

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

RSA No.5227 of 2014 (O&M).
Decided on:-February 02, 2017.

Annu and others

.....Appellants.

Versus

M/s Umang Real Estates Private Limited and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Rajesh Bansal, Advocate
for the appellants.

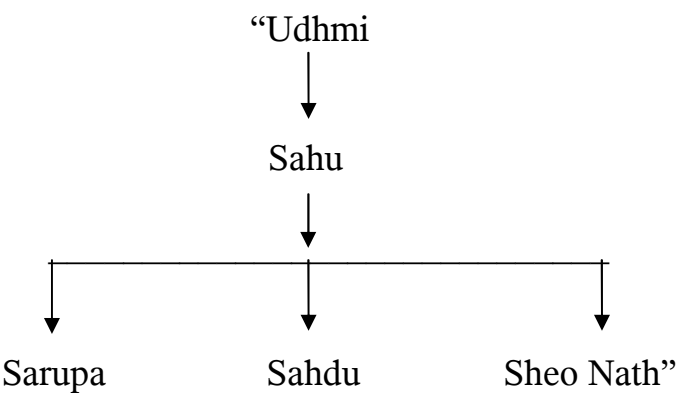
HARI PAL VERMA, J.

Appellants-plaintiffs have filed the present regular second appeal against the judgment and decree dated 06.08.2014 passed by learned Additional District Judge, Panipat whereby their appeal against the judgment and decree dated 16.04.2012 passed by learned Civil Judge (Junior Division), Panipat, was dismissed.

Briefly stated, the appellants-plaintiffs along with other plaintiffs filed a suit for declaration that they are joint owners in possession of the suit land being members of a joint Hindu family. The suit land is a coparcenary property. The sale deed dated 22.08.2005 regarding the land shown in the plaint and situated in the area of village Shimla Maulana, Tehsil and District Panipat is null and void being based on fraud and an act

of misrepresentation. The sale was without consideration and legal necessity. Therefore, the same was not binding upon the rights of appellants-plaintiffs as the plaintiffs being members of the joint Hindu family have birth right in the suit land. Prayer for consequential relief of permanent injunction restraining the respondent-defendant No.1 from selling, mortgaging, alienating and further forcibly dispossessing the plaintiffs and defendants No.2 to 16 from the suit land was also made.

It is the case of the appellants-plaintiffs that the plaintiffs and defendants No.2 to 17 constituted joint Hindu family with Kirpal Singh as its Karta. The suit land is a coparcenary property qua the plaintiffs. The suit land is ancestral and the plaintiffs being members of the coparcenary family have birth right in the suit. The following pedigree table is relied upon:



The defendants No.2 to 17 are sons, daughters and widows of Sadhu, Sheo Nath and Sarupa. The plaintiffs are minor sons and daughters of defendants No.2 to 17 and, therefore, the suit was filed through their mother. Defendants No.2 to 17 along with their Karta Kirpal Singh and Subhash were not managing the suit land properly and alienated the same on 22.08.2005 without there being any legal necessity. Even the vendee did not make any enquiry about the necessity of the same. The defendants No.2 to 16 sold the suit land at a meager amount of Rs.24,41,000/- for 14 Bigha 12

Biswa and 18 Biswansi prime land. The market price of the land is more than Rs.73 lacs to Rs.1.25 crore per acre. The sale consideration was fixed on a lesser side so as to save the stamp duty and other expenses.

Notice was issued to the respondents-defendants and defendant No.1 appeared and filed written statement taking various objections. It has been pleaded that the defendant No.1 is a bonafide purchaser of the suit land for valuable consideration. The defendant No.1 had purchased the land vide sale deed dated 22.08.2005 by way of registered sale deed executed in the office of Sub-Registrar, Panipat for a consideration of Rs.24,41,000/-. The mutation has also been sanctioned in favour of defendant No.1 and as a consequence thereof, he is in peaceful possession of the property. The sale consideration was paid to defendants No.2 to 17 vide various cheques which duly find mention in the sale deed. Initially, the suit was filed by the appellants-plaintiffs along with plaintiffs No.4 to 10. However, plaintiffs No.4 to 10 withdrew their suit when they confirmed that the defendant No.1 has made full payment.

On the basis of pleadings of the parties, following issues were framed by learned trial Court:

1. Whether the suit land is the joint Hindu family property as alleged? OPP
2. If issue No.1 is proved, then whether the sale deed dated 22.08.2005 bearing vasika No.2261 is wrong, illegal, null and void without consideration and without any legal necessity? OPP
3. If issues No.1 and 2 are proved, then whether the plaintiff is entitled for decree for permanent injunction? OPP
4. Whether defendant No.1 is bonafide purchaser for valuable consideration and without notice, as alleged? OPD

5. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
6. Whether the plaintiff has no locus standi nor any cause of action to file the present suit? OPD
7. Whether the plaintiff is estopped by her own act and conduct from filing the present suit? OPD
8. Whether the suit of the plaintiff is not maintainable in the present form? OPD
9. Relief.

Learned trial Court vide judgment and decree dated 16.04.2012 dismissed the suit and recorded a finding of fact that the defendant No.1-vendee is a bonafide purchaser. No such evidence has come on record that Kirpal Singh and Subhash along with other co-sharers were not making the appropriate management of the property and, therefore, the alienation by way of sale deed dated 22.08.2005 is an act of mis-management of the property and there was no necessity for selling of the suit land. The appellants-plaintiffs were required to prove that the Karta and other co-sharers ever mismanaged the property and have sold it without legal necessity. The argument as laid by the appellants-plaintiffs that the land was sold at a very meager amount was also not accepted as onus to prove this fact was again upon the plaintiffs that the property has been sold at a rate lesser than the market value. The defendant No.1 was held to be bonafide purchaser for consideration.

Against the aforesaid judgment and decree passed by the trial Court, the appellants-plaintiffs filed an appeal before the lower appellate Court which was also dismissed by learned Additional District Judge,

Panipat vide judgment and decree dated 06.08.2014.

It is in the aforesaid circumstances, the appellants-plaintiffs have filed the present regular second appeal.

The appellants-plaintiffs have formulated the following substantial questions of law:

- (i) Whether the judgment and decree passed by both the Ld. Courts below are sustainable in the eyes of law when both the Ld. Courts held the suit land as ancestral?
- (ii) Whether the execution of sale deed dated 22.08.2005 was a result of mis-management and was sold without legal necessity adversely affecting the interest of the appellants?

Learned counsel for the appellants-plaintiffs has argued that the sale in question was not made for legal necessity and the respondent-defendant No.1, who is vendee, had not made any enquiry about the necessity of the same. Therefore, the sale being not based on legal necessity is liable to be set aside. The respondents-defendants No.2 to 17 with their Karta Kirpal Singh and Subhash were not making the management of suit land. The alienation dated 22.08.2005 is, therefore, an act of mis-management of the property. The appellants-plaintiffs are members of joint Hindu family and the suit land is ancestral and coparcenary. Therefore, the sale deed dated 22.08.2005 is null and void being based on fraud and an act of mis-management without consideration.

I have heard learned counsel for the appellants-plaintiffs and perused the record.

The basic argument as advanced by learned counsel for the appellants-plaintiffs that the sale in question was made without there being a legal necessity and vendee had not made a bonafide enquiry, cannot be

accepted. The respondent-defendant No1 is found to be a bonafide purchaser. No such material has been brought on record to substantiate the plea that the suit land was mis-managed. There is no dispute that the joint Hindu family property can be sold for legal necessity, its protection as well as betterment. But the appellants-plaintiffs have not led any evidence that the Karta, namely, Kirpal Singh and Subhash were not managing the suit land in a proper manner or there was no necessity for selling the suit land. The alienation of joint family property by Karta for value is valid if the same is for legal necessity and for benefit of the family even without consent of other adult members. Since the appellants-plaintiffs have not been able to lead any evidence that there was no legal necessity or the suit land has been sold at a meager rate, this Court finds no fault with the concurrent findings given by the Courts below.

Thus, no substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

February 02, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No