

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

RSA No. 2520 of 2015 (O&M)

Date of decision: 19.10.2015

Kewal Singh

... Appellant

versus

Dildeep Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ajay Singla, Advocate, for the appellant.

K.Kannan, J.

CM No. 13032-C-2015

CM is allowed.

Appeal is restored to file.

Main Case

The appeal is brought at the instance of the 3rd defendant, whose sale was contested by the son as not binding on him. The plaintiff's claim was that it was an ancestral property and the sale had been done without any necessity or benefit. It would appear that the defendant had a grievance that he had not been served and in appeal he wanted to plead that he had not occasion to show before the Court that the property was not ancestral and it belonged to him absolutely. The defendant was trying to rely on Annexure-A1, a decree said to have been

passed in recognition of a family partition that had already taken place and the allotment of the property in the partition. The application for reception of document was not entertained and the appeal was dismissed.

In second appeal, the appellant would argue that the decree obtained by the appellant itself would show that it is a separate property and not ancestral. However, he was residing in a foreign country at the time of the institution of the suit and he had not been served for bringing the proof to the document which had been filed at the trial.

To a specific query about how the appellant got right to the property, the counsel responds that in a family partition the property was allotted to him and granted in a decree. The decree by itself cannot be a source title except that it can affirm the manner of acquisition of right. If the property came to him in family partition I would take that to be a property that was to be divided as belonging to the family and hence not to be taken as a separate property itself. We are not confronting a situation of a property acquired absolutely by the appellant himself along with yet another and the division that took place among such joint owners who had right by such a joint acquisition. On the other hand, we are dealing with the case of property belonging to the family that was said to have been partitioned by a family arrangement and the allotment of the family arrangement stood confirmed through a decree. The character of such a property could only, therefore, be seen as joint family property in his hand and the plaintiff shall have right to impeach any alienation. Unless the purchaser proves the necessity for the family or

for benefit of the family by such sale, the sale is bound to be set aside.

There has been no attempt to prove such a benefit or compelling circumstances that impelled the sale. The burden of proof of establishing necessity is only on the purchaser for the power of manager father of sale of HUF property is not unlimited but restrict to the two grounds referred to above. If the defendant did not offer any evidence and would have a justification that he had not been duly served, the defendant should have opted for setting aside the *ex-parte* decree and secured the benefit of a fresh trial. If he was preferring an appeal against the decree, he can canvass only for such point as come out from the records and cannot plead his own absence of the trial or inability to produce the documents before the trial Court as enabling him to be favoured with one more opportunity to be given to file the document and secure also the opportunity to prove the documents. It is indeed doubtful that the defendant was set ex-parte, for, there is no such reference in the trial Court decree.

The grounds urged in appeal have no merits and the decrees of the Courts below require no intervention.

The regular second appeal is dismissed.

(K.KANNAN)
JUDGE

19.10.2015

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