

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

RSA-300-1990 (O&M)
Date of decision: 04.01.2023

Lichhman	V/S	...Appellant
Ran Singh and others		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Om Parkash Sharma, Advocate,
For the appellant.

Mr. Mani Ram Verma, Advocate and
Mr. Nipun Verma, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 29.01.1988, as upheld by the learned First Appellate Court vide its judgment and decree dated 02.11.1989.

3. Briefly stated, facts as noticed by Courts below are that the plaintiff and defendant No.4 along with Ram Sarup are the real brothers. Their father Bhola inherited the suit land which was allotted in consolidation of holdings to their grandfather Udmi, who had inherited the same from his father. It is alleged that defendant No.4 is a bachelor and has many vices. He had no legal necessity to alienate the suit land but under the influence of defendants No.1 to 3, he alienated the same to them vide sale deed dated 11.01.1974 for the alleged sale consideration of Rs.49,000/- which is of no effect on the rights of the plaintiff. The suit land is

the joint land and therefore defendant No.4 was not legally competent to alienate specific killa numbers to defendants No.1 to 3 in any manner whatsoever. Moreover, the impugned sale of the suit land amounts to different transactions which are quite distinct to each other and could not be effected by one and the same sale deed. The plaintiff has further alleged that the parties to the suit are agriculturists by profession and are governed by custom in the matters of alienation. But what is that custom, there is no pleading. Alleging further that the defendants No.1 to 3 having refused to admit the claim of the plaintiff, hence, the civil suit.

4. Upon notice, defendant No.4 appeared and filed written statement of admission whereas defendants No.1 to 3 contested the suit pleading that suit land was the self-acquired property of defendant No.4 which he had alienated for consideration and legal necessity. Before purchase of the suit land, they made due enquiry and after satisfying themselves that the necessity in fact existed as defendant No.4 intended to purchase land in village Lakhria (Rajasthan) where he is living with his another brother Ram Sarup, they purchased the same. The answering defendants have accordingly disputed that the alleged sale of the suit land is illegal, null and void and is liable to be set aside. They further admitted that they are the agriculturists but pleaded that they being Hindus are governed by Hindu Law. The said defendants have further set up the plea of estoppel, limitation as also the locus standi of the plaintiff to file the suit.

5. Based on the rival pleadings, following issues were framed:

1. Whether plaintiff and proforma defendant No.4 formed a joint Hindu family? OPP

2. Whether plaintiff and defendant No.4 are governed by custom in the matters of alienation? If so what that custom is? OPP

3. Whether the suit land sold by defendant No.4 was ancestral in the hands of defendants No.4 qua the plaintiff? OPP

4. *Whether the suit land was sold to defendants No.1 to 3 for consideration and legal necessity ? OPD.*
5. *Whether the plaintiff is entitled to the possession of the suit land as alleged ? OPD*
6. *Whether the suit is barred by limitation ? OPD*
7. *Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD*
8. *Whether the suit has not been properly valued for the purposes of court fees and Jurisdiction? OPD*
9. *Whether the plaintiff has no locus standi? OPD*
10. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid.*

7. On appraisal of evidence vis-à-vis pleadings, issues No.2, 3, 5 and 9 were decided against the plaintiff. Issue No.4 was decided in favour of vendees and issue No.6, 7 and 8 was decided against the vendees. Issue No.1 was held to be inadvertently framed and under a mistaken belief. Consequently, the suit of plaintiff was dismissed with no order as to costs.

8. First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal by plaintiff before this Court.

9. In its judgment, the learned First Appellate Court, inter alia observed as below:

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“5. I have heard learned counsel for appellant, Sh.K.C.Jain, learned counsel for respondent, Sh. R.P.Jain and have perused the oral and documentary evidence placed on the file and of the considered view that at the time of arguments it was frankly admitted by counsel for parties that parties are jat; their livelihood is mainly based on an agriculture although certain members of their family have also adopted some other job to supplement the income of the family. It was also admitted that the land in dispute is not self-acquired property of Ram Kumar; it came into his hands from his father; in other words, he inherited this property from his father. So, the property in dispute is admittedly ancestral.

6. *Among the jats who are governed by customary law in the matter of alienation; ancestral property can be sold, but for legal necessity. In the case in hand, it is also admitted fact that Lichhman, Ram Kumar and Ram Sarup are real brothers, They inherited land in equal shares from their father, Ram Sarup and Ram Kumar sold their landed property and went to Rajasthan. Ram Sarup purchased landed property in Rajasthan and has been residing there in village Ladaria, Ram Kumar also preferred to purchase land in village Ladaria because he was not in good terms with Lichhman, He himself admitted that Lichhman used to ill-treat him and used to cause him beatings and thus he used to reside with Ran Singh. It is a settled law that one right- holder can sold ancestral property to purchase land at another 'place and such an act shall amount to an act of good management. I am fortified on this view of mine by judicial pronouncement 1968 P.L.R 1134 Sham Singh Vs. Ranjit Singh and others in which their Lordship observed Custom (Punjab)-Alienation-Sale of land to purchase another land-Act of good management. Held, that where representation is made to the vendee that the land was being sold to acquire other land, even if there is no immediate necessity for the sale, the sale will still be an act of good management and binding on the reversioners.*

7. *So, in view of the above facts and statements made by Devi Chand DW1, DW2 Ran Singh vendee, DW3 Dharam Pal that Ram Kumar expressed his desire that he shall purchase his land in Rajasthan from the sale price because he had no good terms with his brother Lichhman and would like to reside with Ram Sarup who had already purchased land in village Ladaria in Rajasthan.*

8. *All the three DWs also deposed that Rs. 49,000/- where paid to Ram Kumar at his house and this fact he admitted when sale-deed was scribed by petition writer and when the sale-deed was registered by the Sub-Registrar.*

9. *In sale-deed itself, it is mentioned that vendor has admitted that he has received the sale price at his house. Learned counsel for the appellant unsuccessfully laid his emphasis that parties are Hindus and are governed by Hindu Law and among Hindus ancestral property cannot be sold but this contention does not hold good because parties are jat by caste; they are governed by custom in the matters of alienation; property is ancestral; it cannot be ordinarily sold except for legal necessity; legal necessity and consideration have to be established.*

10. *No other point was raised or pressed; no other arguments were advanced. Thus, appeal fails being without merit; judgment and decree under appeal are maintained; appeal is dismissed with costs."*

10. I have heard the learned counsel and perused the judgments of both the Courts below.

11. Shorn of details, the submissions in this RSA are that the First Appellate Court erred in deciding issues No. 3 and 5 in favour of respondents though the counsel for respondents No.1- 3 admitted the ancestral character of disputed land and the burden shifted to them to prove legal necessity for its sale; it misread and misconstrued the evidence on record and based its judgment on conjectures and surmises for which there was no actual evidence. The learned counsel for respondents has contested these submissions.

12. On perusal of the impugned judgments, my considered opinion is that the similar submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree. I also find no substance in the submissions that the impugned judgments are based on conjectures and surmises.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
17. Pending application/s, if any, shall also stand disposed of.
18. No order as to costs.

(ARUN MONGA)
JUDGE

January 04, 2023
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No