

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

RSA No.3302 of 2016 (O&M)

Date of decision : 21.09.2018

Jagdish

...Appellant

Versus

Sheo Karan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Alok Mittal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff filed a present suit challenging the sale deed executed by his father on the ground that father is a habitual drunkard and, therefore, defendant Nos.3 and 4 have got the sale deed executed from him. The plaintiff further claimed that there is custom in District Rewari, State of Haryana that the agricultural land cannot be sold without the consent of the legal heir.

Defendant No.1 contested the suit and pleaded that the property had been sold for legal necessity as he was to marry his grand daughter and grandson.

Learned trial Court held that the land is ancestral but since the sale is for legal necessity, therefore, the plaintiff cannot succeed. The Court

further found that no evidence has been led to prove that there was any custom prohibiting the sale of the agricultural land without the consent of the legal heir.

Learned First Appellate Court after re-appreciating the evidence found that the remaining land was self-acquired and only land measuring 15 kanals and 19 marlas is proved to be ancestral. However, First Appellate Court further reaffirmed the finding of the trial Court that the sale was for legal necessity.

Learned counsel for the appellant argued that in absence of any appeal by the defendants, learned First Appellate Court could not have gone into the issues as to which part of the property is ancestral. He submitted that once the finding was not challenged, therefore, the aforesaid finding became final.

This Court has considered the submissions of the learned counsel for the appellant.

As per the provisions of Order 41 Rule 33 CPC, it is apparent that the Appellate Court has a power to pass a judgment in accordance with law irrespective of the fact that whether any separate appeal or cross-objections have been filed by the other party or not. Order 41 Rule 33 CPC is extracted as under:-

“33. Power of Court of Appeal - The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or make and to pass or made such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the

decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

[Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]”

The defendants-respondents are authorized and have been enabled by the provision of Order 41 Rule 33 CPC to challenge the finding of the Court against them without filing a separate appeal or cross-objections.

In the present case, this is what has been done by the learned First Appellate Court.

Keeping in view the concurrent findings of fact that defendant No.1 sold the property for a legal necessity, this Court does not find any good ground to interfere.

Regular Second Appeal is dismissed.

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

21.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No