

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

**Regular Second Appeal No.2113 of 2015 (O&M)
Date of Decision: November 17, 2015.**

Amit Kumar and others

.....APPELLANT(s).

VERSUS

M/s Bhandari Builders Ltd and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sudhir Aggarwal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is regular second appeal against the judgment dated 04.09.2014 passed by Civil Judge (Junior Division), Gurgaon whereby the suit filed by the appellants-plaintiffs seeking the relief of declaration that the sale deed dated 20.12.1993 executed by their father Rajpal-defendant No.3 in favour of Devender Singh Gyare is illegal, null and void and without legal necessity, was dismissed.

2. The plaintiffs came up with the plea that the suit land measuring 9 kanals 17 marlas was joint Hindu family coparcenary property of the plaintiffs and their father Rajpal. Defendant No.3-Rajpal Singh being Karta of the family was holding this property for and on behalf of all the coparceners. He sold the above said land vide sale deed dated 20.12.1993 for an ostensible amount of ₹3,44,750/- to defendant No.2 Devender Singh,

who further sold it to defendant No.1 M/s Bhandari Builders Limited vide two sale deeds both dated 30.12.1998 for a sum of ₹4,26,950/-. Plaintiffs were minor at the time of execution of the sale deed executed by their father-defendant No.3. Plaintiff No.1 attained the age of majority on 15.9.2007. The plaintiffs have come up with the plea that their father had no legal necessity to sell the suit land, as such, the sale deed executed by him is bad in the eyes of law.

3. Defendants No.2 and 3 did not contest the claim of the plaintiffs and were proceeded against ex parte.

4. Defendant No.1 contested the claim of plaintiffs stating that defendant No.3 had sold the land for legal necessity to defendant No.2 as he required money for running business and for household expenses. Part of the sale deed was used by him for repayment of loan and construction of the house. All the other allegations of the appellants-plaintiffs were contested, controverted and denied.

5. On perusal of the evidence, learned Civil Judge observed that the land in dispute was joint Hindu family coparcenary property but the sale by defendant No.3, father of plaintiffs in favour of defendant No.2 was for legal necessity. In the sale deed, there was a clear recital regarding the legal necessity to sell the suit land. Learned Civil Judge while discussing the aspect of legal necessity for defendant No.3 to sell the suit land has observed in para 7 of the judgment as follows:-

“7. A careful perusal of the impugned sale deed Ex.P32 shows that the property was sold by defendant no.3 Rajpal Singh for the purpose

of occupation/business so that necessities of his legal heirs could be met out. Meaning thereby the impugned sale deed was executed just to facilitate the plaintiffs with basic needs. Even in the cross-examination plaintiff no.1 Amit Kumar categorically stated that his father i.e. Rajpal defendant no.3 has been residing with him and he has been paying for all the expenses and his mother has not been doing any job etc. neither his mother has any property in her name. Though he stated that his marriage was solemnized by his mother but it could not be explained by him as to where from his mother arranged the requisite money. All these facts categorically shows that the property in dispute was sold by defendant No.3 Rajpal just to meet out basic facilities of his family as even the plaintiffs have failed to produce any evidence on record showing the fact whether Rajpal Singh defendant no.3 otherwise capable to meet out their expenses and hence there was no need to sell out the property in dispute. Further vendee to defendant no.3 i.e. defendant no.2 could have inquired only to the extent that whether in fact defendant no.3 was selling his property in legal necessity. And bare mention of aforesaid reasons in the sale deed makes it quite clear that in fact he acted with due diligence and inquired about the legal necessity of defendant no.3. Moreover, admittedly plaintiff no.1 Amit Kumar was of four years at the time of sale and plaintiff no.2 Naveen was of just one year and plaintiff no.3 even did not born at the time of execution of sale deed. Hence even plaintiff no.1 and 2 cannot be expected to explain or depose regarding economical condition of the defendant no.3 at the point of relevant time or even to depose regarding the disposition of the money received by defendant no.3 Rajpal Singh after selling out the property

in dispute. The best person who could explain all these circumstances was the executor of the sale deed i.e. Rajpal defendant no.3 himself. But he even did not appear before the court and hence proceeded ex-parte. Admittedly he has been residing with the plaintiffs so it clearly shows collusion between the plaintiffs and defendant no.3 and hence the absence of defendant no.3 from the court also gives a negative inference to the case of the plaintiff.”

6. The first Appellate Court has also observed that the plaintiffs are living with their father, who is matriculate and is doing nothing. Prior to the sale in question, he had also sold some other land and those sale deeds have not been challenged by the plaintiffs. It was also observed that this case was audacious attempt on the part of plaintiffs to misuse the process of law and Courts. The facts and circumstances indicate strongly towards the collusive nature of the suit filed by the plaintiffs to put defendant No.1 in dire straits in collusion with their father-defendant No.3.

7. Learned counsel for the appellants-plaintiffs has argued that the onus was heavily on defendants No.1 and 2 to prove that the sale of the suit land by defendant No.3 was for legal necessity but no evidence was produced and even defendant No.2 has not stepped into the witness box. Both the Courts in the absence of any evidence led by the defendants committed grave error of law and fact while concluding that the sale by defendant No.3 was for legal necessity.

8. The above submissions of learned counsel for the appellants-plaintiffs have no merit and the first Appellate Court has rightly drawn the

conclusion in the facts and circumstances of the case that this suit has been

filed by the plaintiffs to misuse the process of law and Court, is a correct and plausible conclusion in the facts and circumstances of the case. The sale pertains to the year 1993 which was challenged in the suit filed in the year 2008. A reason was put forth that plaintiff No.1 was minor and attained the age of majority in the year 2007. It has, however, not been explained as to why the other sales made prior to the sale in question by their father, have not been challenged. Plaintiffs are living with their father who was spending on their brought up, education and other family expenses. The sale deed, copy of which has been supplied by learned counsel for the appellants during the course of arguments, has recital that defendant No.3 required money for needs of plaintiffs and for his business. The vendee is not required to deeply probe the legal necessity of the vendor or to follow the user of the sale consideration. From the recital in the sale deed it was evident and rightly concluded by Courts below that the sale was for legal necessity of defendant No.3.

9. No substantial question of law requiring determination arises in this appeal, which has not merits.

10. Dismissed.

November 17, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE