553 of 2010 (O&M)
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RATTAN LAL

....Appellant

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....Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Alka Sarin, Advocate,
for the appellant.

Mr. P.R. Yadav, Advocate
for respondent Nos.1 to 3.

AMIT RAWAL, J (ORAL)

This order of mine shall dispose of two appeals bearing RSA
Nos.4452 and 4453 of 2010 filed by Rattan Lal-appellant/defendant No.1
and cross objection bearing No.19-C of 2015 filed by the plaintiffs. It

would be appropriate to give brief facts which would be essential necessary for adjudication of the dispute between the parties to lis. Ram Kanwar owned a land measuring 74 kanals 18 marlas. He had two sons and one daughter namely Rattan Lal, Radhey Shyam Defendant Nos.1 and 2 and Savita defendant No.3. Radhey Shyam had three sons who are plaintiffs. During the life time, Ram Kanwar alleged to have entered into agreement to sell i.e. on 21.05.1991 and allegedly received a sum of Rs.25000/- as earnest money. He had also obtained a loan from Punjab National Bank. The case set up by the Rattan Lal, appellant/defendant No.1/counter claimant is that since the property at the hands of Ram Kanwar was ancestral and in order to ward off the liability of Joint Hindu Family, in hand, he had been instrumental in getting the agreement to sell cancelled and as well as repayment of loan, in essence returned back the earnest money and as well the loan liability to the bank out of his own savings and in lieu thereof got a registered sale deed dated 18.11.1992 (Exhibit PW-6/1) in respect of land measuring 12 kanals 10 marlas. In this regard a mutation bearing No.587 was also sanctioned. On 27.08.1994, the plaintiffs filed a suit against Ram Kanwar in respect of land measuring 11 kanals 5 marlas. The claim of the plaintiffs was conceded and accordingly the suit, afore mentioned, was decreed on 07.10.1994 and in lieu thereof a mutation bearing No.681 was sanctioned. The said mutation was rejected by the revenue Court on 10.05.1998 and accordingly a mutation bearing No.797 on 09.06.2003 was entered into on the basis of natural succession in respect of the remaining land, in favour of the sons/grand sons of Ram Kanwar and daughter as well.

Learned counsel appearing on behalf of defendant No.1 Rattan Lal-counter claimant submits that the suit filed on 02.08.2007, the respondent-plaintiff challenged the sale deed dated 18.11.1992 in respect of land measuring 12 kanals 10 marlas and as well as mutation No.797 particularly which included the land measuring 11 kanals 5 marlas decreed by judgment and decree dated 07.10.1994 and as well as mutation No.587 entered into on the basis of the registered sale deed dated 18.11.1992. Number of documentary evidence much less statement of Samay Singh, the vendee of agreement to sell afore mentioned, has been produced on record to show that Rattan Lal-appellant/defendant No.1 has discharged the liability of the co-parcenary property and thus the sale deed dated 18.11.1992 was in discharge of legal necessity and therefore could not be challenged by the children of Radhey Shyam-plaintiffs.

She further submits that agreement to sell has also been brought on record as Exhibit DW-5/CCW but all these aspects has not been noticed while dismissing suit, as well as the counter claim.

She further submits that even the judgment decree dated 07.10.1994 was also challenged on the ground that Rattan Lal-appellant/defendant No.1 was not made a party nor any oral settlement referred to in judgment and decree ibid specify any share in a co-parcenary property.

Both the parties challenged the judgment and decree of trial Court by filing the respective appeals. However, the appeal of the respondent viz-a-viz mutation No.797 dated 09.06.2003 in respect of the

land measuring 11 kanals 05 marlas has been set aside being illegal and nullity, however, the appeal filed by the appellant that is Rattan Lal-appellant/defendant No.1 has been dismissed. In these circumstances two appeals and one cross objection have been filed.

Mr.Yadav, learned counsel appearing on behalf of the cross-objector/plaintiff submits that the Rattan Lal-appellant/defendant No.1 has failed to prove discharge of the legal necessity and in as much as no documentary evidence has come on record to show that he was instrumental in repayment of the earnest money of Rs.25000/- or cancellation of agreement to sell. Samay Singh, in cross-examination, stated that he had extended a loan of Rs.25000/- to Ram Kanwar for giving a scooter to his daughter in a 'Chuchak' ceremony. Even receipt of the same has not been proved, except, it has been marked as Mark 'B'.

He further submits that no documentary evidence with regard to the payment of loan to the bank been proved on record. In essence no witness of the bank has come to say that the loan was paid by Rattan Lal-appellant/defendant No.1 on behalf of Ram Kanwar, thus the sale deed in respect of land measuring 12 kanals 10 marlas dated 18.11.1992 and mutation bearing No.587 are null & void and not sustainable in the eyes of law, as the property at the hands of Ram Kanwar was ancestral as he died intestate the entire property would be devolve upon the legal heirs in the equal shares, thus, there is no illegality in perversity in the dismissal of the counter claim. However, the lower Appellate Court has, erroneously, set aside the sale deed dated 18.11.1992, as it does not mention passing for the consideration and thus following substantial

questions of law arises:-

- (i) Whether the sale deed dated 18.11.1992 was for a valuable consideration or not.
- (ii) Whether the sale deed dated 18.11.1992 (Ex. PW 6/1) was entered into by Ram Kanwar in discharge of the legal necessity by paying of the debt of the co-parcenary property.

I have heard learned counsel for the parties and appraised the paper book.

It is a matter of record that the sale deed, afore mentioned does not contain the element of exchange of Rs.94000/- alleged to have paid by Rattan Lal to Ram Kanwar. No witness of the bank has been produced to show that the loan amount was discharged by the Rattan Lal-appellant/defendant No.1 from his own savings. Samay Singh has also not supported the counter claim of Rattan Lal-appellant/defendant No.1, instead in cross-examination stated that a sum of Rs.25000/- was extended to Ram Kanwar for gifting a scooter to his daughter in 'Chuchak' ceremony, thus, in essence the pleas set up by Rattan Lal-appellant/defendant No.1 with regard to the agreement to sell and payment of Rs.25000/- has not been proved.

In my view, it would fair that both the parties should get property in equal shares in respect of property/land referred to in sale deed and collusive judgment and decree. Since Ram Kanwar died in intestate in essence the entire land measuring 74 kanals 18 marlas should devolve upon the legal heirs of Ram Kanwar in equal shares.

Thus, sale deed dated 18.11.1992, being without

consideration and judgment and decree obtained by plaintiff at the back of appellant-defendants are not sustainable and thus are hereby set aside.

In view of the afore mentioned reasons, the questions of law noticed above are hereby answered in favour of the cross-objectors-plaintiffs and against the Rattan Lal-appellant/defendant No.1/counter claimant. The sale deed dated 18.11.1992 (Ex.PW-6/1) as well as judgment and decree dated 07.10.1994 in respect of land measuring 11 kanals 5 marlas in favour of the plaintiff are set aside. In essence the parties to the lis are entitled to claim equal share in respect of the entire state of the Ram Kanwar i.e. 74 kanals 18 marlas.

RSA No.4552 of 2010 is dismissed. RSA No.4553 of 2010 stands allowed.

Cross Objections 19-C of 2015 also stands allowed.

November 26, 2015
rajneesh

(AMIT RAWAL)
JUDGE