

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4258 of 2015 (O/M)
Date of decision : 15.12.2015

Gurdev Singh

..... Appellant

Versus

Balbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Malkeet Singh, Advocate, for the appellant.

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

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KULDIP SINGH, J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 30.3.2015, passed by the Additional District Judge, Jalandhar, reversing the judgment and decree dated 10.7.2013, passed by the learned Civil Judge (Junior Division), Phillaur, vide which the suit of the plaintiff (appellant herein), was decreed.

Briefly stated, the plaintiff/appellant had filed a suit for declaration and permanent injunction, claiming that the sale deed dated 28.2.2007, regarding the suit land, executed by his father

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Darshan Singh in favour of defendant No. 1, is illegal. The plaintiff/appellant claims that the suit property is Joint Hindu Family, coparcenary and ancestral property. The defendant No. 2 was the Karta of the Joint Hindu Family. He is a man of bad repute, extravagant, drunkard and simpleton. There was no need to sell the land for legal necessity. Nor there was any debt against the Joint Hindu Family. Defendant No. 1 sold the land, vide sale deed dated 28.2.2007, without legal necessity and without consideration and without consent of the plaintiff for Rs. 5,31,000/-. The sale consideration was not paid.

Defendant No. 2 did not appear nor he filed the written statement. Defendant No. 1 in the written statement stated that it was self acquired property of defendant No. 1 and that it was sold for legal necessity. It was stated that he had taken a loan from defendants and relatives and to pay back the same, the sale deed was executed.

The lower Court held that the suit property is ancestral property and it was sold without legal necessity. Therefore, the suit was decreed for declaration and permanent injunction. Defendant No. 1 went in appeal. The learned Additional District Judge, Jalandhar, held that the suit property was inherited by survivorship. Therefore, it was not ancestral property qua the plaintiff/appellant. It was further held that the plaintiff/appellant and defendant No. 2 have

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connived with each other and that there is nothing on file to show that the sale consideration was not paid and nor there was want of legal necessity.

I have heard the learned counsel for the plaintiff/appellant and have also carefully gone through the file.

To prove the ancestral property, only copy of the jamabandi has been produced to show that defendant No. 2 alongwith his brother inherited the property from his father. No copy of mutation was filed to show as to whether defendant No. 2 had any other brother or sister. Even if it is assumed that the property was originally owned by Karnail Singh (grandfather of the plaintiff/appellant) and defendant No. 2 inherited the same from his father by way of succession, even then it cannot be said that the suit property was sold without legal necessity. The wild allegations were levelled against defendant No. 2 that he is man of bad habits, drunkard and simpleton. However, defendant No. 2 did not challenge the sale deed, executed by him. Rather, he decided not to put in appearance. He also did not appear in the witness box to state that he has not received the sale consideration. The mere fact that it is recorded in the sale deed that the sale consideration was paid to him at home, is no ground to presume that sale consideration was not paid. The want of sale consideration was to be proved by the vendor or the plaintiff/appellant. The defendant

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had disclosed in the evidence, the sources from which he collected the sale consideration. The presumption is that the registered document is for consideration and want of consideration was to be proved by the plaintiff/appellant. Further, only defendant No. 2 knew for which purpose he needed the money. He decided to abstain from the proceedings. Therefore, it has to be assumed that there was some need in the family, for which the land was sold. Therefore, there is no ground to interfere in the findings of facts recorded by the first appellate Court. Hence, the present regular second appeal is dismissed.

(KULDIP SINGH)
JUDGE

15.12.2015
sjks