

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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***C.M. No. 14654-C of 2014 &
RSA No. 6146 of 2014 (O&M)***

Date of decision: 21.12.2015

Parveen Kumar and another

....APPELLANTS

VERSUS

Salinder Kumar and another

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Saurabh Bajaj, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Karnal dated 13.12.2011, whereby the suit for declaration to the effect that the sale deed dated 05.12.2005 executed by the father of the appellants-plaintiffs, namely, Shyam Lal in favour of respondent No. 1-Salinder Kumar is not sustainable as the sale was without legal necessity and being an ancestral property could not have been done so by respondent No. 2-defendant No. 2 as appellant No. 1-Parveen Kumar, son of Shyam Lal, is 100% disabled and Dinesh Kumar is a minor son, stands dismissed as also the consequential relief of permanent injunction and the appeal preferred against the same dismissed by the

Additional District Judge, Karnal on 18.09.2014.

2. It is the contention of the learned counsel for the appellants that the sale deed dated 05.12.2005 Ex. P5 is not sustainable and not binding upon the appellants as there was no binding necessity and pressing need of their father Shyam Lal to sell the property in favour of respondent No. 1. He contends that the reason for executing the sale deed was a loan of ₹ 1 lac obtained by respondent No. 2-defendant No. 2 from the Primary Cooperative Agricultural and Rural Development Bank Ltd. in the year 2004. As per the terms said loan amount was to be paid in equal monthly instalments within a period of 7 years i.e. up to the year 2011. The said reason cannot be said to be of such a nature which would be included in the term “legal necessity”. Reliance has also been placed upon the judgment of this Court in **Suresh and another vs. Fateh Singh and others**, 2014 (3) Civil Court Cases, 758, especially paras 7 and 8 thereof, where the term “legal necessity” has been explained. He, thus, contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments but cannot accept the same.

4. The sale deed, which is under challenge, is dated 05.12.2005, Ex. P-5, which has been alleged to have been duly executed by respondent No. 2-defendant No. 2 (father of the appellants-plaintiffs) in a civil suit, which was filed by respondent No. 1-defendant No. 1, who is the purchaser of the property, as he was forced to file a suit for declaration against Sh. Shyam Lal as there was some mistake in the sale deed, which was contested by him by alleging that he has never executed any sale deed in favour of respondent No. 1-defendant No. 1. This clearly shows that respondent No.

2-defendant No. 2, the father of the appellants-plaintiffs, had, at the very outset, been not a person who was standing out and accepting the truth. The conduct of respondent No. 2-defendant No. 2, therefore, is reflected.

5. That apart, the present suit appears to be filed by the appellants-plaintiffs through their mother, which is a brainchild of respondent No. 2-defendant No. 2, as is apparent from the facts, as have been culled out in the judgments, which are impugned herein. It may be added here that apart from the sale deed in favour of respondent No. 1-defendant No. 1, there were two other sale deeds executed by respondent No. 2-defendant No. 2 (father of the appellants-plaintiffs), out of the ancestral land, in favour of his brother Ram Lal vide sale deed dated 27.04.2005 Ex. D2, which was of 3 Kanals of land and another in favour of his cousins Raj Kumar etc. for a land measuring 4 Kanals 8 Marlas vide sale deed dated 23.04.2004 Ex. D3. These sale deeds have never been challenged by the appellants-plaintiffs on the grounds of legal necessity. The present suit is only one, which has been preferred by the appellants-plaintiffs. Respondent No. 1-defendant No. 1 is a person, who is facing the brunt at the hands of the appellants-plaintiffs at the behest of respondent No. 2-defendant No. 2 as he is a bona-fide purchaser and had taken due care and caution with regard to the nature of the property by specifically getting it incorporated in the sale deed that the money out of the sale proceeds was to be utilized for clearing the loan taken by him from the Primary Cooperative Agricultural and Rural Development Bank Ltd., which consideration amount, counsel for the appellants admits, has been utilized for the said purpose and the liability of loan has been discharged. All these clearly establish that the present suit has been filed with a mala-fide intention just to deprive respondent No. 1-defendant No. 1

of his fruits of the sale deed dated 05.12.2005. Respondent No.1-defendant No. 1 being a bona-fide purchaser cannot be said to be a person who can be made a scapegoat at the hands of the appellants-plaintiffs.

6. The judgments, on which reliance has been placed by the counsel for the appellants, as far as the principles laid down therein with regard to the legal necessity to sell an ancestral property is concerned, cannot be disputed with but keeping in view the facts and circumstances of the present case, the said principles cannot be made applicable in favour of the appellants-plaintiffs.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

December 21, 2015
pj