

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

**R.S.A. No. 640 of 2014 (O&M)
Date of Decision:- 06.05.2015**

Dharam Pal and another

.....Appellants

Versus

Santosh Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Rahul Deswal, Advocate, for the appellants.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is against the judgment and decree dated 25.10.2012, passed by Additional District Judge, Panipat, whereby the appeal filed against the judgment and decree dated 16.09.2011, passed by Civil Judge, (Jr. Divn.), Panipat was dismissed.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been recaptured in the judgments of the Courts below. However, relevant facts for the

purpose of decision of present Regular Second Appeal are that plaintiffs- Dharam Pal and Sarla Devi, who are son and daughter of Munshi Ram (defendant No.1), filed suit for declaration. The suit land was ancestral property in the name of their father. They had inherited the rights in the property by birth. However, their father (defendant No.1) sold the suit land to defendant Nos.2 to 4, vide sale deed dated 04.11.2004. As per plaintiffs, defendant No.1 was having two wives and plaintiffs are children of defendant No.1 from his first wife. Six children were born out of wedlock of Munshi Ram and Santosh Devi, after death of mother of plaintiffs. Defendant No.1 wants to grab the share of plaintiffs under the garb of sale deed dated 20.11.2004 in the ancestral property. There was no legal necessity at the hands of defendant No.1, to execute the sale deed but still defendant No.1 executed the sale deed and as such suit before the Court of first instance.

4. Defendant No.1 contested the suit, taking the plea regarding maintainability, cause of action, mis-joinder and non-joinder of necessary parties. On merits, defendant No.1 took the plea that he was serving in Army and Ganga Devi left his company. No child was born out of the said wedlock. Plaintiffs have no concern with the suit land and they never remained in possession of the same. The land was sold to defendant Nos.2 to 4, as he (defendant No.1) was the sole owner of the property. More so, defendant No.1 required money to repay the said amount, which was legal necessity and for marriages of daughters. More so, defendant No.1 required amount for construction of residential house, after sale of

suit land. The suit land was giving nominal income and as such sale deed was an act of good management and prayed for dismissal of the suit. On these facts the Court of first instance settled issues and parties were put to trial.

5. The Court of first instance after considering the material and evidence available on file, returned the findings that defendant No.1 had executed the sale deed are legal necessity and the same was because of good management of the family and the sale deed dated 04.11.2004 was not illegal and void. Plaintiffs contested the suit before the Court of first appeal but remained unsuccessful and as such second appeal before this Court.

6. At the time of arguments, Mr. Rahul Deswal, Advocate, learned counsel for the appellant took the plea that both the Courts have not appreciated the facts and evidence available on file because the sale deed at the instance of defendant No.1 was related to ancestral land and there was absolutely no legal necessity. It was not a good management for the family. More so, defendant No.1 had denied the status of plaintiffs to be children from his first wife. So, the finding returned by both the Courts be set aside.

7. Having considered the rival contentions and after going through the record of the case file, this Court is of the considered view that both the Courts below have already appreciated the facts and evidence available on file that suit property was sold by defendant No.1 on the basis of registered sale deed dated 04.11.2004. The said sale deed

was for better management of the family and for legal necessity. It had come in evidence by way of statement of PW4 that Munshi Ram constructed a house in the year 2005. More so, for the last 15/20 years nothing was sown on the suit land. Munshi Ram was in need of money for better management of the family and for marriage of his daughter. PW5 Bharta deposed that suit land was alienated with the consent of family members.

8. As such, the findings were correctly recorded by Court of first instance and duly affirmed by the Court of first appeal. The Regular Second Appeal is not maintainable, as the finding of facts have been recorded and duly appreciated by the Courts below. There is no substantial question of law involved in this appeal calling for interference by way of present Regular Second Appeal.

9. Resultantly, the present Regular Second Appeal is without any merit and the same stands dismissed.

May 06, 2015
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(SHEKHER DHAWAN)
JUDGE