

Sr. No.301

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

**RSA No. 865 of 1998(O&M)
Decided on: 28.03.2018**

Gopal Krishan and others

.....Appellants

versus

Parkash Chand(deceased) through LR's and others

.....Respondents

RSA No. 871 of 1998

Gopal Krishan and others

.....Appellants

versus

Parkash Chand(deceased) through LRS and others

.....Respondents

RSA No. 872 of 1998

Gopal Krishan and others

.....Appellants

versus

Gopal Chand and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. K.S.Boparai, Advocate and
Mr. Amarjit Markan, Advocate
for the appellants.

Mr. C.M.Munjhal, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

This Order shall dispose of three regular second appeals i.e.
RSA Nos. 865, 871 & 872 of 1998 filed by the plaintiffs against the
judgment and decree of reversal passed by the lower Appellate Court

whereby while reversing the findings and judgments and decrees passed by the Trial Court, the lower Appellate Court has ordered the dismissal of the suit filed by the plaintiffs.

For convenience, the parties herein would be referred to as the plaintiffs and the defendants as they were described in the original suit.

The brief facts of this case are that the plaintiffs instituted a suit for joint possession in the suit property; described in the plaints situated at Barnala and also challenged the sale deed dated 18.10.1979 registered on 19.10.1979 in favour of defendant No. 1 for a consideration of Rs. 27,000/-, sale deed dated 12.05.1980 executed by defendant No. 6 in favour of defendant No. 2 for a consideration of Rs. 9,000/-; sale deed dated 27.03.1981 and another sale deed dated 09.06.1981 executed by defendant No. 6 in favour of defendant No. 5 for a consideration of Rs. 9,000/- as null and void and not binding upon the rights of the plaintiffs. Plaintiffs had claimed in the suit that the plaintiffs are the sons of defendant No. 6 Ramesh Chand son of Raja Ram and they belong to Khatri caste and as such are governed by Hindu Law. Plaintiffs and defendant No. 6 constituted a joint hindu family. The suit property is coparcenary property of the plaintiffs and defendant No. 6. Defendant No. 6 is a profligate and dissolute type of person. Therefore, he alienated the suit property without legal necessity through the impugned sale deeds. Since the suit property happens to be the ancestral/coparcenary property, therefore, defendant No. 6 had no right to alienate the same. Hence the sale deeds are bad in law. Still further the plaintiffs claimed that no consideration ever passed to defendant No. 6 from the alleged vendees of the sale deeds. Now on the basis of the sale deeds defendants No. 1 to 5; the vendees are threatening to raise

construction over the suit property and to change the nature thereof. Hence a suit for declaration of the sale deed as is void and for joint possession of the suit property was filed by the plaintiffs with a prayer for permanent injunction; restraining defendants No. 1 to 5 from raising any construction over the suit property.

On being put to notice defendant No. 1 Parkash Chand filed a separate written statement whereby he contested the claim of the plaintiffs. It was averred in the written statement of defendant No. 1 that plaintiffs have no locus standi to file the suit. The routine preliminary objections were taken in the written statement. On merits it was averred by defendant No. 1 that the suit property is not the coparcenary property. Rather it was self-acquired property of Ramesh Chand, defendant No. 6. Since defendant No. 6 has sold the said property to the defendants for a consideration therefore sale deeds are valid. It was further pleaded that defendant No. 6 is neither dissolute type of person nor he ever indulged in gambling habits. Defendant No. 6 is a sapient type of man and a very rational person. He has imparted education to his children and has also met other domestic and necessary expenses out of the sale consideration. Defendant No. 1 averred in the written statement that defendant No. 6 obtained the suit property from his father vide roznamcha report No. 2 dated 21.11.1954 and as such the suit property is not an ancestral property. Further it was pleaded that he has made improvement in the suit property.

Defendant Nos. 2 and 7 also filed separate written statement contesting the claim of the plaintiffs almost on the same line as that of defendant No. 1. It was specifically claimed in the written statement that defendant No. 6 had alienated the suit property for legal necessity as he was

to spend on the education of their children. It was further claimed that defendants have made improvement in the suit property.

Defendant No. 17, Prem Chand also contested the claim of the plaintiffs. No other defendant filed written statement. Replication to each set of written statement was filed by the plaintiffs denying the averments of the defendants made in their respective written statements.

On the pleadings of the parties, the Trial Court framed the issues as under:-

- “1. Whether the property in suit is the Joint Hindu Family and coparcenary property?OPP*
- 2. Whether the defendants alienated the land in suit for legal necessity?OPD*
- 2A. Whether Raja Ram executed a will dated 18.10.1963 If so its effect?OPD17*
- 3. Whether the plaintiffs are entitled for the injunction prayed, for?OPP*
- 4. Whether the plaintiffs have locus standi to file this suit?OPP*
- 5. Whether the suit is not maintainable in the present form?OPD*
- 5A. Whether the present suit is the result of collusion with the plaintiffs and defendant No.6?OPD17*
- 6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD*
- 7. Whether the suit is bad for mis-joinder of cause of action?OPD.*
- 8. Relief.”*

After hearing the parties and appreciating the evidence, the Trial Court decreed the suit filed by the plaintiffs. Accordingly the decree

for joint possession over the suit property was filed and the impugned sale deeds executed by defendant No. 6 in favour of defendant Nos. 1 to 5 were held to be inoperative and not binding upon the plaintiffs. Still further, the Trial Court granted the permanent injunction restraining the defendants from raising any construction over the suit property. While decreeing the suit, the Trial Court held that as per the evidence on record the suit property is proved to be a joint family and coparcenary property of the plaintiffs and defendant No. 6. It has been proved on record that Kanshi Ram Khatri son of Sunder Ram was the owner of the suit property. He died and his estate devolved upon his two sons Raja Ram and Radha Krishan in equal shares. Raja Ram is the father of defendant No. 6. The other brother of Raja Ram, i.e. Radha Krishan had expired and mutation of his estate, Ex:P-6 was entered in favour of father of defendant No. 6, i.e. Raja Ram. Accordingly as per Jamabandi Ex:P-12 for the year 1950-51 it is recorded that Raja Ram is the owner of $1/4^{\text{th}}$ share of Khasra No. 4482. Although Raja Ram had six sons. However, he gave his entire property through a oral gift only to his two sons namely, Ramesh Chand defendant No. 6 and Surinder Kumar. Ex:P-11 is the jamabandi for the year 1962-63 wherein defendant No. 6 Ramesh Chand and his brother Surinder Kumar are recorded as owner of $3/8^{\text{th}}$ share out of the suit property comprised in khasra no. 1210/3. Still further Ex:P-11 and Ex: P-12 if read together indicate that khasra No. 4482 was converted into khasra No. 1210/3 during the consolidation operations. Thereafter, the jamabandi for the year 1969-70 Ex:P-14 shows defendant No.6 to be the owner of $3/16^{\text{th}}$ share out of khasra No. 1210/3, an equal share going to his brother Surinder Kumar. The same entry is there in the jamabandi for the year 1984-85 which record Ramesh Chand as owner of

3/16th share in the suit property. From this series of revenue records and events the Trial court concluded that it is established that Ramesh Chand defendant No. 6 had not purchased the suit property. He has got the entire property from his father Raja Ram, though through oral gift.

While considering the character of the property, the Trial Court held that the property has not lost its character as ancestral property. While repelling the contentions of the defendants, the Trial Court held that merely because Raja Ram got half of the property through his deceased brother and he further transferred this property to his two sons only through oral gift would not change the nature of the property since it is the same property which has come to Ramesh Chand and his brother from their grand father Kanshi Ram. Mere mode of disposition intervening in between can not take away the character of the property as ancestral property. Accordingly, the Trial Court held that the suit property is ancestral and not self-acquired property in the hand of Ramesh Chand, defendant No.6.

While considering the question of legal necessity, the Trial Court held that it is not proved on record that the sale of the property by defendant No. 6 was for any legal necessity. It was observed by the Trial Court that written statement filed by the contesting respondents shows that defendant No. 6 required money for imparting education to his children. No other purpose has been stated by the contesting defendants in their written statement. In the sale deeds Ex:D-1 and Ex:D-2 it has been written that defendant No. 6 required funds for household expenses and therefore, he alienated the suit property. No specific purpose has been assigned in the sale deed for disposition of the ancestral property by the vendor. The Trial Court further recorded that the house was constructed by defendant No. 6

Ramesh Chand in the year 1970 whereas the sale deeds were executed much thereafter by defendant No. 6 in the year 1979-80 and 1981, so it can not be accepted that any money was required by defendant No. 6 for raising construction of the house. So far as imparting education to his children by defendant No. 6 is concerned, the Trial Court recorded that since defendant No. 6 was a government employee and he was receiving salary, therefore, he did not require any separate funds for education of his children, particularly, when none of his children is proved to be highly qualified except one daughter who is B.A-B.ED. Although it has come on record that one of the sons of defendant No. 6 started a chemist shop, however, it was started in the year 1986, much after the dates of sale deeds. Therefore, opening of the shops is not linked to legal necessity of sale deeds. Hence the defendants have failed to prove that sale of the property by defendant No. 6 was for legal necessity. Regarding passing of the consideration the Trial Court recorded that since no money has exchanged hands in the presence of the sub-Registrar, therefore, mere recital in the sale deed and the statement of the witnesses that money had already been paid at the house of defendant No. 6 can not be accepted. Hence the sale deeds were held to be without consideration as well.

There was another issue framed by the Trial Court regarding the alleged Will dated 18.10.1963 executed by Raja Ram in favour of defendant No. 17, Prem Chand. Defendant No. 17, Prem Chand, though depose before the Trial Court that he was attesting witness to the alleged will, however, the Trial Court did not accept the plea regarding the Will on the ground that defendant No. 17 was one of the legatees and thus, beneficiary of the Will. Furthermore, Raja Ram was suffering from

paralysis on 18.10.1963. No evidence has been led to match the thumb impression of Raja Ram with the thumb impression on the alleged Will. Moreover, Raja Ram expired on 19.10.1963 as per the death certificate Ex:P-9. Hence the bare fact that Will was only one day prior to the date of death raises suspicion against the Will. Accordingly, the Trial Court held that Will in favour of defendant No. 17 is not proved.

In view of the above findings, the Trial Court held that the plaintiffs had the locus standi to file the suit. The suit property was a coparcenary property. Defendant No. 6 had no right to alienate the suit property without legal necessity. The legal necessity to alienate the suit land by defendant No. 6 is not proved on record. Hence the suit was decreed and the sale deeds were set aside. Aggrieved against this judgment and decree three separate appeals were filed. Two separate appeals were filed by the persons in whose favour defendant No. 6 had executed the sale deeds, challenging the declaration of the sale deed as null and void. Third appeal was filed by defendant No. 17, Prem Chand challenging the finding of the Trial Court regarding the validity of the Will.

After hearing the parties and appreciation of the record, the lower Appellate Court allowed all the appeals filed by the defendants. While allowing the appeals, the lower Appellate Court held that the Trial Court had not appreciated the facts of the case in its proper prospective. As per the jamabandi for the year 1950-51, Ex:P-12 Raja Ram was a co-sharer in the land property to the extent of 1/4th share at Barnala and remaining 3/4th share was owned by various other persons. Later on Raja Ram made oral gift of that property in favour of his two sons i.e. Ramesh Chand, defendant No. 6 and Surinder Kumar, defendant No. 15, to the exclusion of

his 4 other sons and mutation dated 12.01.1954, Ex:P-7 regarding that was also sanctioned in favour of Ramesh Chand and Surinder Kumar. The lower Appellate Court further held that it appears that thereafter, Ramesh Chand, defendant No.6 also acquired some property by some other means and therefore holding of Ramesh Chand in consolidation proceedings have increased to 3/16th share in the joint property, as per jamabandi for the year 1962-63, Ex:P-11 and the remaining share was owned by other co-sharers. The lower Appellate Court further held that it has come on record that Ramesh Chand, defendant No. 6 alongwith his brother Surinder Kumar got the property by way of oral gift from their father. Had the suit property been coparcenary property in the hands of their father Raja Ram then he was not entitled to make the gift of the property. However, since he has made the gift of the property, therefore, it has to be held that the suit property in the hands of Raja Ram and subsequently in the hands of Ramesh Chand and Surinder Kumar was not a ancestral and coparcenary property. It has acquired the character of self-acquired property in the hands of Ramesh Chand, defendant No. 6 and Surinder Kumar, defendant No. 15. The lower Appellate Court further held that since the record shows specified shares of defendant No. 6 and defendant No. 15 along with other co-sharers, therefore, the suit property was no more ancestral and coparcenary property. The lower Appellate Court further held that since Raja Ram made gift in favour of his two sons by excluding the remaining 4 other sons, therefore, it can not be said that the transfer of property by Raja Ram in favour of Ramesh Chand and Surinder Kumar was by way of accelerated succession. It was giving the property exclusively to two sons by excluding the remaining four sons. Hence in the hand of Ramesh Chand the property was

not a coparcenary property.

The lower Appellate Court further held that having held the property to be self-acquired property, defendant No. 6 being absolute owner was fully competent to alienate the suit property. He was a prudent man. He has sold the property for a valuable consideration which is recorded in the sale deeds and proved by the defendants. Hence it was a valid sale consideration. The lower Appellate Court further held that the disputed property appears to have been sold by him in the form of small plots and this goes to show that defendant No. 6 made the alienation to derive maximum benefits out of those alienations. Dealing with the concept of legal necessity the lower Appellate Court held that since Raja Ram was a government employee, therefore, he could not have personally cultivated the same. Therefore, the alienation was made by him to maximise the benefits from the estate. Accordingly, the findings of the Trial Court in this regard were set aside by the lower Appellate Court. The sale deeds were held to be validly executed.

While considering the appeal filed by Prem Chand seeking to validate the Will in his favour the lower Appellate Court held that although the Will has not been legally proved on record as has been held by the Trial Court in its finding, however, since the plaintiff had no locus standi to file the present suit. Therefore, the finding in their favour in this regard is also liable to be reversed and set aside. The other issues were also decided by the lower Appellate Court against the plaintiffs. Accordingly, the lower Appellate Court had allowed all the three appeals, thereby dismissing the suit filed by the plaintiffs. Aggrieved against this common judgment and decree passed by the lower Appellate Court, the present three appeals have

been filed before this Court.

RSA No. 865 of 1998 has been filed by the plaintiffs against the Parkash Chand, the contesting defendant in the suit. RSA No. 872 of 1998 has been filed by the plaintiffs against Gopal Chand and Ashok Kumar who had not contested the suit before the Trial Court. They had not led any evidence in the suit, although, they were also purchaser through two sale deeds. As stated by learned counsel for the appellants even possession was taken from them in execution proceedings. Although, they had filed appeal before the lower Appellate Court which was allowed in their favour. However, in the appeal filed by the plaintiffs before this Court again they have not appeared and have chosen not to contest the appeal filed by the plaintiffs. Same is the situation with RSA No. 871 of 1998 in which there is no representation on behalf of contesting defendant No. 1 Prem Chand/his legal heirs. However, since the three appeals have been decided by a common judgment by the lower Appellate Court. The same are also being considered together and being decided upon it.

While arguing the case learned counsel for the appellants submitted that lower Appellate Court has gone wrong in law in holding that the property in the hands of defendant No. 6 Ramesh Chand was self-acquired property only because the line of succession was interfered twice, once when the property came to Raja Ram from his brother Radha Krishan by succession and next time when Raja Ram gave the property through oral gift to Ramesh Chand and Surinder Kumar. It is submitted by learned counsel for the appellants that there is no proof on record that jointness of the family was ever severed or any partition had ever taken place amongst the members of the joint hindu family. Coparcenary was constituted by

Kanshi Ram father and of his sons namely, Raja Ram and Radha Krishan. After the death of Kanshi Ram; his sons Raja Ram and Radha Krishan constituted the coparcenary. On the death of Radha Krishan; the share of Raja Ram was increased to 100% being sole survivor. Therefore, the factum of property coming to Raja Ram through his brother Radha Krishan does not alter the character of the property from being ancestral and coparcenary property. Thereafter, when six sons of Raja Ram were born again the coparcenary was created constituting Raja Ram and his six sons. Although Raja Ram executed the oral gift in favour of his two sons namely, Ramesh Chand and Surinder Kumar; being one of the co-sharer only their father Raja Ram was not entitled to execute any gift qua the coparcenary property. Therefore, after the death of Raja Ram all his sons would get the property as ancestral property regardless of the gift executed by Raja Ram in favour of his two sons only. Hence the property in the hands of Ramesh Chand to the extent of his share, was the ancestral property. To buttress his claim learned counsel for the appellants has relied upon Sections 221 and 214 of Mulla Principle of Hindu Law which are reproduced as under;-

“S.221.Ancstral property:-----(1) *Property inherited from paternal ancestor-----*All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to *Mitakshara* law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth. Thus, if *A inherits property, whether movable or immovable*, from his father or father's father, or father's father's

father, it is ancestral property, as regards his male issue. If A has no son, son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases. However, if he has son's, sons' sons or sons' sons' sons in existence at the time, or if a son, son's son or son's son's son is born to him subsequently, they become entitled to an interest in it by the mere fact of their birth in the family, and A cannot claim to hold the property as absolute owner nor can he deal with the property as he likes. The position has been materially affected after section 8 of the Hindu Succession Act, 1956, came into force.

A father cannot change the character of the joint family property into absolute property of his son by merely making a will and bequeathing it or part of it to the son as if it was the self-acquired property of the father. In the hands of the son, the property will be ancestral property and the natural or adopted son of that son will take interest in it and be entitled to it by survivorship, as joint family property. However, an affectionate gift of his self-acquired property by a father is not *ipso facto* ancestral property in the hands of the son.

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property. The result is that if a person inheriting property from another one of his three immediate paternal ancestors has no

son, son's son, or son's son's son, the property is his absolute property, and no relations of his are entitled to any interest in it in his lifetime.

Property inherited by a Hindu male from his father, father's father, or father's father's father, is ancestral as regards his male issue, even though it was inherited by him after the death of a life-tenant. Thus, if a Hindu settles the income of his property on his wife for her life, and the property after her death passes to his son as his heir, it is ancestral property in the hands of the son as regards the male issue of such son.

Illustrations

(a) A inherits certain property from his father. A has a son B. The property so inherited is ancestral in A's hands, and it must be held by him in coparcenary with B. B can enforce partition of it against A, in which event he will be entitled to one-half. If B continue joint with his father, the whole property will pass to him by survivorship on the father's death.

(b) A inherits two immovable properties from his father. A has no son, son's son, or son's son's son in existence at the time. A can alienate the properties at his pleasure. Suppose A alienates one of the properties, and a son B, is subsequently born to him, B cannot claim any interest in the property alienated by A before his birth, but as regards the other property which still remains with A, B acquires an interest in it by birth, and A must thenceforth hold it in coparcenary with B.

(c) A inherits certain properties from his father. A has no son, grandson, or great-grandson, but he has a brother (or a paternal

uncle). The brother(or uncle) does not take any interest in the property by birth. As regards the brother or uncle, the property inherited by A is his separate property. A may therefore sell or mortgage it, or make a gift of it to any one he likes, or he may dispose it of by will.”

Section 214.Undivided coparcenary interest:-

The essence of a coparcenary under *Mitakshara* law is unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by *Mitakshara law*, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property that he, that particular member, has a definite share, one-third or one-fourth. His interest is a fluctuating interest, capable of being enlarged by deaths in the family, and liable to be diminished by births in the family. It is only a partition that he becomes entitled to a definite share. The most appropriate term to describe the interest of a coparcener in a coparcenary property is 'undivided coparcenary interest'. The rights of each coparcener, until a partition takes place, consist in a common possession and common enjoyment of the coparcenary property. As observed by the Privy Council in *Katama Natchiar v Rajah of Shivagunga*:

...there is community of
interest and unity of possession
between all the members of the
family, and upon the death of any of
the them, the others may well take by
survivorship that in which they had

during the deceased's lifetime a common interest and a common possession.

The latter part of this proposition must be read in the context of sections 6 and 30 of The Hindu Succession Act, 1956, in cases where those sections are applicable.

Illustrations

Suppose a family consisting of A and his sons B and C; on a partition each will take one-third. However, if D was born while the family remained joint, each would take one-fourth. Suppose the family still remains undivided; on the death of A, the possible shares of the three sons would be enlarged to one-third; and if B were subsequently to die without issue, the shares of C and D would be enlarged to one-half, as C and D married, their sons E, F and G would enter into the family, they acquire an interest in the property, but that interest again would be shifting interest, depending on the state of the family. If C were to die leaving only two sons E and F and they claimed a partition against D, E and F would each take one-half of one-half, and D would take the other half. However, if H had previously been born, E, F and H would each take one-third of one-half, i.e., one-sixth each. If they put off their claim for a division until D and G had both died, E, F and H would each take one-third of the whole.

Note that on a partition between C and D after the death of A and B, C would take one-half and D would take the other half. If C is dead, his issue E, F and H will take per stirpes as regards D, i.e., they will take the one-half share of C, D

will take the other half, but as regards each other, they will take *per capita, i.e.*, and each will take an equal one-sixth share.

The interest of a coparcener in an undivided *Mitakshara* family is not individual property. However, the interest of a coparcener in an undivided *Dayabhaga* family is individual property.”

Learned counsel for the appellants further submitted that since no money has been paid in the presence of the Sub-Registrar, therefore, there is no proof of consideration having exchanged hands in this case. Still further it was incumbent upon the defendants to prove the legal necessity for disposal of the land by Ramesh Chand, defendant No.6 being only the karta of the family. However, defendants have not led any evidence to prove the legal necessity. Therefore, the sale in favour of defendants is bad and illegal because of incompetence of defendant No.6 to alienate the land, because of lack of consideration and also because of absence of legal necessity for him to alienate the suit land.

On the other hand, learned counsel for the respondents/defendants have submitted that the property in the hands of Ramesh Chand was a self-acquired property. He had every right to dispose of the property. Consideration has been duly paid, mentioned in the sale deed and has also been proved on record by examining the witness. So far as the legal necessity is concerned, learned counsel for the respondents have relied upon the judgment of the Hon'ble Supreme Court rendered in **1997(9) SCC 701;Sunder Dass and others versus Gajananrao and others** to contend that if there is recital in the sale deed; regarding the alienation being for family necessity and no evidence is led to show that the

transaction was tainted by any immoral or illegal purpose; then it has to be taken that the alienation was made for legal necessity. Learned counsel for the appellants submitted that the respondents have spent money on property purchased by them by improving it. The appellants have not shown by leading any evidence that the alienation was made by their father for some immoral or illegal purpose. The father-Karta is not shown to be of tainted or immoral conduct. Hence, there is nothing suspicious in the sale. Even if the property is taken to be ancestral property; the father of the plaintiffs had every right to sell the same for valuable consideration. Accordingly, the same has rightly been sold to the respondents. The judgment and decree passed by the lower Appellate Court are rightly passed and the same deserve to be sustained.

After hearing learned counsel for the parties and perusing the available record, this Court is of the considered opinion that the arguments of learned counsel for the parties deserve to be partly sustained. So far as the character and nature of the property is concerned, learned counsel for the appellants is right in submitting that the property in the hands of Ramesh Chand is an ancestral property to the extent of his share. Initially, Kanshi Ram and his two sons-Raja Ram and Radha Krishan-constituted coparcenary. Kanshi Ram expired on 01.05.1913(converted from actual date mentioned as per Hindu(Calendar). Therefore, Raja Ram and his brother Radha Krishan were left as members of the coparcenary. Thereafter, Radha Krishan also expired on 07.09.1913 leaving Raja Ram as the sole survivor of the coparcenary. After this stage when six sons were born to Raja Ram then coparcenary was regenerated again which was constituted by Raja Ram and his six sons namely, Raja Ram, Surinder Kumar, Ved

Parkash, Prem Chand, Dev Raj and Rakesh Kumar. Hence all the six sons had got share in the coparcenary property by birth. Raja Ram was karta of the family. Since it was coparcenary property, therefore, he could not have legally executed any gift of the property in favour of his two sons only, namely, Ramesh Chand and Surinder Kumar. Therefore, the transaction of oral gift has to be treated as non-existent; so far as the character of the coparcenary property is concerned. Irrespective of any gift deed executed by the father Raja Ram, all his sons have share in the coparcenary property. Therefore, alongwith Raja Ram, his six sons have also got share in the property by birth, of course, to the extent of their share. The lower Appellate Court has wrongly held that since the share inherited from Raja Ram was $\frac{1}{4}$ th share in the joint property whereas after consolidation in the year 1962, the share in the hands of his two sons is shown to be $\frac{3}{16}$ th. It shows that there was an increase in the property in the hands of Ramesh Chand. Hence, the lower Appellate Court held that it appears that Ramesh Chand had also purchased some other property to make the share as $\frac{3}{16}$ th. However, this finding of the lower Appellate Court is not sustainable. The increase in share could be for various reasons during the process of consolidation. There is not even pleading regarding any specific purchase of property by Ramesh Chand, much less any evidence. The increase in share is possible during the consolidation proceedings because of valuation of the land also. Hence, nothing much can be read in the change of share of holding by the Ramesh Chand and his brother.

Succession by inheritance, if any, after coming into force of Hindu Succession Act, 1956 would relate only to $\frac{1}{6}$ th share of Raja Ram. Hence, the property in the hands of Ramesh Chand has to be taken as

ancestral property. It is not the case of either parties that the property sold by Ramesh Chand to the defendants exceeds the share of his branch in coparcenary property; de hors the existence of any gift in his favour. With the birth of sons of the plaintiffs they also become coparceners with their father Ramesh Chand. Hence any alienation by defendant No. 6, Ramesh Chand has to be seen in the context of the property in the hands of Ramesh Chand being the ancestral property. Accordingly, if any alienation by Ramesh Chand is made without legal necessity or without consideration then the plaintiffs have got right and locus standi to question the sale deed executed by him. Accordingly, the finding recorded by the lower Appellate Court that the plaintiffs do not have any locus standi to file the suit is also reversed.

Since the property in the hands of Ramesh Chand has been held to be coparcenary property, therefore, the next question is whether he has sold the same for legal necessity or not. In this regard, it is worth mentioning here that the sale deed itself mentions that the property was being alienated by the vendor Ramesh Chand, who is defendant No. 6 in the suit; for meeting the house-hold expenses(kharcha khangi). Since the sale deed mentioned the requirement of the vendor Ramesh Chand for money, therefore, the judgment of the Supreme Court in the case of Sunder Dass (supra) supports the case of the defendants/respondents herein.

Still further to prove the factum of legal necessity the defendant, Ragbir Singh has appeared as DW-3. He has deposed that defendant No. 6 Ramesh Chand is a person of very good character. Ramesh Chand used to be a teacher in a private school in the year 1947 and the DW-3 Ragbir Singh had been his student. Thereafter, for better prospects of his

family, defendant No. 6 Ramesh Chand had left the job of teacher in a private school and had taken up the regular job of clerk in a government department. The vendor Ramesh Chand had also constructed a house at Barnala and ensured education for his children. Still further; this witness has deposed that Ramesh Chand; defendant No. 6 had got opened a chemist shop for his elder son by spending Rs. 1 lakh. It is further deposed by this witness that defendant No. 6, the vendor has never been a person of bad character. He had sold the suit property only for a genuine requirements. Due sale consideration was paid for the sales and only thereafter, he had executed the sale deed in their favour. Hence; the defendants have corroborated the recital in the sale deed that the vendor defendant No. 6 required money at the time when he sold the land. Learned counsel for the appellants have raised an argument that a specific purpose for which the money was required has not been mentioned either in the sale deed or in the deposition of the defendants. His further submission is that the lower Appellate Court has wrongly held that enhancement of the value of the estate can be reiterated as one of the legal necessities and further that legal necessity pleaded in the written statement, deposed before the Court and the finding recorded by the lower Appellate Court are at variance. Hence legal necessity is not proved. However, this Court does not find any substance in this argument. The requirements of legal necessity can not be exhaustively laid down. The legal necessity for which the property can be alienated by Karta can vary from case to case and has to be inferred from the circumstances as proved on record. The vendees of the property may not be having any specific knowledge of the family and therefore, they would not be required to lead any positive evidence regarding any specific head for

which the property was sought to be alienated by Karta. It is not even the concern of the defendants as to how the money is spent by the Karta of the joint family after having sold the land. What they are required to show to the Court is that there is recital in the sale deed executed by Karta regarding the existence of legal necessity, the necessity was not illegal and further that the vendees had made inquiries regarding legal necessity from Karta of the joint family or that they had the knowledge that money is required by the Karta of the joint family for some compulsion which is not illegal. After this initial burden is discharged by the vendees, the burden shifts upon the person, who challenges the sale deed on the ground of in-capacity of the Karta to alienate the land, to prove that there was no legal necessity for karta to alienate the land. The person challenging the sale shall have to prove that money, to the knowledge of the vendees, was required by the vendor-karta for some illegal or immoral purpose.

However, in the present case the plaintiffs have not lead any evidence that money was required by their father for some illegal or immoral purpose to the knowledge of the vendees. They have further failed to prove that their father defendant No.6 is of immoral or bad character. To substantiate their plea that their father is a person of immoral and bad character, the plaintiffs have examined PW-1, Girdhari Lal; who claims to be a person known to defendant No. 6. This witnesses has said that defendant No. 6 is addicted to taking liquor. His salary was sufficient for meeting out the expenses of the family. He has further said that the children of defendant No. 6 were unmarried till the year 1990. However, in cross-examination this witness has deposed that he has never seen defendant No. 6 consuming liquor and he has not consumed liquor with defendant No. 6.

Hence; the testimony of this witness is not sufficient to prove that defendant No. 6, the father of the plaintiffs, is a person of immoral or bad character or even addicted to taking liquor. The another witness in the case is the plaintiff Gopal Krishan; who has appeared as PW-3, who had deposed in affirmative evidence that his father is addicted to bad habits. He has further said that there was no necessity for selling the house. However, while appearing in rebuttal evidence this witness has not stated even in his examination-in-chief that his father was of any immoral character. At this stage this witness has not even said that the sale was without legal necessity. In cross-examination this witness has admitted that he did not know if his father spent Rs. 2 lakhs on construction of the house. This witness has further said that he could not say if his father had borrowed some money for construction of the house. Hence the testimony of this witness is also not categoric to exclude the legal necessity with defendant No. 6 qua the requirement of money for his family expenses.

Another witness examined in the case by the plaintiff was PW-2, Ramesh Kumar who is the maternal uncle of the plaintiffs. This witness has also said that defendant No. 6, Ramesh Chand, father of the plaintiffs, often takes liquor. He has further deposed that defendant No. 6 was having salary and he was managing his expenses in his salary only. However, this witness has also said that he does not know how much he spent on construction of house or if defendant No. 6 had taken any loan. This witness being the maternal uncle of the plaintiff is obviously trying to help out the plaintiffs by making a non-committal disposition before the Court. However, his testimony also does not categorically show that the vendor, defendant No. 6 was not in the necessity of money at the relevant time or

that he was a person of immoral or bad character.

If over all circumstances of defendant No. 6 are assessed then it becomes quite clear that defendant No. 6 is not a person of immoral or bad character. Even the plaintiffs and their witnesses have deposed that their father defendant No. 6 was managing family expenses out of his salary. Had the defendant No. 6 been a person of immoral and bad character and addicted to taking liquor then he would not have been able to meet his own expenses and supporting his family; consisting of three sons and two daughters out of his salary. Therefore, the testimony of the plaintiffs in this regard is inconsistent and contradictory to each other. Only a person with disciplined life and having no bad habits could have been able to manage his family expenses within the limits of his salary, particularly, when the family comprised of seven members. Still further it has come on record that defendant No. 6 had constructed a house also in which the family was residing. It has come on record that he might have obtained loan at the time of raising of the construction. This fact has not categorically been denied by any of the witnesses examined by the plaintiffs. Moreover, it has come on record that defendant No. 6 have made efforts to educate his children. When the sons could not progress further in studies, he made efforts to put them in business also by introducing them in the business of chemist shop. Although the plaintiffs have tried to depose before the Court that he started the chemist shop with Rs. 10,000/- which he was having however, it does not appear logical that he was having Rs. 10,000/- when he was still in his early 20's and there was no evidence that he was employed with salary anywhere. Still further DW-3 has deposed that it is defendant No.6, the father of the plaintiffs who spent Rs. 1 lakh on the chemist shop. This

testimony finds corroboration even from the testimony of the plaintiffs; wherein he has stated that he has spent Rs. 25,000/- for initiating the business of chemist shop and that now medicine worth Rs. 70,000/- are lying in his shop. Therefore, by any means, it can not be said that defendant No. 6 was not having any requirement of money for his family expenses. Plaintiffs have failed to prove that their father is a person of immoral character or a person of bad character.

Otherwise also, since defendant No. 6 happens to be an educated person of 1940's, a time when education was not so wide-spread, the fact that he got the job of a teacher and the fact that he did not remain satisfied with that job of the teacher in private school and he made endeavor to move to the government job; shows that he is a person having a desire to move ahead. Thereafter, defendant No. 6 has constructed a house for the family in an urban area. He has also given education to the children to whatever extent they intended to get it. This all he has been done with his own efforts. It has also come on record that he was not getting any income from the suit property. This shows that defendant No. 6 was managing everything either from his own salary or by arranging the money on loan. Hence by any means defendant No. 6 is not proved to be a person of slackness and indiscipline; much less to speak off being of immoral character or a person of bad conduct. Needless to say that so far as the immorality of character and immorality of purpose for which the sale proceeds might have been spent by defendant No. 6 have not even been deposited before the Court. No immorality, as such, has been alleged by the plaintiffs against their father. The only allegation is that defendant No. 6 used to take liquor. Firstly, mere taking liquor does not make a person of

immoral or bad character. Secondly, even this fact has not been proved on record by the plaintiffs. Thirdly, had the defendant No. 6 been of such an immoral and bad character then he would not have been able to manage his family expenses in his salary, a fact which is stated and asserted even by the plaintiffs. So by any means defendant No. 6 can not be held to be a person of immoral or bad character. Nor is it proved by the plaintiffs that he required the money for any immoral or illegal purpose. Hence it has to be held that defendant No. 6 was having legal necessity to alienate the suit land at the time when he alienated it. The payment of consideration has also been proved by the defendants. Nothing could be extracted in their cross-examination that money was not actually paid to defendant No. 6. The sale deed also says that there was passing of consideration in this transaction. However, the most striking feature of the matter is that defendant No. 6 is still alive. He has not been produced by the defendants as witness even to prove that no money was paid to him for the sale in question. Defendant No. 6 has neither filed any written statement nor has he appeared before the Court either to say that there was no legal necessity for him to sell the land or to say that he had not received any money in lieu of the land sold by him. Hence the sale deeds in favour of the defendants are held to be the sale deeds executed for legal necessity and for consideration.

However, there is a caveat in this regard. This finding is only with regard to the purchaser who has come forward to contest the suit and had led evidence qua the sale deed dated 18.10.1979 for the land measuring 17 marla and sale deed dated 12.05.1980 for the land measuring 9 marla. So far as the other two sale deeds dated 27.03.1981 for the land measuring 5 marla and sale deed dated 09.06.1981 for the land measuring 5 marla are

concerned no evidence of any kind had been led by the defendants. Hence no finding for upholding these sale deeds can be recorded by this Court. The purchaser through these two sale deeds remained ex parte before the Trial Court and they have not come forward to contest the appeals even before this Court. Hence the sale deed dated 27.03.1981 and 09.06.1981 are held to be not valid sale deed for want of evidence.

No further argument was raised by learned counsel for the parties.

Accordingly while partly upholding the findings and judgment and decree passed by the lower Appellate Court, **RSA No. 865 of 1998** is dismissed.

Since no evidence has been led on file qua the above said two sale deeds dated 27.03.1981 and 09.06.1981, therefore, while setting aside the findings of the lower Appellate Court in this regard, the **RSA No. 872 of 1998** is allowed.

Since the appeal in which the validity of the Will in question was allowed by the lower Appellate Court by saying that the plaintiffs have no locus standi to file the suit and this finding has now been reversed by this Court holding the plaintiffs to have locus standi to file the suit, therefore, the judgment and decree passed by the lower Appellate Court to that extent is reversed and **RSA No. 871 of 1998** is allowed.

These three appeals i.e. RSA Nos. 865, 871 & 872 of 1998 are decided in the above said terms.

28th March, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*
Whether Reportable *Yes*