

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

RSA No.4748 of 2001 (O&M)

Date of decision : 08.01.2018

Prem Singh and others

...Appellants

Versus

Dharam Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Akshay Rawal, Advocate for the appellants.

Mr. B.R. Mahajan, Sr. Advocate with
Mr. Prateek Mahajan, Advocate and
Ms. Tanika Goyal, Advocate for the respondent.

ANIL KSHETARPAL, J.

This case has been remanded back by Hon'ble the Supreme Court vide judgment dated 13.09.2017.

The plaintiffs are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed challenging the sale deed dated 20.07.1993 registered on 04.02.1994 executed by defendant No.2, the predecessor-in-interest of the plaintiffs in favour of defendant No.1-Dharam Singh.

It is claimed that plaintiff No.1 is son whereas plaintiff Nos.2 and 3 are grandsons of defendant No.2. The sale executed by defendant No.2 in favour of defendant No.1 has been challenged on the ground that

the property is ancestral coparcenary land and, therefore, all the persons namely plaintiff Nos.1, 2 and 3, defendant No.1 are having 1/4th share in the property. It is further pleaded that the sale is without legal necessity.

Defendant No.1 contested the suit whereas defendant No.2 was proceeded ex parte. Defendant No.1 objected to the maintainability of the suit and submitted that the land is neither Joint Hindu Family Ancestral Coparcenary Property nor the sale is without legal necessity.

Both the Courts below after appreciation of the evidence available on the file have chosen to record a concurrent finding of fact that the plaintiffs have failed to prove that the land is either Joint Hindu Family Coparcenary Property or the sale by Gurdit Singh is without legal necessity.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments and records of the Courts below.

Learned counsel for the appellants has submitted that the plaintiffs have produced on file the revenue record to prove that the property is ancestral coparcenary property. He has submitted that the jamabandi for the year 1911-12 has been produced on file. He has submitted that it is proved from the file that originally the land was owned by common ancestor namely Hira Singh, father of Gurdit Singh. He has further submitted that it is clear from the evidence produced on file that defendant No.2 was having sufficient bank balance and, therefore, he was not having any legal necessity to sell the property.

On the other hand, learned counsel for the respondent has submitted that there is no pleadings with regard to the property being joint

hindu family property. Counsel has pointed out that as per the plaint, the property is claimed to be ancestral land having come to Gurdit Singh from his father. He has submitted that the parties are pleaded to be coparceners. However, there is no pleading to the fact that the property is joint hindu family.

Learned counsel for the respondent has further submitted that the property does not remain to be ancestral coparcenary property after the partition of the land between Gurdit Singh and his brother. He refers to the plaint in Civil Suit No.377 filed by the plaintiff (Ex.DW6/A). The pleadings in para No.5 of the plaint are extracted as under:-

“5. That originally the defendant No.1 and his brother S. Gurbux Singh were owners of agricultural land to the extent of 159 k/s 5 m/s. Both brothers orally entered into a partition and the agricultural land mentioned in the heading of the plaint fell into the share of the defendant No.1 S. Gurdit Singh and the remaining land bearing khasra Nos.78/9 (8-0), 78/12 (5-5), 78/13 (7-12), 78/3/2 (3-19), 78/2 (7-11), 78/3/1 (2-17), 78/1/1 (4-12), 78/3/3 (0-15), 78/4 (7-4), 78/7 (8-0), 78/8 (8-0), 78/10 (6-11), 78/11 (3-0) and 78/14 (6-6), khata khatauni Nos.437/876, 460/906, 471/919, 480/936, 482/937 as entered in the jamabandi for the year 1979-80 situated at Village Pheruman, Tehsil Baba Bakala, District Amritsar fell to the share of S. Gurbux Singh. Said Sh. Gurbux Singh has sold his entire share of land to the defendants No.4 to 8. Some land is lying mortgaged without possession with the defendant No.9 i.e. State Bank of India, Br. Beas District Amritsar.”

He has further submitted that the present suit is barred under Order 2 Rule 2 CPC, as plaintiff No.1 had earlier filed a suit for declaration

which was withdrawn by the plaintiff claiming that Gurdit Singh is *karta* of the Hindu Undivided Family and he is governed by Hindu Law and they are coparceners.

I have carefully considered the submissions made by the learned counsels for the parties. However, this Court does not find any substance in the submissions of the learned counsel for the appellants.

It is not disputed before this Court that in the earlier suit filed by plaintiff No.1, it was pleaded by the plaintiff that initially Gurdit Singh and his brother Gurbax Singh were owners of the agricultural land inherited from their father but both the brothers had separated and the land measuring 79 kanals and few marlas fell to the share of Gurdit Singh. Once there was disruption in the family and father of plaintiff No.1 had separated from the family, the property received in partition cannot be claimed as Coparcenary Property. Further, the plaintiffs have not pleaded or proved on file any custom to the effect that there was any restriction on the sale of the agricultural land. It has come in the evidence that brother of Gurdit Singh had sold away the land which fell to his share. Still further, even Gurdit Singh and his family members were not living jointly. The plaintiffs were settled in Amritsar City whereas Gurdit Singh was living in Village Pheruman, Tehsil Baba Bakala, District Amritsar for the last 20 years. There is no pleadings that after separation from his brother, Gurbax Singh, Late Sh. Gurdit Singh, a smaller coparcenary came into existence. What has been pleaded is that since the land has been received from a common ancestor, therefore, there was a coparcenary ancestral property. The land which was received from a common ancestor i.e. Hira Singh, had been divided by

Gurdit Singh, defendant No.2 and Gurbax Singh, his brother. Once the family separated, the property which fell to the shares of Gurdit Singh would be his individual property unless there is any further evidence to prove that the family of Gurdit Singh and his children and grand children were part of a smaller coparcenary or Joint Hindu Family.

As regards the legal necessity, it would be significant to note that in the sale deed executed by Gurdit Singh, legal necessity has been specifically mentioned. Still further, plaintiff No.1 had earlier filed a suit i.e. Civil Suit No.377 dated 22.07.1993. Gurdit Singh had filed a written statement pleading that he was having necessity of the funds as he was suffering from Asthma of acute type. The relevant extract of written statement filed by Gurdit Singh is read as under:-

“In fact, defendant No.1 is perfectly of sound mind and supporting his family. Gurdit Singh is suffering from Asthma of acute type and is in need of funds for his treatment out of compulsion. He sold the land measuring 40 K bearing Khasra No.71/18, 19, 20, 70/16, 17 and 25 min North (2K-5M) as per jamabandi for the year 1989-90 for consideration of Rs.2,25,000/- in favour of Dharam Singh s/o Bakhshish Singh and the sale deed was duly executed on 20.7.93 and as per sale deed the entire sale consideration was received by defendant No.1 as per details given in the sale deed for his treatment. The sale deed was duly presented before the Sub Registrar Baba Bakala. Before it could be registered the plaintiff obtained injunction order from this Hon'ble Court and the sale deed could not be registered. Defendant No.1 being owner in possession of the suit land is competent to sell the same to any person and the plaintiff has no right or interest in the suit land during his

life time. If defendant No.1 is of unsound mind the suit against him in his personal capacity is not maintainable.”

Further, it is well settled that a Vendee is not required to prove that how the funds received under the sale deed have been spent. The Vendee is only required to prove prima facie that the Vendor was having some legal necessity. In the present case, the legal necessity is specifically mentioned in the sale deed. Gurdit Singh, Vendor has also specifically pleaded the legal necessity in the previous litigation. Although, the learned counsel for the appellant has drawn my attention to the fact that Gurdit Singh was having some amount in the bank, however, that would not improve the case of the plaintiffs. The amount as pleaded in the plaint available in the hands of Gurdit Singh was approximately ₹1,00,000/-. Gurdit Singh had felt that there was legal necessity for further funds particularly when he was suffering from Asthma of acute type and his children and grand children were not living with him. The sale by Gurdit Singh cannot be set aside on the ground that he was not having any legal necessity because he was having approximately ₹1,00,000/- in his hands.

It may be significant to note here that in the written statement, Gurdit Singh had pleaded that the property is not ancestral property or he is not *karta* of the Hindu Undivided Family. He had pleaded that the suit land is his exclusive ownership.

In view of the aforesaid discussions, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

08.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No