

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

Regular Second Appeal 4567 of 2003 (O&M)

Date of decision: 07.01.2016

Gordhan

..Appellant

versus

Ram Mehar and others

...Respondents

COCF No.809 of 2004 (O&M)

Gordhan

...Petitioner

versus

Ram Mehar and others

....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Arun Jain, Senior Advocate with
Mr.Varun Parkash, Advocate for the appellant
In RSA No.4567 of 2003 and for the petitioner
In COCF No.809 of 2004
Mr.Karan Garg, Advocate for
Mr.Aashish Chopra, Advocate for respondent No.5

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

Kuldip Singh, J.

Impugned in the present regular second appeal is the judgment and decree dated 10.6.2003, passed by the learned Additional District Judge, Fast Track Court, Gurgaon, reversing the judgment and decree dated 11.1.2000, passed by the learned Civil Judge, Junior Division, Gurgaon, thereby, decreeing the suit of the plaintiffs / respondents and granting declaration to the effect that the sales deeds and lease deeds in favour of defendant Nos.2 to 4 are illegal, null and void and without legal necessity and not binding upon the rights of the plaintiffs. The parties were left to bear their own

costs. It is mentioned here that the lower Court had dismissed the suit of the plaintiffs.

Facts of the case are that the plaintiffs filed a suit on 13.1.1990 for possession, in the alternative declaration for declaring the sale deed dated 8.9.1982 in favour of defendant Nos.2 to 4, Pattanama dated 25.8.1982 in favour of defendant No.3, also sale deed dated 21.1.1988 and surrender Pattanama dated 10.2.1982 both in favour of defendant No.4 regarding the suit land as illegal and without legal necessity and without consideration. In the alternative, it was prayed that if the plaintiffs are held to be governed by the agricultural custom of the Punjab and Haryana State and that of District Gurgaon, then a decree for declaration may be passed that the alleged sale deeds and Pattanamas in favour of defendant Nos.2 to 4 are illegal, being without legal necessity and consideration and not binding upon the reversionary rights of the plaintiffs.

It is case of the plaintiffs that defendant No.1 was recorded as owner in possession of the suit land measuring 44 kanals 13 marlas fully detailed in the plaint, being the Joint Hindu un-divided family and ancestral land, consisting of plaintiffs and defendant No.2. Plaintiff No.1 was born on 30.10.1969, plaintiff No.2 was born in the month of October 1972 and plaintiff No.3 was born in the year 1975-1976. Plaintiffs are sons of defendant No.2. They are Hindu by religion. Plaintiffs and defendant No.1 form Joint Hindu Coparcenary family. Defendant No.1 is the Karta. Plaintiffs have got right by birth in the Joint Hindu Family coparcenary and ancestral property. The suit land was recorded in the name of defendant No.1, being Karta of

the family. According to Hindu Mitakshara Law, Karta is not competent to alienate the ancestral property to anyone without consideration and legal necessity. It is stated that defendant No.1 is man of evil habits. He is a drunkard and gambler. He is also a spend thrift and man of loose character, who feels pleasure in squandering away the ancestral joint Hindu family and coparcenary property without legal necessity and consideration. It is stated that defendant No.1 had executed sale deed dated 8.9.1982 for Rs. One lac in favour of defendant No.2. Defendant No.2 also obtained a sham and bogus lease deed for 99 years from defendant No.1 in favour of his relations or fast friend, defendant No.3 vide Pattanama dated 25.8.1982. The said Pattanama amounts to permanent alienation. The same is without consideration and without legal necessity. Plaintiffs also came to know that defendant No.2 further transferred the suit land to defendant No.4 for a fictitious sum of Rs.25 lacs vide sale deed dated 21.1.1988 and also got said Pattanama surrendered from defendant No.3 in favour of defendant No.4 vide surrender deed dated 10.9.1988. The said sale deed dated 21.1.1988 and surrender Pattanama are also illegal and void documents and do not effect the rights of the plaintiffs. Therefore, prayer is made for setting aside these documents and granting decree for possession. It is further stated that the suit is filed within three years of attaining majority by plaintiff No.1. Plaintiff Nos.2 and 3 are still minors.

In the written statement, defendant No.4 pleaded that suit is time barred. He is bona fide purchaser for consideration. The relationship of plaintiffs with Mangtu Ram – defendant No.1 was

denied. The date of births were also denied. It was further stated that land was sold for legal necessity and valuable consideration and that a perfect title had passed on to defendant No.2 and further sale in favour of defendant No.4 is also held to be legal and valid.

Defendant No.2 also raised more or less same plea. He also pleaded that sale was for legal necessity and for consideration.

From the pleadings, following issues were framed:-

- 1. Whether plaintiffs are sons of Sh.Mangtu Ram defendant No.1 and they constitute joint Hindu family amongst themselves? OPP*
- 2. Whether suit property described in para No.1 of the plaint was ancestral and coparcenary property of the joint Hindu Family in the hands of defendant No.1 qua plaintiffs? OPP*
- 3. Whether sale deed executed by def. No.1 in favour of def. No.2 and the lease deed in favour of def. No.3 were without consideration? OPP*
- 4. Whether suit property was sold by def. No.1 for legal necessity and consideration and it was for benefit of his estate? OPD*
- 5. Whether the defendant had made bonafide inquiries about the legal necessity of def. No.1 before purchasing the suit property, if so what is its effect? OPD*
- 6. Whether plaintiffs are governed by any custom and if so what is that custom and what would be its effect? OPD*
- 7. Whether suit has not been filed within time? OPD*

8. Whether defendant No.4 is bonafide purchaser for valuable consideration without notice and so entitled to the protection of provisions of Section 41 of the Transfer of Property Act and other equitable provisions?

OPD

9. Whether suit has not been correctly valued for the purpose of court fee and jurisdiction? OPD

10. Whether plaintiffs have no locus standi to file the present suit? OPD

11. Whether suit is collusive between plaintiffs and defendant No.1? OPD

12. Relief.

The lower Court decided issue No.1 in favour of the plaintiffs. Issue No.2 was decided against the plaintiffs. Issue No.3 was also decided against the plaintiffs and so were issue Nos.4 to 6. Issue No.7 was decided in favour of the plaintiffs holding that the suit is within limitation. Issue No.8 was also decided against the plaintiffs and so was issue No.10. Issue No.9 and 11 were not pressed before the lower Court. Accordingly, the suit was dismissed.

In the appeal, the learned Additional District Judge held that the suit property is ancestral qua the plaintiffs. The sale was not for legal necessity and hence, the judgment of the lower Court was reversed.

I have heard learned counsel for the parties and have also carefully gone through the file.

First of all, it is required to be determined whether the suit

property is ancestral qua the plaintiffs?

It comes out that before the lower Court Hindi translation of Urdu documents was not produced. In the appeal, the Hindi translation was produced and the first appellate Court, while discussing the revenue record, made the following observations to hold that it is ancestral property qua the plaintiffs:-

“Excerpt PW3/1 (Hindu version given in appeal) indicates that in the year 1903-1904 (Jamabandi) the common ancestor of the parties was Sukh Chain who was the owner in possession of the property. The name of Sukh Chain continued in the Jamabandi 1907-08. In the Jamabandi 1915-16, after the death of Sukh Chain names of Nathu, Bani and Jangi came on record as legal heirs. In the year 1923-24 Jamabandi name of Nathu alone came because Bani and Jangi died issueless. In the Jamabandi 1927-28 Nathu was again shown to be in possession of the property. After the death of Nathu, in the Jamabandi 1935-36 name of Mangtu s/o Nathu came on record. This continued in the later revenue record. Meaning thereby Mangtu was the owner in possession of the property in question till he alienated in favour of other defendants. The reference to excerpt Ex.PW3/1 wherein the record of various Jamabandis is contained goes to indirect that property in question was ancestral in the hands of Mangtu. The pedigree tables Ex.P13 and Ex.P14 (Hindi version given in appeal) further

substantiates the case of plaintiffs that the property was ancestral in the hands of Mangtu.”

The learned counsel for the appellant has argued that it is proved from the record that the suit property was originally owned by Sukh Chain. Sukh Chain was succeeded by three sons, namely, Nathu, Bani and Jangi. Thereafter, land was recorded to be owned by Nathu only because Bani and Jangi died issueless. In this way, Nathu had inherited the property of Bani and Jangi to the extent of 2/3rd share. Therefore, said 2/3rd share becomes self acquired property of Nathu. Since the entire property has intermingled and the major portion was self acquired property, therefore, entire property is to be held as self acquired property of Nathu. Nathu was succeeded by his son Mangtu. Therefore, it is argued that the suit property qua Mangtu defendant No.1 was self acquired property.

Contention has been countered by the learned counsel for the plaintiffs stating that there is nothing on file to show that how Nathu alone was recorded to be owner. There is nothing on file to show how the share of Bani and Jangi was acquired by Nathu. It is further contended that there was a coparcenary amongst Nathu and Bani and Jangi and the suit property was coparcenary property. Therefore, if one of the coparcener dies his rights devolve upon other coparcener and in such case, suit property does not lose its original character of being ancestral. It is further argued that the suit property was admittedly inherited by Mangtu defendant No.1 from his father. Therefore, qua the plaintiffs the suit property will be ancestral. It is argued that the property inherited from father or father's father or

father's father's father is to be termed as ancestral property.

In the present case, the copies of the jamabandi as discussed by the lower appellate Court shows that the disputed property was inherited by Mangtu –defendant No.1 from his father Nathu. Therefore, the same is ancestral qua the plaintiffs. Findings of the lower appellate Court in this regard are affirmed.

The next question arising for consideration is as to whether the sale was for legal necessity? In this case, the lower appellate Court has held that the legal necessity was to be proved by the defendant –Gordhan who did not state any word about the same in his statement on oath. However, the evidence of both the parties is to be read as a whole to find out whether any legal necessity is made out or not? The statement of PW1 Ram Mehar –plaintiff shows that Mangtu –defendant father of the plaintiffs had three sons and four daughters. All the four daughters of Mangtu have been married. Ram Mehar –plaintiff claimed that his daughters were married in the year 1972. He denied that his daughters were married in the year 1983. Age of Ram Mehar was 30 years when his statement was recorded on 14.12.1994, which indicates that two younger sisters of the plaintiff might have been married around the period the initial alienation took place in the year 1982. The statement of Ram Mehar further discloses that there is collusion between plaintiffs and their father. Ram Mehar has admitted in cross-examination that his father Mangtu had sold the land through about 50 sale deeds. They filed the suits against buyers but later on withdrew the same on account of compromise. He admitted that they had accepted the money for

abandoning those civil suits. However, he claimed that from Gordhan defendant they do not want money but want land. It means that all the 50 alienations made by Mangtu were challenged by the plaintiffs. They got additional money from the buyers and abandoned the suit. Therefore, it is apparent that the suits were filed in collusion with Mangtu –defendant to get extra money from the buyers, taking the cover of the legal right of the plaintiffs to challenge such alienations. The cross-examination of Ram Mehar further shows that Mangtu had taken the loan of Rs.39,000/- from State Bank. He had seven children and for their marriage he had to bear the expenses. Therefore, the expenses on the marriage and taking loan from the bank for running the family amounts to legal necessity. Further as observed above, there is apparent collusion between the plaintiffs and Mangtu-defendant to extort extra money from the prospective buyers as has been done by them. Therefore, on this ground also, the plaintiffs are not entitled to any relief.

Learned counsel for the respondents has relied upon the authorities in Mihan and another v. Inder and another, 2008(3) RCR (Civil) 124, Kumaraswami Mudaliar and others v. Rajamanikkam Udayar and others, 1966 AIR (Kerala) 266, Mohinder Singh v. Karam Singh, 1996(1) PLR 254, Sital Singh v. Jamna Bai and others, 2004 (3) RCR (Civil) 711, Duli Chand v. Mahabir and others, 2000(4) RCR (Civil) 176, Dharamvir v. Mahavir and others, 2002(2) RCR (Civil) 758, Ratesh Kumar v. Basudev Singh Pathania, 1994(3) RRR 308, Amar Singh v. Tej Ram, 1982 PLR 237 to press that the alienation of ancestral property without legal necessity is illegal.

The discussion made above clearly shows that in this case, it is held that though the suit property was ancestral property, but the sale was for legal necessity. Whether the sale is for legal necessity or not is a question of fact which is to be decided on the facts of each case? In the present case since it has been held that the sale was for legal necessity, therefore, these authorities are of no help to the respondents.

Now coming to the question of consideration. The documents on file show that sale consideration is recorded in the documents itself. Mangtu-defendant did not appear to deny the allegations levelled against his character and also did not deny the non-receipt of consideration. Initial sale took place in the year 1981-82 for Rs.62,000/- vide sale deed Ex.P9. The said sale was never challenged by the Mangtu on the ground that the sale consideration has not been received. The lease for 99 years through Ex.P10 regarding same land measuring 44 kanal 13 marlas is for Rs.1500/- per year as on 25.8.1982. The copy of the sale deed Ex.P11 shows that Gurbachan Singh who had purchased the land through sale deed dated 8.9.1982 further sold the same to Gordhan –defendant on 21.8.1988 for Rs.25 lacs. Gurbachan Singh has never claimed that no sale consideration was received. Therefore, it has to be held that the alienations were for consideration. So far as the question of defendant –Gurbachan is concerned, Gordhan –defendant-appellant paid Rs.25 lacs. In the revenue record the previous owner Gurbachan Singh was recorded as owner. Gurbachan also had document of title with him and the purchaser was required to enquire about the title of

the seller. Since the seller Gurbachan had the title and it was so recorded in the revenue record and the sale by Gurbachan Singh was for valuable consideration, therefore, Gordhan –defendant is held to be bona fide purchaser for consideration.

Consequently, the findings on issue Nos.3, 4, 5, 8 and 11 are reversed and these issues stand decided in favour of the contesting defendants.

As a result of the foregoing discussion, the present appeal is allowed. The impugned judgment and decree dated 10.6.2003, passed by the learned Additional District Judge, Fast Track Court, Gurgaon is set aside and the judgment and decree dated 11.3.2000, passed by the learned Civil Judge, Junior Division, Gurgaon is restored. Consequently, the suit of the plaintiffs stands dismissed with costs.

In view of the above discussions, the COCP No.809 of 2004 stands disposed of.

07.01.2016
gk

(Kuldip Singh)
Judge