

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3904 of 2013
Date of decision: 06.10.2015

Narinder Singh and others

... Appellants

Versus

Mohar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. ND Achint, Advocate for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court vide judgment and decree dated 25.10.2011. As even the appeal preferred against the said decree failed and was dismissed vide judgment dated 06.03.2013, plaintiffs are before this court in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiffs, they prayed for a declaration that the sale deed, executed by defendants No.1 & 2, in favour of defendant No.3, qua land measuring 4 kanals 18 marlas i.e. 98/736 share of a total land measuring 36 kanals 16 marlas, comprised in different khasra numbers, situated in the revenue estate of village Karsa Chor, was null

and void, as the same was executed without any legal necessity and consideration. Consequently, a decree for joint possession was also claimed. It was maintained that Mohar Singh and Shingara Singh i.e. defendants No.1 & 2, sons of Chhelu, owned an agricultural land in village Karsa Chor, Tehsil Assandh, District Karnal. Chhelu was owner to the extent of 1/3rd share in the agricultural land measuring 77 kanals 16 marlas. Post his death, in the year 1997, his 1/3rd share was mutated in favour of defendants No.1 & 2 along with their other brothers and sisters. Thus, the suit land was a joint Hindu family property in the hands of Mohar Singh and Shingara Singh. Defendant No.1 constituted a joint Hindu family with his two sons i.e. plaintiffs No.1 & 2. Shingara Singh (defendant No.2) also constituted a joint Hindu family with his three sons i.e. plaintiffs No.3 to 5. However, defendants No.1 & 2 sold a land measuring 4 kanals 18 marlas, for a sale consideration of ₹ 2,76,000/-, in favour of Dulia (defendant No.3). And, the said sale was without any legal necessity and consideration. Thus, the suit.

Defendants No.1 & 2 did not opt to contest the suit and, thus, were proceeded against ex parte.

In the written statement filed by defendant No.3, it was pleaded, inter alia, that defendants No.1 & 2 were in dire need of money to meet out their legal necessities and, thus, they sold the suit property for a valuable consideration.

On a due and comprehensive consideration of the matter in issue, and the evidence on record, both the courts concurrently concluded that the plea set out by the plaintiffs, that defendants No.1 & 2 were induced by defendant No.3 to alienate the suit property in his favour, remained unsubstantiated as they did not choose to contest the suit. They were alleged to have been defrauded by defendant No.3, but no evidence was led to prove the said plea either. Concededly, Mohar Singh i.e. defendant No.1 lived with the plaintiffs, but nothing was brought on record to justify as to why he still did not appear as a witness to support the claim of the plaintiffs. Further, an analysis of jamabandi (Ex.P2) and mutation (Ex.P1) revealed that the suit property was not ancestral and co-parcenary in nature. In any case, even if the suit land was assumed to be ancestral yet plaintiffs were required to prove that the sale deed executed by defendants No.1 & 2, was without any legal necessity and consideration. The cross-examination of Narinder Singh (PW1) revealed that he conceded that his father obtained a loan from the bank. He also admitted that they installed tubewell twice in the land situated at Dachar. His sister was married in February last year and a huge amount was spent on her marriage. They had also constructed their house in the shape of a kothi and ₹ 5-7 lacs were spent on construction. Similarly, Sunita Devi (PW2), wife of Shingara Singh, admitted that a family partition took

place between Mohar Singh and Shingara Singh. And, her husband had got installed a tubewell about six months ago. They also constructed a verandah for animals 2-3 years ago and an amount of ₹ 1-2 lacs was spent on construction. Sri Chand Nambardar (DW1) proved the execution of the sale deed by defendants No.1 & 2 in favour of defendant No.3 and the registration thereof before the Sub Registrar. Satyawan, Registry Clerk (DW2), proved the sale deed (Ex.D1). Likewise, Dulia (DW5), defendant No.3, proved that the alienation of the suit property in his favour vide sale deed dated 07.04.2006, was for a valuable consideration. And as a result, he was put in possession of the suit land. PW1 conceded in his cross-examination that they had no other source of income except the agricultural land. No material, least any cogent or credible evidence, was led to show that plaintiffs had some other source of income from which they had constructed houses and spent money on the marriage of their sister. Therefore, construction of houses, marriage of their sister, installing of tubewells indeed were the instances to show that the amount was spent for the benefit of the family and to meet the necessity of its members. Consequently, plaintiffs were not found to be entitled to the relief prayed for.

Learned counsel for the appellants could not point out as to how the conclusions that had concurrently been recorded by both the courts below were either contrary to the

position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

October 6, 2015
Rajan

(Arun Palli)
Judge