

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

RSA No.4235 of 2013 (O&M)

Date of decision : 27.08.2018

Pardeep

...Appellant

Versus

Bhupender Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kumar Khubbar, Advocate for the appellant.

Mr. Dishant D. Tuteja, Advocate for respondent No.1.

Mr. Rakesh Nehra, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

The plaintiff filed a suit initially for injunction but later on converted the suit into declaration challenging the sale deed executed by his father on 01.10.2003. The plaintiff claims that since the property in dispute is ancestral, therefore, the defendant had no right to sell the property.

Learned First Appellate Court has held that simplicitor suit for declaration was not maintainable as admittedly the plaintiff is not in possession in view of the proviso to Section 34 of the Specific Relief Act, 1963.

Still further, the First Appellate Court has held that sale was on account of legal necessity as the plaintiff had filed an earlier suit for maintenance against his father-Ram Singh. It may be noted that the plaintiff claims that he is adopted son of Late Sh. Ram Singh. The aforesaid suit for maintenance was decreed on 21.02.1997 and the property was sold in order to honour the decree which has been passed against Ram Singh.

Learned counsel for the appellant has submitted that maintenance was only at the rate of ₹150/- and, therefore, the property could not be sold. It is not in dispute that those proceedings were instituted in the year 1991 and Ram Singh was required to pay maintenance not only during the pendency of the petition but subsequent to the passing of the decree also.

In view thereof, the sale by Ram Singh cannot be said to be without legal necessity. Hence, no ground to interfere.

Regular Second Appeal is dismissed.

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

27.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No