

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

RSA No.1119 of 2013 (O&M)

Date of decision : 15.03.2019

Harbans Singh and another

...Appellants

Versus

Gurmeet Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surinder Gandhi, Advocate for the appellants.

Mr. Satbir Gill, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the Regular Second Appeal against the judgments passed by the Courts below.

Question of law which needs consideration is “whether a suit for declaration to the effect that the properties purchased are joint hindu family coparcenary property can be dismissed on the ground that the sale deed through which a part of the property was purchased has been challenged and the suit is time barred?”

Plaintiffs who are Harbans Singh and his two sons had filed a suit for declaration claiming that the property purchased vide three sale deeds in Village Naiwala by defendant Nos.1 to 3 are joint hindu family coparcenary property and these defendants have wrongly got it purchased in their individual name. Defendants pleaded that the property was purchased

in Village Naiwala from their own resources.

The First Appellate Court recorded a finding that the property is proved to be joint hindu family coparcenary property. It was found that the property at Village Naiwala was purchased after sale of the ancestral property in District Amritsar. The relevant findings of the Court are extracted as under:-

“Since the plaintiffs have adduced sufficient evidence to show that a sum of Rs.15.00 lacs was generated from joint family nucleus and this amount was sufficient to acquire the property vide impugned sale deeds, therefore, in the considered opinion of this Court, the onus was upon the defendants to prove that the sale consideration of the impugned sale deeds was generated from their independent earnings. In this regard, reliance has been placed upon judgment cited Srinivas Krishnarao Kango Vs. Narayan Devji Kango & Ors., AIR, 1954, SC, 379 wherein similar observations have been made. The defendants, however, have failed to bring any cogent evidence to explain their independent source of income sufficient for acquisition of the suit land by way of the impugned sale deeds.

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This fact clearly shows that sum of Rs.15.00 lacs was handed over to them by plaintiff Harbans Singh. Learned Civil Judge has observed that since the sale consideration of the impugned sale deeds was only Rs.6,30,010/- after including the expenditure on the stamp papers, therefore, Harbans Singh would not have handed over the entire amount of Rs.15.00 lacs to defendants No.1 and 2. Learned Civil Judge has also observed that Harbans Singh had withdrawn the money in January, 2003 but the impugned sale deeds have been executed in November and December,

2003 and there was no occasion for handing over the money in the month of January. Again, both these observations of learned Civil Judge are not tenable. It is common practice that the exact sale consideration is not mentioned in the sale deeds and sale deeds are executed by mentioning Collector rates in order to avoid stamp charges, therefore, it would be erroneous to conclude that the sale amount was only Rs.6,39,010/-. Further, merely because the money was handed over in January and sale deeds were executed in November and December, 2003, again no such presumption can be drawn that the amount of Rs.15.00 lacs was not utilized in the purchase of the suit land by way of impugned sale deeds. Having said so, this Court is of the considered opinion that the plaintiffs have proved on the record that the sum of Rs.15.00 lacs withdrawn by Harbans Singh from his account in January, 2003 was utilized by defendants No.1 and 2 for purchasing the suit land vide impugned sale deeds since they had failed to prove their independent income sufficient enough to meet the sale consideration, therefore, the land purchased vide impugned sale deeds would become ancestral property. However, merely for this reason, the impugned sale deeds cannot be set aside as has been rightly observed by learned Civil Judge.”

However, First Appellate Court dismissed the appeal on the ground that the sale deeds were executed in the year 2003 whereas the present suit has been filed in the year 2008.

In the considered view of this Court, once the plaintiffs had made a prayer for declaration that the property purchased at Village Naiwala alongwith other property is joint hindu family property, challenge to the sale deed was in the context of main prayer made. In fact, the prayer for

challenge to the sale deed is superfluous.

However, learned counsel for the respondents has pointed out that through Ex.D1, parties had entered into a compromise and as per the compromise, the payment was exchanged. Learned First Appellate Court has not dealt with Ex.D1.

Keeping in view the aforesaid facts, judgment passed by the learned First Appellate Court is set aside by answering the question in favour of the appellants. Case is remitted back to the First Appellate Court to re-decide the appeal without being influenced by the previous judgment passed by its predecessor on 03.12.2012.

Parties through their counsel are directed to appear before the First Appellate Court on 08.04.2019.

Regular Second Appeal is disposed of.

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

15.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No