

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

435

RSA No.1259 of 1991 (O&M)

Date of decision: 23.02.2018

Krishan and others

..... Appellants

Versus

Jile Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ashok Singla, Advocate
for the appellants.

Mr. Avinish Mittal, Advocate and
Mr. Ganga Singh, Advocate
with the respondents.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court in a suit filed by the plaintiffs for declaration challenging the validity of sale deed dated 21.05.1980 jointly executed by Didara, Desh Raj, Lakhmi Chand and Ram Sarup. The plaintiffs No.1 to 3 are minor sons of Ram Sarup whereas plaintiffs No.4 and 5 are sons of Lakhmi Chand. The suit has been filed through guardian Shanti, wife of Ram Sarup one of the vendor. It is the case of the plaintiffs that the suit property is co-parcenary property and the sale deed has been executed without legal necessity. The plaintiffs have also pleaded that their parents and their uncles are drunken spendthrift. Didara, Desh Raj, Lakhmi Chand and Ram Sarup were impleaded as defendants No.8 to 11.

Defendants filed the written statement claiming that the sale is without any legal necessity. Obviously the suit was filed at the behest of defendants No.8 to 11 through children of defendants No.8 and 9.

The sale deed is available on the file as Ex.P-1. In the sale deed, it is specifically recorded that the defendants No.8 to 11 required the money for purchasing the property at some other place. Learned First Appellate Court on appreciation of evidence has found that the vendors were in legal necessity of the funds on three grounds:-

1. Defendants No.10 and 11 were only having daughters and they were to marry of the daughters.
2. Defendants No.8 to 11 were involved in a murder case as accused and convicted. The appeal against the conviction was pending and they required the money for defraying the expenses of the litigation.
3. Defendants also required the money for purchase of some other land.

Judgment of the learned First Appellate Court is challenged before this Court. This Court has heard the arguments of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

As noticed in the facts, the suit filed by the plaintiffs was through Smt. Shanti, guardian who is wife of one of the vendor Ram Sarup. The plaintiffs were minor at the time of filing of the suit. The sale deed was executed on 21.05.1980 whereas the suit was filed on 06.06.1985. In the registered sale deed, it is recorded that the vendors required the amount of sale consideration for purchase of other land. The necessity is mentioned in

the sale deed itself. Still further, it has come in evidence that two out of four vendors i.e. Didara and Desh Raj did not have any son. They were to marry their daughters. Further, it is not disputed that the defendants No.8 to 11 were involved in a murder case and convicted by the learned trial Court. Their appeal was pending before the learned First Appellate Court and the defendants No.8 to 11 needed the money for defraying the expenses of the litigation.

Still further in the sale deed itself, it has recorded that the land is under mortgage for a sum of Rs.6,000/- and the vendees would be entitled to adjust the amount in the sale consideration and pay the same to the mortgagee. Hence, this Court does not find any reason to reverse the finding arrived at by the learned First Appellate Court on legal necessity.

Learned counsel for the appellants has further submitted that in fact the entire payment on the sale consideration has not been proved. He submits that the total sale consideration is Rs.1,42,725/-. He submits that Rs.20,000/- is recorded as earnest money whereas Rs.6,000/- was to be paid to the mortgagee against the repayment of loan. He further submits that only Rs.16,725/- was paid before the Sub-Registrar. Hence, amount of Rs.1,00,000/- has not been paid.

This aspect has already been considered by both the Courts below. Learned trial Court which decided in favour of the plaintiffs-appellants also recorded a finding that there is an error in the endorsement of the learned Sub-Registrar. A careful reading of the sale deed proves that the total amount of Rs.1,16,725/- was payable before the Sub-Registrar. The Courts have further noticed that the amount received was deposited by the vendors in their bank accounts. The Courts have found that the entire

payment was deposited. Hence, there is no force in the submission of learned counsel for the appellants.

Next argument of learned counsel for the appellants is that the property is joint Hindu family ancestral co-parcenary property. The plaintiffs in order to prove that has produced on file excerpt.

It is not in dispute that the original revenue record to prove the excerpt was not produced. As per the High Court rules and orders, an excerpt can only be proved when the original revenue record is brought before the Court. This original revenue record was not produced. In any case, once the sale has held to be for legal necessity, even if the property is joint Hindu family co-parcenary and ancestral, still sale of the property for legal necessity is permissible.

In view of the discussion made above, there is no scope for interference with the finding of fact arrived at by the learned First Appellate Court.

Appeal is dismissed.

23.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No