

Regular Second Appeal No.3298 of 2011 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3298 of 2011 (O&M)
Date of Decision: September 2nd, 2016

Surender Singh

...Appellant

Versus

Rajpal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.R.A.Sheoran, Advocate,
for the appellant.

Mr.Sandeep Thakan, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit for declaration claiming ownership qua 1/4th share by granting declaration that the suit property was ancestral and coparcenary in the hands of defendant No.3 and for setting-aside the sale deed No.106 dated 23.5.2005 executed by defendant No.3 in favour of defendant Nos.1 and 2, has been dismissed by setting-aside the judgment and decree of the trial Court.

Mr.R.A.Sheoran, learned counsel for the appellant-plaintiff submits that the conceded position on record is that the property in the hands of Raghbir Singh was ancestral. The only question which arises for

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determination is whether the sale deed, aforementioned, was for legal necessity or not. The trial Court decreed the suit by holding that the appellant-plaintiff had 1/4th share, but the Lower Appellate Court, on the basis of the additional evidence i.e., receipt which has been produced to show that some loan was taken from the bank and the sale consideration was deposited for discharging the loan liability and, therefore, the sale deed was held to be for legal necessity. He further submits that Raghbir Singh died on 8.8.2006, whereas the loan taken from the bank had been repaid on 28.6.2007, thus urges this Court for setting-aside of the judgment and decree under challenge.

Mr.Sandeep Thakan, learned counsel for respondent No.1 submits that no doubt the nature and character of the property was ancestral, but the sale deed, aforementioned, was for legal necessity and there were certain loans taken from the bank vis-a-vis agricultural implements, tractor etc. The additional evidence brought on record proves the aforementioned contention, which weighed in the mind of the Lower Appellate Court being the last court of fact and law to differ with the findings rendered by the trial Court and, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and

appraised the paper book.

The substantial question of law, which arises for determination by this Court is “whether the property admittedly being ancestral, the sale deed executed on 23.5.2005 can be said to be in discharge of legal necessity or not” and the answer is in negative as Raghbir Singh stated to have died on 8.8.2006, the sale deed was executed on 23.5.2005 and the repayment of the loan was in 2007. There is no connection with the dates and events that there was an occasion for Raghbir Singh to discharge the loan liability and, therefore, execution of the sale deed was within the family, i.e., two sons of Raghbir Singh and, therefore, it cannot be said to be in discharge of legal necessity. Had it been to a third party, perhaps there could have been some iota of truth.

In my view, the Lower Appellate Court has not examined aforesaid aspects and, thus, there is illegality and perversity in the impugned judgment and decree. Accordingly, the same is set-aside and that of the trial Court is restored. Resultantly, the question of law is answered in favour of the appellant-plaintiff and appeal stands allowed.

September 2nd, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No