

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

**RSA No.2861 of 1995 (O&M)**

**Date of Order: 05.12.2018**

**Harkishan Singh and others**

**..Appellants**

**Versus**

**Manmohan Singh and others**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Avnish Mittal, Advocate,  
for the appellants.

Mr. Ashish Aggarwal, Sr. Advocate, with  
Mr. Parvnjeet Singh, Advocate,  
for respondents no.1 and 2.

**ANIL KSHETARPAL, J(Oral)**

Defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court while reversing the judgment of the learned trial court.

In the present case, plaintiffs-respondents herein had challenged 2 sale deeds executed by their father and uncle on the ground that they were into bad habits and the property in dispute is a Joint Hindu Family Coparcenary property. It was pleaded that the sale deeds are illegal and void being without any legal necessity.

Learned trial court held qua defendant no.2 that property was not a coparcenary property and qua defendant no.1 i.e. Sarwan Singh, it was held that the property has been sold for a legal necessity as after selling the

land which was not giving any income, a residential house has been purchased in the name of plaintiff no.1.

However, learned first appellate court reversed the finding by recording that Amar Singh, common ancestor of the parties has become owner in the year 1931 as mortgage had not been redeemed and purchase of residential house after selling the agricultural land was not a wise decision.

Learned counsel for the parties, at the outset, has pointed out that the decree dated 04.09.1980 by which predecessor-in-interest of the parties were declared to be owners by efflux of time has been reversed by this court while deciding RSA Nos.1037 and 1498 of 1983, therefore, the predecessor-in-interest of the plaintiffs cannot be held to be owner of the property. The sale of the property by Sarwan Singh and Harbhajan Singh i.e . defendants no.1 and 2 would be sale of mortgagee rights. In such circumstances, Sarwan Singh and Harbhajan Singh or their predecessors had never become owners of the property by efflux of time.

In view of the above, the entire basis of the suit has ceased to exist. In any case, it is not for the court to examine whether the decision to sell the property for a necessity was a wise decision or not?. It will always depend upon the perception of the person who is selling the property. One person may think that residential house is more important than the piece of land, which is not giving any income and other may think otherwise. The courts are not to sit in appeal over the aforesaid decision.

In view of the aforesaid, judgment of the first appellate court is set aside and the judgment passed by the trial court is restored. However, the judgments which has been passed by this court while deciding Regular Second Appeal Nos.1037 and 1498 of 1983, only mortgagee rights would

be deemed to have been transferred in favour of the plaintiffs.

The regular second appeal is disposed of accordingly.

December 05, 2018  
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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No