

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.1143 of 2017
Date of decision: 25.04.2017**

Joginder Singh

...Appellant

Versus

Gurdial Singh (deseased) through LR's and Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajesh Goyal, Advocate for
Mr. Pritam Saini, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in a regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration, challenging the sale deed suffered by his father-defendant No.1 for legal necessity, was dismissed by the learned trial Court vide its impugned judgment and decree dated 11.02.2014 and his first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 09.12.2016.

Brief facts of the case, as noticed by the learned trial Court in paras 2 to 5 of the impugned judgment, are that plaintiff and defendants No.3 and 4 are the sons of defendant No.1 (Gurdial Singh) whereas defendants No. 5 and 6 are the legal heirs of another son namely Gayasa of defendant No.1. No relief had been sought against defendants No.3 to 6 as the interest of the plaintiff as well as all defendants No.3 to 6 was common and since defendants No.3 to 6 were not available at the time of filing the present suit, therefore they were being arrayed as proforma defendants and

defendant No.5 being minor represented through his natural mother Smt. Surjit Kaur who had got no adverse interest to the interest of minor. Mangta son of Nathu was the great grandfather of the plaintiff was the owner of the land including suit land and Mangta (great grandfather of plaintiff) died on 01.06.1964 and after his death the land inherited by Sh. Daulta (grandfather of the plaintiff) vide mutation dated 10.06.1965 and after death of Daulta the suit land and other land inherited by both sons of the Daulta namely Gurdial Singh and Mani Ram vide mutation dated 25.5.2006 as such the land in subject matter of the sale deed in questions was that the ancestral property in the land of Gurdial and Mani Ram and apart from the suit property being ancestral the land in question was joint Hindu family property and the same was still joint amongst the legal heirs of the Daulta Ram as the same had not been partitioned till today and the plaintiff along with defendant No.3 to 6 were in cultivating possession of the land which was inherited by defendant No.1 after death of Daulta Ram.

It was further averred that the Uncle of the plaintiff namely Sh. Mani Ram earlier was cultivating the land to the extent of his share and after his death his son namely Jaipal and Tarsem Lal were in possession of the land to the extent of their share. It was further stated that defendants No.1, 3 to 6 and plaintiff were agriculturists by procession and were solely dependent upon the agriculture and as per the custom prevalent in the community of the plaintiff and defendant No.1 and defendants No.3 to 6 no more had a right to alienate/transfer any part of the land, which was ancestral property to anyone without any legal necessity.

It was further averred that defendant No.1 who was a man of vices and having no legal necessity alienate the suit land to fulfill his vices.

Earlier defendant No.1 also threatened to alienate the suit land in question upon which the plaintiff served a legal notice upon defendant No.1 mentioning their in the status of the suit land and was non competency to execute the sale deed and that notice was duly received by defendant No.1 upon which defendant No.1 assured the plaintiff and defendants No.3 to 6 that he would not alienate any part of the land and also admitted his in competency to execute the sale deed being land as ancestral in nature. But on 02.11.2007 defendant No.1 illegally executed the sale deed bearing No.2644 dated 02.11.2007 to the extent of his one half share in favour of defendant No.2 as defendant No.1 was not legally competent to execute the sale deed in favour of defendant No.2 as there was not having any legal necessity to alienate the suit land, therefore the sale deed executed by defendant No.1 in favour of defendant No.2 was totally illegal, inoperative and liable to be set aside. The plaintiff approached defendants No.1 and 2 to get the sale deed cancelled but they refused to do that.

Having been put to notice, defendants put appearance and filed their separate written statements, taking more than one preliminary objections. Replication was filed by the plaintiff-appellant.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the sale deed bearing No.2644 dated 02.11.2007 is illegal null and void? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff is established by her own act and conduct to file the present suit? OPD

4. whether the suit is liable to dismissed for want of affixation of ad volerm Court fee? OPD.

5. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has miserably failed to prove his case. Accordingly, his suit was dismissed by the learned trial Court, vide its impugned judgment and decree dated 11.2.2014. Feeling aggrieved plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 09.12.2016. Hence this regular second, at the hands of the plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that defendant No.1 was father of the plaintiff-appellant. In fact, relationship between the parties is not in dispute. The entire case of the plaintiff/appellant was based on the fact that his father Sh. Gurdial Singh sold the land measuring 12 marlas out of ancestral property and that too without any legal necessity. However, PW-1 Panch Ram, who was examined by the plaintiff-appellant himself, deposed before the court that after selling the land in question, Sh. Gurdial Singh got the mortgaged land redeemed. This witness further deposed that Gurdial Singh got tubewell installed in his land. Once this material statement suffered by PW-3 has gone undisputed, appellant-plaintiff had no legs to stand because his own witness completely smashed his case. Having said that, this Court feels no hesitation to conclude that both the learned

courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that appellant, being the plaintiff, onus was on him to prove his case, by leading cogent and convincing evidence. However, he failed to do so. Further, it is pertinent to note here that appellant will also get his share out of the mortgaged land, which was got redeemed by his father Sh. Gurdial Singh by selling his small piece of land measuring 12 Marlas. To get the mortgaged land redeemed would certainly be a legal necessity for the father of the appellant. Under these undisputed facts and circumstances, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 30 to 35 of its impugned judgment, which deserve to be noticed here, read as under:-

“As noticed earlier that there is clear admission of PW3 Panch Ram, the witness examined by the plaintiff that it is after selling the disputed land measuring 06 marlas only out of the large land owned by Gurdial Singh that he had got the mortgaged land redeemed. It is also in his testimony that Gurdial had got tube-well installed on his land. In the fact of this evidence produced by the plaintiff-appellant himself, even if it be assumed that Gurdial Singh had performed marriages of his daughters prior to execution of the impugned sale deed, it will not have any impact on the decision of the case, once

there is clear evidence that Gurdial Singh had got his mortgaged land redeemed after execution of the impugned sale deed and had got the tube-well installed.

In the face of above said evidence, containing admissions of plaintiff and his witnesses, nothing else is required to be proved on record by defendants because own evidence of the plaintiff proves beyond any doubt that suit land was sold by defendant no.1 for the legal necessity as he had to get his land redeemed.

Simply because, appellant has collected information under The Right to Information Act that no tube-well was installed in his land, will not advance the case of the appellant in any manner. As such, it is held that legal necessity of deceased Gurdial Singh is well proved on record. It is further held that none of the ingredients to allow application under Order 41 Rule 27 CPC are there and so, the said application is dismissed being devoid of any merit.

In view of the above discussion, it is held that learned lower court did not commit any error by coming to the conclusion that suit land has been sold for legal necessity and so, impugned sale deed executed by defendant no.1 in favour of defendant no.2 cannot be held to be illegal or void in any manner whatsoever. Said sale deed is binding on the rights of the plaintiff as well as other legal heirs of defendant no.1 Gurdial Singh.

*Apart from above, learned lower court rightly came to the conclusion that plaintiff was required to pay ad valorem court fee on the sale consideration mentioned in the sale deed. Reliance has been rightly placed on **Bagrawat Vs. Mehar Chand, 2002 (1) Civil court Cases 12 (P&H)**. In that case, sale made by father was challenged by his son on the similar ground that property was ancestral. It was held by Hon'ble Punjab and Haryana High Court that as plaintiff has challenged the validity of the sale deed, he was required to pay requisite court fee as per the sale consideration mentioned in*

the sale deed under challenge.

Despite the above said clear finding by learned lower court, plaintiff failed to pay court fee either before learned lower court after decision of the case or before this Court at the time of filing this appeal. The contention of the appellant's counsel that if court directs, he shall deposit the court fee, cannot be accepted because learned lower court had given clear finding that plaintiff- appellant was required to pay court fee as per sale consideration mentioned in the impugned sale deed. On this ground also, appeal deserves to be dismissed being not maintainable.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

25.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No