

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

RSA No.796 of 2018(O&M)
Date of decision: 29.10.2019

Saroj and another

... Appellants

Versus

Smt. Neelam and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Vikrant Hooda, Advocate, for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiffs/appellants was decreed by the trial Court vide judgment and decree dated 12.01.2016, but as the appeal preferred against the said decree was accepted and the appellate Court vide impugned judgment dated 13.02.2017 reversed the said decree and dismissed the suit, the plaintiffs/appellants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration that sale deed executed by defendant No.2 in favour of defendant No.1 be declared illegal, null and void as it was without any legal necessity or for benefit of the estate. In brief, the case set out by them was that plaintiffs No.1 & 2 were real daughters of defendant No.2-Hawa Singh. Vide sale deed dated 29.05.2012, Hawa Singh sold the suit property in favour of defendant No.1 without any

legal necessity, but as the suit property was ancestral, and the plaintiffs had 1/3rd share each therein, their father lacked authority to alienate the same. Thus, the suit.

In the written statement filed by the defendants, it was pleaded, *inter alia*, that prior to execution of the sale deed dated 29.05.2012, defendant No.2 was owner to the extent of half share in the suit property. It was denied that the suit property was ancestral in nature and the sale deed executed by defendant No.2 was invalid. The fact as regards parties being governed by customs in the matter of alienation was denied. In fact, defendant No.2 had received Rs.19,25,000/- from defendant No.1 as sale consideration. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter, the trial Court, vide judgment and decree dated 12.01.2016, held that suit property was ancestral in nature. Further, evidence on record showed that suit land was alienated without any legal necessity. Although plaintiff Murti Devi (PW2) admitted in her cross-examination that they followed Jat Jamindara customs, but by no stretch of imagination that could establish that her father (Karta) could sell whole of the ancestral property without any legal necessity. Even otherwise, the customary laws were abrogated with effect from 1956 by force of Section 4 of Hindu Succession Act. Accordingly, the suit was decreed and the sale deed dated 29.05.2012 was declared to be illegal, null and void.

However, upon due and comprehensive consideration of the matter in issue, and the evidence on record, the appellate Court reached a conclusion that: the short issue that required determination was if the suit property in the hands of Hawa Singh (defendant No.2) was ancestral in nature? It was not in dispute that suit land devolved from Nathu Singh to

Hira to Hawa Singh by way of inheritance. However, Nathu Singh, grandfather of defendant No.2 and great grandfather of plaintiffs, had acquired the same from Zalam Singh by way of a Will and not by inheritance. The said position was explicit from mutation Ex.P14-Ex.P14/T. Therefore, all what the plaintiffs could show was that suit land was inherited by their father Hawa Singh (defendant No.2) only upto two degrees above in the male line of descent. Whereas, they were required to connect the hereditary devolution of the suit property upto five degrees above them or four degrees above their father i.e. Hawa Singh, in the male line of descent. In reference to the decision of this Court in **Maturam v. Kartar Singh**, **RSA No.2697 of 1980, decided on 15.10.2013**, it was concluded that mere admission qua the nature of the suit property being ancestral was inconsequential and would not absolve a party to establish its character by leading cogent documentary evidence. That being so, the plaintiffs apparently failed to substantiate their plea that suit land was ancestral at the time of execution of sale deed dated 29.05.2012 (Ex.P1).

As regards customs, the plea that plaintiffs and defendant No.2 (Hawa Singh), who happened to be Jats of erstwhile Rohtak district (now Jhajjar), and were governed by custom in matters of alienation of the ancestral property, and in terms whereof defendant No.2 (Hawa Singh) did not have any right to alienate the suit property. Suffice it to say, once it was the case set out by the plaintiffs themselves that they were governed by Jat Jamindara customs, the only issue that required determination was: what are the rights of the last male holder of the property in family of such Jat Jamindara. Accordingly, in reference to the decision of this Court in **Surajmal and others v. Kamla and others**, 1966 Current Law Journal

453, as also the Hon'ble Supreme Court in **Sube Singh and another v. Kanhiya and Ors., 1991(1) LJR 313**, it was concluded that last male holder of the Jat agriculturist tribe of Rohtak and Jhajjar districts had an unrestricted right to alienate even his ancestral land except for an immoral purpose. Meaning thereby, sale deed dated 29.05.2012, executed by defendant No.2, could be assailed only on a limited ground that it was executed for an immoral purpose. However, that was not even the case set out by the plaintiffs. That being so, the only and the inevitable conclusion that could be reached: the suit filed by the plaintiffs was liable to be dismissed, for, they failed to substantiate that suit property was ancestral in nature.

Though in the wake of the above, the issues if the sale deed in question was executed without any legal necessity and non-payment of consideration were not required to be gone into. However, on an analysis of the evidence on record, it was observed vendor Hawa Singh himself conceded the receipt of sale consideration as reflected in the sale deed (Ex.P1). None other than Murti Devi (plaintiff No.2) admitted in her statement that her father had organized the marriage of the plaintiffs, and she was living happily in her matrimonial home since 1990. She also admitted that she had cordial relations with Ombir and Surajbhan, the attesting witnesses of the sale deed. Further, this was never the case of the plaintiffs that their father Hawa Singh was a person of bad habits and of unsound mind. In any case, the suit land being not ancestral in the hands of Hawa Singh, and the plaintiffs being a third party to the contract of sale between defendant No.1 and defendant No.2, they had no locus either to rake up any such issue.

There was yet another dimension to the dispute as recitals in sale deed (Ex.P1) clearly showed that the possession of the suit land was delivered to the vendee (defendant No.1). Not just that, even Murti Devi (plaintiff No.2) conceded in her cross-examination that Neelam (defendant No.1) was in cultivating possession of the suit property. Therefore, the plaintiffs ought to have asked for a decree for joint possession of the suit land as well, and, thus, the suit filed by them was not even maintainable.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusion arrived at by the appellate Court was either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by the appellate Court.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

29.10.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO