IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

106 **RSA No.5946 of 2014(O & M)**
Date of Decision:05.10.2015

Tejbir Singh

....appellant

Versus

Brijesh Singh Chauhan and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Y.P.Khullar, Advocate
for the appellant

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ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court vide judgement and decree dated 30.11.2007. As even the appeal preferred against the said decree failed, and, was dismissed on 27.04.2010, plaintiff No.1 is before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration that the sale deed dated 07.03.1989, executed by defendant No.2 in favour of defendant No.1, qua the suit land was wholly illegal, null and void. And also claimed a decree for joint possession qua their ½ share in the suit property. It was maintained that the plaintiffs as also

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defendants No.2 and 3 were members/coparceners of the joint Hindu family. Defendant No.2 happened to be the *Karta* of the family. Plaintiffs and defendant No.3 happened to be the sons of defendant No.2. However, defendant No.2 was recorded as owner in possession of the suit land measuring 88 kanals 13 marlas. The suit property was claimed to be ancestral and coparcenary in nature. Thus, the sale deed dated 07.03.1989 executed by defendant No.2 in favour of defendant No.1 was wholly illegal, as the property was alienated without any legal necessity. Since plaintiffs were owners to the extent of ½ share, thus the suit.

In defence, defendant No.1 pleaded, that plaintiffs and defendants No.2 and 3 did not constitute a joint Hindu family and were thus, not, coparceners. As defendant No.2 was an absolute owner of the suit land, he rightly executed the sale deed dated 07.03.1989 in favour of defendant No.1. The sale deed was executed for a consideration of ₹ 2,43,788/-. And, defendant No.1 claimed himself to be the bona fide purchaser.

On a due and comprehensive consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that ½ share in the suit land, inherited by defendant No.2 i.e.Girraj from Sohan Lal, was/is deemed to be his self-acquired property. Excerpt Ex.P1 proved that defendant No.2 had in fact inherited the said land from his collateral. Nothing was brought on record to show that defendant No.2 ever intended to abandon his rights qua the said half share. That being so, it was concluded that the said property could not be held to be coparcenary

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in nature. Therefore, plaintiffs could only assail the sale deed dated 07.03.1989, only to the extent of ½ share, which their father Girraj inherited from his father Sanwalia. But for plaintiffs to succeed, it was still required to be shown that the rest half was sold by defendant No.2 without any legal necessity. Defendant No.2 tendered his affidavit; Ex.DW1/A, which reveals that defendant No.2 required money to pay the mortgage amount of PLDB Palwal to the tune of ₹ 45,000/-. The fact as regards mortgage with PLDB was duly proved from the entries in the jamabandis. So much so, even the recitals in the sale deed dated 07.03.1989 revealed that defendant No.2 had paid the mortgage amount to the bank. Consequently, it was concluded that defendant No.2 had indeed sold the land in dispute for a legal necessity. And defendant No.1 had made the bona fide inquiries as regards the existence of such necessity. Defendant No.2 never appeared in the proceedings to deny the receipt of sale consideration. The suit was filed on 28.10.1997 i.e.after over 8 years of the sale deed dated 07.03.1989.

Records show that the present appeal suffers from a delay of over four years in re-filing the appeal. Be that as it may, the application that has been moved in this regard is being dealt with separately.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts 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 out above, there

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hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

05.10.2015 **(ARUN PALLI)**
neenu **JUDGE**

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