

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1814 of 1999 (O&M)

Date of Decision:22.11.2018

Isa and others

...Appellant(s)

Versus

Imam Khan

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Salil Bali, Advocate for appellants No.1 and 2.
Mr.Ghulam Nabi Malik, Advocate for appellant No.3.
Mr.C.B.Goel, Advocate and
Mr.Kulvir Narwal, Advocate for the respondent.

ANIL KSHETARPAL, J.

Defendant-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit filed by the respondent-plaintiff for declaration and possession, ignoring three sale-deeds dated 1.6.1983, 2.6.1983 and 3.8.1983 executed by Noor Khan.

In the considered view of this Court, question which requires consideration is “whether the court can sit in the appeal to adjudge the correctness of the legal necessity for sale of the property mentioned in the sale-deeds particularly when the vendor himself admitted in the pleadings before the court that the sale was for legal necessity.”

The plaintiff Imam Khan, brother of Noor Khan-defendant No.4, filed a suit, claiming various sale-deeds executed are bad, because parties belong to Meo Community. As per agriculture custom, a proprietor cannot sell the property without legal necessity.

Defendants No.1-3/appellants filed the written statement, pleadings legal necessity. Defendant No.4 namely Noor Khan, vendor of all the three sale-deeds, had pleaded as under:-

“That the answering defendant had alienated the land in suit for legal necessity and consideration. Answering deft owed Rs.10,000/- from Shri Din Mohmad and had also entered into an agreement for purchasing agricultural land 22 Kanal 3 Marla at the rate of Rs.20,000/- in cash and the remaining amount was to be paid by 25.6.85. The agreement was executed on 2.3.83 and the answering defendant needed money to pay other debts and for constructing house and also for business purposes. The answering defendant had redeemed his mortgaged land and had also purchased bullocks etc. The answering defendant had also pay the loan of one Shri Ibrahim”.

Unfortunately before his turn for leading evidence could come, he died.

Both the courts, after examining the evidence, have held that all the sale-deeds have been executed on payment of valuable sale consideration and therefore, the stand of the plaintiff that the sale-deeds are without consideration stands falsified. However, the learned trial court held that legal necessity has not been proved and, therefore, the sale-deeds be treated as mortgage-deeds. It may noted here that defendant No.3, who was minor on the day when the suit was filed, was at one point of time adopted by Noor Khan, which, of course, was later on cancelled on 19.10.1987, however, legality thereof is not the issue before this Court.

In the present case, both the courts, while examining the evidence and finding faults with the evidence led by the purchasers for valuable consideration with regard to the necessity as pleaded by defendants

No.1 to 3, have decreed the suit.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below.

In the present case, both the courts have totally ignored the written statement filed by defendant No.4, wherein specifically Noor Mohd. has pleaded that he was having legal necessity to repay the loan and he had entered into an agreement to sell for purchase of land measuring 22 Kanals and 3 Marlas from Rup Singh and had paid Rs.35,000/- in cash as earnest money and remaining amount was to be paid on 25.6.1985.

As noted above, unfortunately defendant No.4 died and therefore, could not get the opportunity to lead evidence. Hence, this Court is to decide the case on the basis of evidence led by the parties.

It may be noted that Mohammad Isha (DW-1) when appeared in the evidence, has stated that in the year 1977 the plaintiff Imam Khan and Noor Mohd had sold the property to them. Imam Khan is the plaintiff in the present suit. There is no cross-examination on this aspect of the matter and his evidence has gone unchallenged, therefore, deemed to have been admitted.

Now the stage is set for considering the question of law.

In the sale deeds of the present case itself, it has been written that all the sale transactions are being entered into on account of personal necessity. Coupled with the aforesaid that there is a written statement filed by Noor Khan in the present suit, explaining his necessity. He was unmarried and issueless. He was exclusive owner. In these circumstances, the issue which framed is required to be answered. Vendees cannot be

expected to ensure that the sale consideration paid to the vendors has been properly spent on the necessity as mentioned in the sale deed or not. A vendee can only enquire from the vendor that whether he has any legal necessity or not.

The vendees can only be expected to lead evidence to prove that the amount was received by the vendor. Once the vendee had paid the amount, it is for the vendor to spend the amount in the manner he likes and vendees have no control over the same. In such circumstances, vendees cannot be expected to prove that whether the necessity as disclosed by the vendor is genuine or not. One has to test the case on the basis of whatever pleaded by Noor Khan, while defending the suit after he had executed the sale-deed.

The written statement was filed on 7.5.1984, i.e. after a period of more than one year. Once Noor Khan had pleaded that he had a legal necessity, the courts cannot be expected to sit in appeal over the assertions made about legal necessity in the sale-deeds as well as in the pleadings.

In the considered view of this Court, the second issue, i.e. whether there was any agriculture custom or not, would not be required to be gone into. Once this Court has found that the courts below wrongly put onus on the defendants who were vendees to prove that the money received under the sale-deeds was spent on the legal necessity or not, therefore, the judgments under appeal are erroneous.

In view of the above, the judgments and decrees passed by both the courts below are set aside. The regular second appeal is allowed. The suit shall stand dismissed. The appellants were directed to deposit mesne profits in the bank as per the order dated 11.3.2003 which they shall be

entitled to withdraw. Pending application(s), if any, shall also stand disposed of, in terms thereof.

22.11.2018
mks

(ANIL KSHETARPAL)
JUDGE
Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No