

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

**RSA No. 3281 of 2012 (O&M)
Decided on: 13.8.2015.**

Krishan Kumar and another

.... Appellants

Versus

Amar Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI

Present: Mr. Navneet Singh, Advocate,
for the appellants.

K.C.PURI. J. (ORAL)

The plaintiffs have directed this appeal against the judgment and decree dated 6.3.2012 passed by Sh. Parmod Goyal, Additional District Judge, Sonapat whereby judgment and decree dated 31.7.2009 passed by Sh. Lal Chand, Civil Judge (Senior Division), Sonapat was upheld and the suit of the plaintiffs was dismissed.

Briefly stated, the plaintiffs filed suit for declaration and joint possession on the allegations that defendant No.1 constituted a Joint Hindu Family to which the plaintiffs being the sons from common ancestor Mangat owned and possessed the coparcenary properties which were inherited from the common ancestor Mangat the great grandfather of the plaintiffs fully detailed in the plaint. The

plaintiffs being coparceners had 2/3 share and defendant No.1 was having 1/3 share in the disputed property. The defendant No.1 sold the land comprised in khasra No. 39//19/1(1-16), 20//1/1(0-4) total two kanals through a registered sale deed dated 21.5.1991 to defendant No.6, land comprised in khasra No. 37//17/1(1-4), 24/2(2-14), 25/1(1-16), 52//14(7-2), 53//1(2-6), 10(2-0), 52//4/2(4-6), 5 (8-6), 7 (5-18), total 35 kanals 6 marlas through registered sale deed dated 11.6.1987 to defendants No.2 & 3 to the extent of 2/9 share and likewise 7/9 share to defendants No.4 & 5 respectively and also sold land comprised in Khasra No. 37//16(8-0), 52/6(8-0) total measuring 16 kanals through registered sale deed dated 12.9.1989 to defendant No.2 and 3. The said property was sold by defendant No.1 without any legal necessity and consideration. In fact, the land was sold for immoral purposes and sale consideration was never spent by the defendant No.1 for the welfare of the family and estate. So, the above said sale-deeds dated 21.5.1991, 11.6.1987 and 12.9.1989 are illegal, null and void, without legal necessity, without consideration and for immoral purposes and not binding on the right and interest of the plaintiffs. Hence, the suit.

On notice, the defendants appeared and contested the suit. The defendants No.2 to 5 filed their joint written statement taking preliminary objections of maintainability, locus standi, deficiency of court fee, estoppel, mis-joinder of cause of action and limitation. On merits, the factum of parties being governed by coparcenary law was

denied. It was pleaded that the plaintiffs did not have any share in the

suit property. The defendant No.1 is not drunkard. The defendant No.1 has rightly and legally sold the disputed property to other defendants through registered sale deeds for legal necessity which are binding on the plaintiffs and defendant No.1 as well.

Replication was filed by the plaintiffs re-iterating the stand taken in the plaint and denying the contents of the written statement.

From the pleadings of the parties following issues were framed:-

1. Whether the subject matter of the suit is ancestral property of the plaintiffs and defendant No.1 ?OPP
2. Whether the plaintiffs are coparceners in the suit property to the extent of 2/3 share ?OPP
3. Whether the plaintiffs and defendant No.1 are governed by Hindu Law ?OPP
4. Whether the sale deeds mentioned in para No.7 of the plaint are illegal, void ab-initio, nullity without legal necessity and without consideration and not binding on the rights of the plaintiff ?OPP
5. Whether the plaintiffs and defendant No.1 are governed by Jat Customary Law prevailing in the erstwhile Delhi State ?OPD
6. Whether the present suit is not maintainable in the present form ?OPD

7. Whether the plaintiffs have no locus standi to file the present suit ?OPD

8. Whether the present suit is barred by limitation ? OPD

9. Whether the suit does not disclose any cause of action ?OPD

10. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties ?OPD

11. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit ?OPD

12. Relief.

The parties have led their respective evidence on the aforesaid issues. After appraisal of the evidence, learned trial Court dismissed the suit of the plaintiffs vide judgment and decree dated 31.7.2009 passed by Sh. Lal Chand, Civil Judge (Senior Division), Sonapat.

Feeling dis-satisfied with the aforesaid judgment and decree dated 31.7.2009, the plaintiffs filed first appeal before Additional District Judge, Sonapat and the same was dismissed vide judgment and decree dated 6.3.2012 passed by Sh. Parmod Goyal, Additional District Judge, Sonapat.

Still felling dis-satisfied with the aforesaid judgments and decrees dated 31.7.2009 and 6.3.2012 the plaintiffs appellants have directed this regular second appeal.

The appellants in paragraph No. 6 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present appeal:-

(i) Whether the suit filed by the appellants is within limitation?

(ii) Whether the evidence of the defendants/respondents is beyond pleadings ?

(iii) Whether the judgment and decree passed by both the Courts below are perverse ?

I have heard learned counsel for the appellants and have gone through the file.

The plaintiffs have challenged the sale deeds on the ground that the sale relates to joint co-parcenary property. Both the Courts below after appreciating evidence on the file, came to the conclusion that the sale deeds in question are as a result of legal necessity and that plaintiffs have failed to prove the fact that property is in joint possession. That finding of fact remained unassailable in the first regular appeal. The second appeal lies only if any substantial question of law arises. The finding of factum of legal necessity cannot be interfered in the regular second appeal, more so when the finding of both the Courts below is not the result of misreading and misinterpreting in the evidence on the file. The questions of law raised by the appellants in Para No.6 of the grounds of appeal, do not exist.

Even if it is assumed that suit is within limitation, in that case, the

plaintiffs can succeed only if they are able to overcome the hurdles of proving the property as the Hindu family co-parcenary property and that the same has been sold without any legal necessity. There is a finding that Karta had to solemnize the marriage of children and in connection with that sale deeds were executed and loan was raised. It has also come on record that construction of house was also made by the Karta and all these acts of Karta fall within the definition of legal necessity.

In view of the above discussion, the appeal is without any merit and the same stands dismissed.

13.8.2015.
anju rani

(K.C.PURI)
JUDGE