

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2524-1996(O&M)

Date of decision:15.01.2020

Charan Singh

.....Appellant

Versus

Dalbir etc.

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Kulvir Narwal, Advocate for the appellant

Mr. Virkam Punia, Advocate for the respondents

ANIL KSHETARPAL, J.

Defendant No. 1-appellant has filed Regular Second Appeal against the judgment passed by Additional District Judge, Sonipat, who had reversed the judgment passed by the learned Trial Court. The plaintiff- Dalbir had filed a suit for declaration which stands decreed.

Through the present suit, Dalbir through his mother Lachhmi has challenged the sale deeds dated 26.4.1983 and 20.7.1987 as also mortgage deeds dated 13.11.1978 and 28.5.1979 executed by his father Govardhan-defendant No. 7. These sale deeds and mortgage deeds were challenged on various grounds including that these were executed without legal consideration.

At the outset, it must be noticed that the counsel appearing for the plaintiff suffered a statement on 7.9.1997 that the plaintiff does

not wish to press the suit with respect to challenge to the sale deed dated 26.4.1983 and mortgage deeds dated 13.11.1978 and 28.5.1979. Thus, the only question which remains to be decided is with respect to sale deed dated 20.7.1987.

Defendants contested the suit by filing separate written statements. After framing of the issues, the parties were permitted to lead evidence.

The Trial Court on appreciation of evidence did find that the property is ancestral and the parties are governed by Hindu Law and not by the customary law. The learned Trial Court further held that the sale deed dated 20.7.1987 was executed by Defendant No.7 in favour of Defendant No.1 (appellant herein) for legal necessity.

First appeal filed by the plaintiff has been accepted and it has been held that the sale deed is not for legal necessity.

At this stage, it would be relevant to note in brief, the reasons given by the learned First Appellate Court for setting aside the sale deed:-

- i) There is not even a hint in the sale deed, Ex.P1, as to for what purpose the money was required by Gordhan.
- ii) There is nothing in the sale deed to show that Charan Singh made any inquiry before purchasing the suit land regarding legal necessity of Gordhan to sell the land in suit.
- iii) There is no evidence that the property was alienated by Gordhan for the benefit of the Joint Hindu Family .
- iv) Gordhan had squandered the property in order to meet

his own expenses, i.e., purchase of liquor and charas to which he was addicted.

v) There is ample evidence on record which shows that Gordhan did not require Rs.49,000/- for construction of house, for solemnization of the marriage of his son or meeting the expenses towards necessities of life.

With these findings, learned First Appellate Court set aside the judgment passed by the learned Trial Court resulting in cancellation of the sale deed dated 20.7.1987 Charan Singh-appellant has been held entitled to refund of the sale consideration i.e Rs.49,000/-.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record, which has been requisitioned.

Learned counsel for the appellant has submitted that in the present case, legal necessity to sell the land measuring 27 kanals 12 marlas is established from the fact that in the sale deed itself it has been recited that the land which is subject matter of the sale deed is under mortgage with Ishwar for an amount of Rs.17,500/- which shall be deducted from the sale consideration and repaid to Ishwar in order to get the land redeemed. He further submitted that Smt. Lachhmi mother of Dalbir-plaintiff has admitted that she filed a petition for grant of maintenance which was allowed and maintenance as ordered was to be paid by Gordhan. It was further submitted that thus, legal necessity stands proved. He further submitted that once challenge to the sale deed dated 26.4.1983 and mortgage deeds dated 13.11.1978 and 28.5.1979 has

been abandoned, although these were also challenged in this suit, on the same grounds, therefore, the first Appellate Court has erred in decreeing the suit of the plaintiff.

On the other hand, learned counsel for the respondents has submitted that Gordhan was owner of more than 10 acres of land and he squandered his property by executing various sale deeds. He, hence, submitted that there was no legal necessity. He further submitted that the mortgage deed in favour of Ishwar is also not proved. He further submitted that Lachhmi and Dalbir had filed a suit restraining Gordhan from alienating the property on 16.7.1982, which was decreed on 20.2.1984. He submitted that, therefore, the sale deed in question dated 20.7.1987, is in violation of the order of injunction.

This Court has critically re-appraised the evidence and found that the judgment passed by the learned First Appellate Court is not sustainable for the following reasons:-

i) It is specifically noted in the sale deed dated 20.7.1987 that this very agricultural land is under mortgage for an amount of Rs.17,500/- in favour of Ishwar and the vendee -appellant shall be entitled to get the land redeemed by paying Rs.17,500/ to Ishwar. The mortgagee Ishwar has also appeared in evidence and corroborated the aforesaid fact that he did receive payment of Rs.17,500/- and the mortgage of the land stands redeemed.

ii) It is not in dispute that Smt. Lachhmi had filed a petition for fixing maintenance as they were not living together due to marital discord. Thus, Gordhan was required to pay the maintenance

which has been ordered by the Court.

iii) The plaintiff, originally, as noted above, challenged two sale deeds and two mortgage deeds, however, subsequently vide statement dated 7.9.1997, the plaintiff abandoned challenge to the aforesaid sale deed and mortgage deeds. Thus, an inference can be drawn that the plaintiff was selective in challenging the alienation made by his father. No reason has been given in the statement dated 7.9.1997 as to why the challenge to the aforesaid sale deed and two mortgage deeds has been abandoned.

iv) It has come in evidence that after the execution of the sale deed dated 20.7.1987, Gordhan-defendant No.7 had also mortgaged land measuring 55 kanals 16 marlas in favour of appellant-Charan Singh for an amount of Rs.60,000/- vide mortgage deed dated 10.5.1988 which was redeemed later on. Thus, it is apparent that Gordhan used to deal with the property.

Now, let us examine the reasons given by the learned First Appellate Court while reversing the judgment of the Trial Court. As regards first reason, there is no statutory requirement that in the sale deed it must be recited as to for what purpose/legal necessity the money is required by the vendor. It always depends upon the evidence produced before the Court.

Second reason assigned by the First Appellate Court is with regard to the fact that in the sale deed it has not been recited that vendee had made an inquiry before purchasing the suit land regarding the legal necessity of vendor- Gordhan. The answer to the aforesaid reason is the

same. It is not necessary that in the registered sale deed it must be recited that the vendee has enquired regarding the legal necessity of the vendor.

Next reason assigned by the Court is to the fact that there is no evidence that the property was alienated by Gordhan for the benefit of joint Hindu Family. In this respect, it may be noted that the family of Goverdhan was not living together. There was in fact a dispute between the husband and his wife who was residing separately at Gohana whereas husband Gordhan was residing in the village. It has also come in evidence that Smt. Lachhmi had filed a petition for directing Goverdhan to pay maintenance which was allowed. Thus, it cannot be said that the property was not alienated for legal necessity. Still further the mortgaged land has also been redeemed from the part of the sale price.

No doubt, Lachhmi has stated that Gordhan was addicted to alcohol and charas, however, learned Trial Court on appreciation of evidence found that in the absence of corroboration, the evidence of Lachhmi cannot be believed. Still further on the one hand, Lachhmi has admitted that Gordhan had started roaming with the Fakirs by renouncing the world whereas on the other hand she states that he was addicted to liquor and charas. However, in absence of convincing evidence, first Appellate Court has erred in recording such finding.

The next reason assigned by the Court that Gordhan did not require the amount of Rs.49,000/- for construction of house, for solemnizing the marriage of his son or meeting the expenses towards necessity of life of his family. It may be noted in this regard that out of

Rs.49,000/- the total sale consideration, Rs.17,500/- was payable and hence, was paid to the mortgagee Ishwar. Thus, more than 1/3rd amount of the sale consideration was required for repaying the debt. Apart therefrom, it has come in evidence that Gordhan was also liable to pay maintenance as ordered by the Court on the application filed by Smt. Lachhmi. In such circumstances, it is apparent that there was a legal necessity to sell the property.

Out of the total sale consideration of Rs.49,000/-, Rs.17,100/- was retained by the vendee to repay the debt. Remaining amount of Rs.31,500/- was paid before the Sub Registrar.

It has also come in evidence that Charan Singh and Gordhan are cousins belonging to the same larger family. It has also come in evidence that Gordhan had a regularly dealing with Charan Singh.

In view of the aforesaid overwhelming documents available on the file, this Court is of the considered view that the First Appellate Court committed an error in setting aside the sale deed dated 20.7.1987. Hence, the present appeal is allowed. The judgment passed by the learned First Appellate Court is set aside whereas the judgment of the Trial Court is restored.

15.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No