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

**RSA No.4935 of 2014 (O&M)  
Date of Decision: 27.07.2016**

**Rajvir and another**

**.....Appellants**

**Vs**

**Ranvir Singh and others**

**.....Respondents**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present:Mr. B.S. Tewatia, Advocate  
for the appellants.

**\*\*\*\***

**RAJ MOHAN SINGH, J.**

[1]. Plaintiffs/appellants have filed this Regular Second Appeal against the judgment decree dated 01.04.2014 passed by Additional District Judge (1), Palwal whereby appeal filed against judgment and decree dated 10.10.2011 passed by Civil Judge (Jr. Divn.) Palwal was accepted and suit of the plaintiffs for declaration and possession as a consequential relief was dismissed with costs.

[2]. Brief facts as gathered from the record are that the plaintiffs filed suit for declaration and possession as a consequential relief to the effect that the land shown in the plaint was ancestral, coparcenary and joint Hindu family property of

the plaintiffs and defendant No.2. They assailed sale deed dated 17.02.2006 executed by defendant No.2 in favour of defendant No.1, alleging that the same was illegal, null & void, without consideration and without legal necessity. Plaintiffs claimed themselves and defendant No.2 to be Hindus and at the relevant time, they were governed by Hindu law in the matter of inheritance, succession and alienation. Land measuring 19 *Kanals* in the revenue estate of village Badhraon, Tehsil Palwal was ancestral, coparcenary and joint Hindu family property in the hands of defendant No.2, who was the man of many vices.

[3]. Plaintiffs alleged that defendant No.2 sold away *Killa* No.3/1 (4-0) out of Rect. No.80 to defendant No.1 for a consideration of Rs.1,20,000/- vide registered sale deed dated 17.02.2006. Mutation was also entered and sanctioned in favour of defendant No.1. Plaintiffs further alleged that defendant No.2 had no legal necessity and impugned sale deed was without legal necessity and without consideration and, therefore, the sale deed was not binding upon them. It was alleged that defendant No.2 had no legal necessity for selling the suit land because he was owner in possession of agricultural land in village Alawalpur and Badhraon and there was sufficient income from the said land in the hands of defendant No.2. Plaintiffs stated that under the garb of said sale deed, defendant No.1

was bent upon to change the nature of the property by way of raising construction and also threatened to alienate the same to the strangers.

[4]. Defendants contested the suit on all counts and pleaded that defendant No.2 was the owner of the property and he lawfully sold the same to defendant No.1 for a valuable consideration and delivered the possession of the land to him. Legal necessity was existed for repaying the loan of Rs.3 lacs of P.A.R.D. Bank, Palwal. Defendant No.1 claimed himself to be the owner of the property by virtue of the sale deed. The nature of land being ancestral, coparcenary and joint Hindu family property was denied by the defendants.

[5]. Replication was not filed and both the parties went to trial on the following issues:-

- “1. Whether the plaintiffs are entitled for decree for declaration that the suit property is ancestral coparcenary, as per para no.4 of the plaint? OPP*
- 2. Whether the sale deed dt. 17.02.2006 is illegal, null and void? OPP*
- 2A. Whether the plaintiffs are entitled to the decree of possession, as prayed for? OPP.*
- 3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD*

4. *Whether the plaintiffs have not come with clean hands before the Court? OPD*
5. *Whether the plaintiffs have not paid the court fee as required by law? OPD.*
6. *Relief.”*

[6]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[7]. After appraisal of the evidence, trial Court decreed the suit of the plaintiffs on the premise that there was admission by defendant No.1-Tarachand in his cross-examination that the suit property was ancestral and the same was inherited by defendant No.2 from his father Bhajan Lal. Admission of defendant No.1 was corroborated by *jamabandi* (Ex.P-8) for the year 1962-63 in which property was shown to be owned and possessed by Bhajan Lal son of Ramdayal. As per mutation (Ex.P-9), the property was inherited by defendant No.2 after the death of his father on 03.09.1968. The *jamabandies* (Ex.P-1 to P-3) were relied upon to hold that defendant No.2 was in possession and the mutation (Ex.P-7) was also to this effect, showing inheritance of the suit property from defendant No.2 in favour of present plaintiffs. The witnesses namely PW-2 Vidhya Sagar and PW-3 Rajbir also deposed in league with plaintiff No.1.

[8]. The trial Court took notice of the aforesaid evidence and held that the suit property including the land in Rect.No.80/3/1(4-0) was ancestral and joint Hindu family property in the hands of defendant No.2 at the time when sale deed dated 17.02.2006 was executed in favour of defendant No.1. After holding the land to be ancestral in the manner as depicted above, the factum of legal necessity was also not found by the trial Court for selling the land. Trial Court went on to observe that in case of legal necessity for which joint land was sold, the burden was on the vendee to prove that he made proper and *bona fide* inquiry regarding existence of legal necessity before purchasing the said property. The defendant did not lead any such evidence to prove that he had in fact made proper inquiry regarding existence of such legal necessity of paying loan of an amount of Rs.3 lacs to the Bank.

[9]. The clearance certificate Ex.PW-1/1 and Ex.P-6 were relied upon to show that amount of Rs.3 lacs allegedly received by defendant No.2 from the Bank had already been paid by defendant No.2 himself on 08.02.2006. The clearance certificate was proved with the statement of PW-1 Dev Dutt, Clerk of the PARD Bank, who was examined by the plaintiff. The sale deed (Ex.P-5) was executed on 17.02.2006 by defendant No.2 in favour of defendant No.1 after clearance of the loan on

08.02.2006. In view of aforementioned, the trial Court held that defendant No.1 had not made proper inquiry in respect of existence of legal necessity before purchasing the property, therefore, it was held that there was no such legal necessity for selling the land by defendant No.2 in favour of defendant No.1.

[10]. Trial Court held that the alienation of the joint Hindu family property by *Karta* of joint Hindu family was governed by Mitakshara law and without consent of other coparceners and without any legal necessity, is liable to be set aside. The land could not be subjected to sale. The alienation would not be binding upon the other members of the family. It was concluded that the sale deed dated 17.02.2006 was executed by defendant No.2 in favour of defendant No.1 without any legal necessity and was liable to be set aside.

[11]. Feeling aggrieved against the aforesaid judgment and decree dated 10.10.2011 passed by the trial Court, the defendant No.1 filed appeal before the lower Appellate Court. The appeal was accepted by the lower Appellate Court vide judgment and decree dated 01.04.2014 on the basis of material on record.

[12]. Against the acceptance of appeal by the lower Appellate court, the plaintiffs/appellants have preferred the present Regular Second Appeal before this Court.

[13]. I have heard learned counsel for the appellants and have also perused the record.

[14]. In para No.9 of the grounds of appeal, the appellants have framed following substantial questions of law:-

- “(i) Whether the ancestral property and self acquired property can be mixed up and come in the definition of non-ancestral is legal?”*
- “(ii) Whether the Karta of the Hindu joint family can sold the property without any personal necessity?”*
- “(iii) Whether the sale qua ancestral property which was held to be without legal necessity could not be binding on the plaintiff?”*

[15]. All the aforesaid questions are revolving around the factum of the property being ancestral or self-acquired property of defendant No.2. Perusal of the record shows that as per *jamabandi* (Ex.P-8) for the year 1962-63 Bhajan Lal predecessor-in-interest of the plaintiffs was owner in possession of the land. After the death of Bhajan Lal, the suit land was inherited by his son Balley @ Balram and daughter Smt. Lauhari in equal shares vide mutation (Ex.P-9). Subsequent *jamabandi* for the year 1972-73 (Ex.P-10) also reflected Balley @ Balram and his sister Smt. Lauhari to be owners in possession of the suit land in equal shares. However, in the subsequent

*jamabandi* for the year 2001-02 (Ex.P-2), Balley @ Balram was shown to be exclusive owner in possession of the suit land including the land of his sister Smt. Lauhari which was inherited by her from her father. Lauhari was absolute owner of the half share of the land which was inherited by her from his father. The subsequent *jamabandi* showed that Lauhari had relinquished her share in favour of her brother Balley @ Balram and, therefore, the land received by Balley @ Balram from his sister to the extent of half share was merged with his half share which he received from his father as ancestral property. After such merger the land was so intermixed and was not capable of segregation. In view of **Inder Singh (D) through LRs. vs. Channo and others, 2004(3) PLR 710**, if the ancestral nature of land was mixed up with non-ancestral part of the land in such a way that it was difficult to find out as to which part of land was ancestral and which part of land was non-ancestral, then the entire land has to be treated as non-ancestral.

[16]. Since there was no partition between the shares of Balley @ Balram and his sister Smt. Lauhari, therefore, the shares on merger would make the ancestral and non-ancestral nature of land to be wholly impossible to identify. Since land was not proved to be ancestral, therefore, the question No.(i) as suggested by the appellant has to be answered in the manner

that the entire land was non-ancestral in the hands of defendant No.2, who was the *Karta* of joint Hindu family property. Since the land was not the ancestral property, therefore, defendant No.2 had every right to deal with the self-acquired property and, therefore, question No.(ii) did not arise for consideration. The question of legal necessity was also dependent upon the nature of property i.e. ancestral property, therefore, with the decision that the property was self-acquired property, question No.(iii) has to be answered in the manner that the question of legal necessity of selling land to defendant No.1 did not arise.

[17]. Having considered the factual details in the light of aforesaid facts, I am of the view that no illegality was committed by the lower Appellate Court while assessing the merits of the case on the basis of material available on record. The lower Appellate Court has appreciated the material in right perspective and such an appreciation cannot be faulted with. Resultantly, this appeal is found to be totally bereft of merits and the same is accordingly dismissed.

July 27, 2016  
Atik

(RAJ MOHAN SINGH)  
JUDGE

Whether speaking/reasoned                      Yes / No

Whether reportable                                      Yes / No