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

**RSA-5472-2019 (O&M)
Reserved on 11.05.2022
Date of decision : 17.05.2022**

Abdul Rehman

.....Appellant

versus

Smt. Jubeda

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mohammad Arshad, Advocate
for the appellant.

ALKA SARIN, J.

CM-15573-C-2019

For the reasons mentioned in the application, the delay of 22 days in filing the appeal is condoned.

CM disposed off.

RSA-5472-2019

The present regular second appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts below dismissing his suit for declaration, possession and permanent injunction.

Brief facts relevant to the present *lis* are that the plaintiff filed a suit challenging the alienation made by his father, Juhru, by virtue of sale deed dated 03.08.1994 in favour of the defendant thereby selling land measuring 6 kanal 16 marlas. It was averred that the plaintiff and his father belong to the Meo caste and were governed by custom as per which a proprietor cannot alienate ancestral property without legal necessity or

without the consent of successors but Juhru sold the same without legal necessity in favour of the defendant and without the consent of the plaintiff and, as such, the alienation was bad. It is further pleaded that the alienation made by Juhru was without any consideration and that a fraud was played upon Juhru by the defendant while obtaining the sale deed.

The defendant appeared and filed written statement raising objections regarding limitation pleading that though the sale deed had been executed on 03.08.1994 the suit was filed in 2017 and was barred. On merits it was pleaded that the suit property had been sold by Juhru for legal necessity for purchasing other land. Alternatively, it was pleaded that the suit property was the self-acquired property in the hands of Juhru and was not inherited by him from his ancestors. It was denied that the plaintiff and Juhru were governed by custom or that any fraud had been played upon Juhru.

From the pleadings of the parties, the following issues were framed :

1. Whether the suit land is ancestral property in the hands of Juhru ? OPP
2. Whether the sale deed no.1052 dated 03.08.1994 is illegal, null and void ? OPP
3. Whether suit of plaintiff is not maintainable ? OPD
4. Relief.

The Trial Court, vide judgment and decree dated 25.01.2019, dismissed the suit of the plaintiff. It was found that though the suit property was ancestral, it stood proved that the sale was made for legal necessity. The suit filed by the plaintiff was held to be barred by limitation. All the issues

were decided against the plaintiff. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff which was dismissed vide judgement and decree dated 29.07.2019. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the Courts below have erred in dismissing the suit of the plaintiff. According to him, the sale of the suit property by Juhru was without necessity and infact Juhru received no consideration. It was submitted that as per the prevalent custom Juhru could not alienate the suit property, which was ancestral property, without legal necessity or without the consent of his successors but Juhru sold the same without legal necessity and without the consent of the plaintiff.

Heard learned counsel for the plaintiff-appellant and perused the paper-book.

The Courts below have found that the evidence available on the record produced by the plaintiff showed that the sale of the suit property by Juhru was for legal necessity. The sale deed Ex.PW2/A itself records *“Kharch Khaangi anya bhumi kharid karne hetu dhan ki jaroorat hai”* which means that the sale was being done for meeting domestic expenses and for purchasing other land. Thus, the intention of Juhru to sell the suit property was for legal necessity. The contention of counsel for the plaintiff that the sale in favour of the defendant was without consideration is belied by the testimony of his own witness PW4 who stated that Juhru received ₹40,000/- from Haroon the husband of defendant before the Sub-Registrar in his presence. The suit has also been held to be barred by limitation also. The sale deed which has been challenged was executed on 03.08.1994 while the

present suit was filed in 2017 – after over 23 years. So far as the contention of the counsel for the plaintiff that the plaintiff was governed by custom, suffice it to say that it is well settled that custom has to be specifically pleaded and established by leading cogent evidence by the person propounding such custom. In the absence of specific pleadings supported by evidence the plea of custom cannot be accepted. In the present case the plaintiff failed to establish the applicability of customary law. The learned counsel for the plaintiff has not been able to dislodge the factual findings recorded by both the Courts below and has simply reiterated the submissions that were advanced before the Courts below and which submissions were rejected after due and comprehensive consideration.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

17.05.2022

Yogesh Sharma

NOTE :

(ALKA SARIN)

JUDGE

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No