

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3426 of 1997 (O&M)

Date of Decision:08.05.2018

Prem Singh and others

...Appellants

Versus

Ranbir and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.C.B.Goel, Advocate for the appellants.
Mr.Prem Nath Aggarwal, Advocate for the respondents.

ANIL KSHETARPAL, J.

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

In the considered opinion of this Court, question which requires consideration is whether a vendee is liable to prove legal necessity of entire sale consideration of the vendor in case of purchase of ancestral property?

FACTS

Mehar Singh, grandfather of the plaintiffs, sold the land measuring 14 kanals and 16 marlas to defendants No.1 to 3 vide registered sale-deed dated 26.5.1987. The land was sold for total sale consideration of Rs.70,000/-. After three months of the execution and registration of the sale-deed, the plaintiffs, who are grandsons of Mehar Singh, filed a suit, challenging the sale-deed executed by their grandfather Mehar Singh, asserting that the aforesaid sale-deed is illegal, null, void and not binding on their rights. It was pleaded that property is a coparcenary ancestral

property and their grandfather had sold the property without legal necessity as he was having immoral habits.

The learned trial court, after appreciation of evidence and after examining the evidence available on the file, dismissed the suit, while recording a finding that the property, which was subject matter of sale, was under a charge because of a loan and in the registered sale-deed, it is also recorded that the loan amount is to be repaid. Hence, the learned trial court dismissed the suit. However, the learned first appellate court reversed the judgment passed by the learned trial court on the ground that the legal necessity of only Rs.11,000/-, out of total sale consideration of Rs.59,000/-, has been proved and, therefore, the sale-deed is not proved to be for legal necessity, hence not binding on the rights of the plaintiffs.

Now the stage is set to consider the above-said question of law, which is as under:-

“Whether a vendee is liable to prove legal necessity of entire sale consideration of the vendor in case of purchase of ancestral property?”

A careful reading of the sale-deed, which has been produced before the learned trial court, proves that the vendor, i.e. Mehar Singh, while selling the property, has specifically mentioned in the sale-deed that a loan of Rs.11,000/- has been paid after receiving part of the sale-consideration and remaining amount is required for construction of the house and other requirements. From reading of Ex.D1, the Loan Clearance Certificate proves that the entire loan amount was repaid on 26.5.1987.

Still further, Sh.Khilla Ram (PW-1) when appeared in the witness box, has stated that Mehar Singh has not done any wrong act except selling the land. Although, he stated in his examination-in-chief that he had heard

that Mehar Singh had sold the land after drinking but that part of the statement was only hearsay evidence.

The plaintiffs, being minors, filed a suit through their mother Smt.Bimla. She does not even state in evidence that her father-in-law was having any immoral habits. A vendee, who has agreed to purchase the property, is not expected to monitor that the amount of sale consideration received is utilized for a legal necessity as mentioned in the sale-deed. A vendee can only be expected to see broadly whether there is a legal necessity or not.

In the present case, a reading of sale-deed proves that following three legal necessities have been mentioned:-

- (i) Repayment of loan to The Chhachhrauli Primary Co-op. Agriculture Development Bank Ltd. Chhachhrauli;
- (ii) Construction of house;
- (iii) Other legal necessities,

Repayment of loan is proved from Ex.D1 and Ex.D2, i.e. Loan Clearance Certificate. A part of the sale consideration has been used for repayment of loan which is a legal necessity. A vendee is not expected to monitor that the amount received on account of sale-deed has been duly applied for meeting with the aforesaid legal necessities or not. Still further, as noticed earlier, although, it is pleaded that Mehar Singh, the vendor, was having immoral habits, however, no evidence in this regard has been led. Smt.Bimla does not depose about any immoral habits, whereas Khilla Ram, who appeared as PW-1, has only stated that Mehar Singh has not done any wrong act except selling the land.

Hence, question No.1 as framed above is answered in favour of

the appellants.

In view thereof, the judgment under challenge is set aside and judgment passed by the learned trial court is upheld.

The present Regular Second Appeal is allowed. Pending application(s), if any, shall also stand disposed of.

08.05.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No