IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-193-1990 (O&M)
Reserved on: 29.02.2024
Date of decision: 05.04.2024

RAJMAL (DECEASED) THROUGH LRS. & ANR. ..Appellants

Versus

ATTAR SINGH & ANR. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Vashishth, Advocate
and Mr. D.P.S. Joura, Advocate
for the appellants.

Mr. Sanjay Majithia, Sr. Advocate
with Mr. Sumit Sinha, Advocate
for respondents.

ANIL KSHETARPAL, J.

Brief facts of the case:-

1. In this regular second appeal the defendants assailed the correctness of the concurrent findings of fact arrived at by the Courts below while decreeing plaintiffs (respondents) suit for grant of decree of declaration that the Sale deed No.306 dated 31.05.1972, executed by his father Sh. Phool Singh in favour of the appellants, was without legal necessity, and against the interest of joint Hindu family.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Sh. Phool Singh was owner of the land measuring 27 kanal 1 marla being 6/25th share. In the total land measuring 112 kanal 16 marlas, comprised in Khewat No.25.

4. On 07.02.1968, he mortgaged the land against loan of

Rs.6,000/-, in favour of Sh. Jug Lal son of Sh. Gopala. Subsequently, on 29.05.1972, he sold 20 kanal land for a total sum of Rs.16,875/- in favour of the appellants namely Sh. Rajmal and Sh. Dhup Singh sons of Sh. Mange Ram.

5. On 03.06.1989, the plaintiff (respondent herein) (Sh. Attar Singh) filed a suit for declaration that the sale deed executed by his father is without legal necessity and against the interest of joint Hindu family. Defendant No.1 and 2 contested the suit on the ground that the sale was for the benefit of the joint family and legal necessity. In the alternative, it was claimed that the suit property was self acquired property of the vendor. It was explained that out of total sale consideration, the vendor paid Rs.6,000/- to the mortgagee, Rs.500/- to Sh. Kali Ram creditor of Sh. Phool Singh, and Rs.600/- to Sh. Rati Ram creditor of Sh. Phool Singh, whereas Rs.3,000/- has been spent by Sh. Phool Singh on marriage of his son Sh. Ram Kumar.

6. Upon appreciation of evidence both the Courts have decreed the suit, against which this appeal was admitted for regular hearing vide order dated 25.01.1990, now, it has come up for final hearing.

7. Sh. Phool Singh-defendant No.3 admitted plaintiffs claim by filing a separate written statement.

8. The First Appellate Court has recorded the following reasons to uphold the judgment of the trial Court.

1. Defendant No.1 and 2 have failed to produce agreement or other credible evidence to prove that Rs.5,000/- was actually paid to the vendor on 24.01.1972.

2. Neither Sh. Sukhdev Raj nor any other person alleged

to be creditor of Sh. Phool Singh was examined by the vendees to prove the payment of the various items of debt.

3. It has been recited in the sale date that the vendor required money for his business and the evidence adduced by the vendees that after the sale, he started a *'chakki',* expeller and chaff cutter etc. But that stands belied from the recital in the mortgage.

4. The vendees have failed to prove that the marriage of Sh. Ram Kumar took place in the year 1972 or thereafter. Hence, the legal necessity is not proved.

5. The mutation of the sale deed was got attested by the vendees in the year 1983, whereas, the sale deed was executed on 29.05.1972. Had there been no doubtful play, the vendees were expected to get the mutation entered and attested at the earliest.

6. There is an entry in the *'Goshwara'* of village Shamlo Khurd proving that Sh. Phool Singh was sentenced till rising of the Court with a fine of Rs.20/- in a case under The Central Excise Act, 1944 (hereinafter referred to as the '1944 Act'). Therefore, it is proved that Sh. Phool Singh was a man of bad habits.

7. It is not proved that the plaintiff has filed suit in collusion with his father Sh. Phool Singh.

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned trial Court record.

10. The learned counsel representing the parties have also filed synopsis with the gist of their arguments.

11. The learned counsel representing the appellant in his written note has made the following submissions:-

> *"1. That Ld. Courts below didn't considered that Sale deed i.e. Ex PA categorically speaks about the necessity of seller i.e Phul Singh (Father of plaintiff), wherein it has been mentioned that total sale consideration was of Rs. 16875/-. Out of which Rs. 5000/- were already received on 24.01.1972 and also mentioned that Rs. 6000/- will be paid for mortgage to Mahla, Rs. 500 paid to kali Ram on account of previous debt of Phul Singh, also Rs. 600/- paid to Sukhdev s/o Harbans and remaining Rs. 5275/- were received in front of Registrar and thus land in dispute, was sold because of the necessity of Phul Singh and nothing else.*
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> *2. That Ld. Court didn't considered that Phool Singh who was Vendor (seller) of property never entered in to witness box although he has filed his written statement and was proceeded Ex-Parte in the suit. Which raises doubt that this suit was filed with due conspiracy of family and that is why Phul Singh never entered in to witness box.*
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> *3. That Ld. Court didn't consider that only attesting witness i.e. Dariya Singh DW-1, has also deposed about authenticity of alleged sale deed and also about the money which was o be given against the mortgage of Phul Singh. Also it was not considered by Ld. Courts below that no question about state of mind of Phul Singh (i.e. seller of land in question) and also no question or suggestion was put to him to question the installation of Chakki in village or not.*
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> *4. That again it was not considered by the Ld. Courts below that DW-2 i.e. Dhup Singh has categorically stated that Phul Singh was in need of money and for that he had sold the property. Also DW-2 has mentioned about the distribution of money. But instead of this Ld. Lower Court had allowed the suit without appreciating facts of the case.*
>
> *5. That PW-1 Attar Singh Has also admitted in his cross examination that his father has sold his property for releasing land from the mortgage of Rs. 6000/- and same is also evident from the perusal of EX-D3. Thus legal necessity is proved and plaintiff can not be allowed for taking U-turn after 14 years of sale of property.*
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> *6. That surprisingly sale deed was challenged in 1986 i.e. after 14 years of sale of suit land i.e. 31.05.1972 and handing over the possession to defendants and even then no elder brother or father i.e. Vendor has entered in to witness box or joined as party*

in present suit. This facts itself speaks that plaintiff has come before Ld. Court with a concocted story and manipulated facts and tried to get wrongful gain by claiming the sale was void since it was without necessity, whereas in sale deed itself necessity has been mentioned.

7. That again it was not considered by the Ld. Court below that none of the plaintiff's witness had denied that Phul Singh was not residing with his son and since all family members are residing with his father i.e. Phul Singh then it is hard to believe that Phul Singh didn't take care of the family and didn't fulfil duty of karta. Rather Phul Singh (Vendor) was all aware of his duties and was not a drunker and all money which he received from sale of suit land he had spent for paying his debts and after that he performed all his duties towards his family. Thus plea of plaintiff is totally wrong and frivolous where he stated that his father Phul Singh was having bad habits and due to habit of drinking he executed the sale deed in question.

8. That admittedly Phul Singh vendor and his eldest son i.e. Ram Kumar didn't appear in the witness box and only these are best evidence to prove that whether the amount of sale deed was used for benefits of the family or not but since none of them entered in to witness box it can be easily presumed that case was filed with ill motive and mal fide intention.

9. That although there are three elder brother to plaintiff who were major at the time of sale deed, but none of the elder brother had filed any suit qua the authenticity of sale deed and also none of them has entered into the witness box in the present suit. Thus it is no wrong to infere from the conduct of plaintiff that father and elder brother of the plaintiff were consented to the sale deed and as per landmark judgment of Supreme Court of India in case titled as 'Subhod Kumar & others Vs Bhagwant Namdeorao Mehetre & others' bearing case No. CA-1584-2004 vide order dated 25.01.2007 wherein it was held that when the Karta, however conveys by way of imprudent transactions, the alienation is voidable to the extent of undivided share of non-consentive coparcener.'

Thus, even if contention raised by the plaintiff in plaint were taken as it is, then also, plaintiff has right to challenge the sale deed qua his share of land only and not to the whole transaction.

10. That it is also pertinent to mention here that sale deed was registered in 1972 and mutation no. 357 was entered in year 1974 and same was sanctioned in year 1983 after recording the statement of Phool Singh and it is well known fact that sanction of mutation is in hand of revenue official who sanctioned the mutation after statement of Phul Singh and thus vendor should not be allowed to take U-turn after selling his property.

> *11. That also EX-PW6/A was wrongly relied upon by the Ld. Court because it was not proved to be related to Phul Singh rather PW-6 Bhim Singh clearly admitted that father's name of Phul Singh is not mentioned in document EX PW-6 and he could not say as to whether Phool Singh mentioned in document is same or not. Thus finding on Issue no. 8 is not sustainable in the eyes of law."*

12. The operative part of the short note submitted by the learned Senior counsel representing the respondents (plaintiffs), reads as under:-

> *"(5). The sale deed recites that vendor Phool Singh in need of paper book of money.*
>
> *The vendor started Chakki expeller and Shaft Cutter.*
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> *6) The recital in sale deed is incorrect because ExP3 is the mortgage deed of 07.02.1968 wherein it has been recited that Chakki was already in existence.*
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> *(7). Zimini Order of this Hon'ble Court dated 14.05.1990.*
>
> ***CM no. 253-C of 1990 in***
> ***RSA no. 193 of 1990.***
>
> *Present: Mr. Y.K. Sharma Advocate for the appellants.*
> *Mr. R.K. Gupta Advocate for the respondents.*
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> *After hearing learned counsel for the parties, it is ordered that the execution of the decree shall stand stayed subject to the appellants furnishing security for mesne profits to the executing court within two months from today. The security will be accepted after notice to the respondents.*
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> *But till date neither surety was furnished nor any mesne profits were paid by the appellant (Judgment debtor).*
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> *(8). For furnishing mesne profits Civil Misc. No. 5440-C of 2023 was filed in the instant RSA by the Respondents/Applicant.*
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> *Subsequently Civil Misc. No. 9863-C of 2023 in Civil Misc. No. 5440-C of 2023 in instant RSA no. 193 of 1990 was moved to decide Civil Misc. No. 5440-C of 2023 in which notice was issued on 11.09.2023 for 20.11.2023 by this Hon'ble Court which also deserved to be decided.*
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> *The unrebutted pedigree table of the parties is Ex PW3/1 showing that the suit land is un-partitioned holding coming from great great Grandfather of plaintiff. Hence the appeal deserved to be dismissed."*

13. An application under Order XLI Rule 27 of the Code of Civil

Procedure, 1908, was filed along with the appeal with permission to produce copy of certificate issued by the Registrar of Death and Birth to prove that a male child was born to Sh. Phool Singh on 14.02.1963. In reply to the aforesaid application, the plaintiff has submitted that the aforesaid certificate does not relate to the plaintiff as grandfather's name in the certificate is depicted as Sh. Ram Sarup, whereas his grandfather's name is Sh. Ram Sukh. The learned counsel representing the appellants did not press this application at the time of final arguments. Hence, no further order is required to pass in this application.

Analysis of the reasons recorded by the First Appellate Court:-

14. The First Appellate Court’s reason No.1, is erroneous because in the registered sale deed, it has been specifically recited that Sh. Phool Singh (vendor) received Rs.5,000/- as earnest money on 24.01.1972. Sh. Phool Singh did not come forward to testify in the Court though he was impeded as defendant No.3. Moreover, on a careful reading of the testimony of PW-1 Sh. Attar Singh (plaintiff), it is evident he does not dispute that Rs.5,000/- was never paid to his father on 24.01.1972. He has stated that his father was drug addict and used to waste money in gambling. Hence, the First Appellate Court’s reason No.1, is not sustainable.

15. The First Appellate Court’s reason No.2 is also wrong because in the sale deed, it has been recorded that Sh. Phool Singh is required to pay Rs.600/- to Sh. Sukhdev Raj son of Sh. Harbans. Defendant No.1 and 2 have also produced and prove copy of the attachment order dated 27.07.1961 (Ex.D-2) to prove that in the execution proceedings initiated for recovery of Rs.980.25/-, the property of Sh. Phool Singh was attached. In such circumstances, the failure on the part of the defendants to examine Sh. Sukhdev Raj or any other creditor of Sh. Phool Singh would not be

sufficient to draw adverse inference against the vendees.

16. The First Appellate Court's reason No.3 is required to be examined in the context of documents. Defendant No.1 and 2 have produced and proved Ex.D-3, a mortgage deed executed by Sh. Phool Singh in favour of Sh. Jug Lal son of Sh. Gopala. In this mortgage deed, it is recited that the mortgager (Sh. Phool Singh) requires the amount for running his factory (flour mill) located in village Baroli. In the sale deed executed on 29.05.1972, it is again recorded that Rs.6,000/- is repayable to the mortgagee. In the sale deed, it is nowhere recorded that Sh. Phool Singh requires the money for establishing flour mill or cotton ginning plant. It has been recited in the agreement that Sh. Phool Singh requires the money for repaying the loan in order to get the land redeemed from the mortgage and he requires Rs.600/- for payment to Sh. Sukhdev. Thus, the oral evidence of the vendees would not be sufficient to supersede the recitals in three important documents namely mortgage deed, sale deed and warrants of attachment.

17. The First Appellate Court's reason No.4 is not relevant because even if Sh. Ram Kumar son of Sh. Phool Singh was married before execution of the sale deed, however, this is not a reason for legal necessity for want of money recorded in the sale deed.

18. The First Appellate Court's reason No.5 lacks substance because after a period of 11 years is not sufficient to doubt the genuineness of the sale deed. The revenue authorities entered and sanctioned the mutation in order to update the government record. However, delay in getting the mutation sanctioned does not adversely impact the validity of the sale date.

19. Similarly, First Appellate Court's reason No.6 has no merit

because Ex.PW6/A is an entry in the village *'Goshwara'* to prove that in August-September 1978, Sh. Phool Singh was sentenced till rising of the Court with a fine of Rs.20/- under the 1944 Act. However, there was no evidence to prove that Sh. Phool Singh was drunkard to the extent that he was not able to consciously take decisions in the year 1972. Once solitary instance of conviction and payment of fine under the 1944 Act with respect to event of 1978 is not sufficient to prove that Sh. Phool Singh was a habitual drunkard.

20. The First Appellate Court's reason No.7 is also incorrect on account of the following reasons:-

> i. Sh. Phool Singh has admitted the plaintiff's claim and never came forward to testify in the Court.
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> ii. The plaintiff admits that he has five older brothers. They never filed any suit challenging the sale deed.
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> iii. The suit was filed after a period of 14 years from the date of the execution of the sale deed.
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> iv. None of the five older brothers of the plaintiff has stepped into the witness box.
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> v. The plaintiff claims that he was 4-5 years of age when the sale deed took place. Hence, the collusion between the plaintiff and his father Sh. Phool Singh is apparent.

Conclusion:-

21. This Court has arrived at the following conclusions:-

i.) The legal necessity to execute the sale deed has been proved as Ex.D-2 is mortgage deed executed by Sh. Phool Singh with possession against loan of Rs.6,000/- in favour of Sh. Jug Lal son of Sh. Gopala in the year 1968. It is also proved by document Ex.D-2, that Sh. Sukhdev Raj had got Sh. Phool

Singh's property attached in execution of the decree for recovery of Rs.980.25/-. Hence, the assertions made in the sale deed stands corroborated by the other evidence produced by the defendants No.1 and 2(ii). There is another aspect of the matter. In the mortgage deed, it is recited that the loan amount is required for running the factory, which has been established in village Baroli. In the sale deed, the vendor has recited that he requires the money for running his business and for repayment of the debt. It is evident that the mortgage was with possession. Thus, the family was not getting any return as the possession was with the mortgagee. Sh. Phool Singh was also required to repay the loan to various persons including Sh. Sukhdev Raj. In these circumstances, the finding of the First Appellate Court that the vendees have not proved legal necessity, suffers from non-appreciation of evidence in the proper perspective. Once a suit is filed challenging the sale deed on the ground of lack of legal necessity, the vendees are required to prove that the sale was on account of legal necessity and they made bonafide inquiry for the same.

22. In these type of cases, the Court is also required to examine "whether the sale deed was for valuable consideration or not?". In this case, no evidence has been produced by the plaintiff to prove that Sh. Rajmal and his brother (defendant No.1 and 2) did not purchase the property for valuable consideration or the sale in their favour was not in a bonafide manner. Defendant No.1 and 2 have led sufficient evidence to prove that the sale deed was executed for bonafide necessity including redemption of the mortgage and repayment of loan, at least to the extent of Rs.6,600/-. Moreover, it is the positive recital in the sale deed that the vendor requires the amount for his business. It has already come on record that Sh. Phool Singh established flour mill as well as cotton ginning machine. The plaintiff

while appearing in evidence had admitted that previously these machines were being run with the help of an engine, which was being operated on diesel. Subsequently, Sh. Phool Singh applied and was issued electric connection to run the factory. What were the requirements of the business is the exclusive domain of the vendor and the vendees were not expected to deeply probe into the same.

23. Additionally, the suit appears to have been filed by the plaintiff in collusion with Sh. Phool Singh as he admitted plaintiff's case and did not come forward to testify in the suit.

24. Moreover, five older brothers of the plaintiff neither filed the suit nor any one of them came forward to testify in the suit. The suit was filed after a period of approximately 14 years from the date of the execution of the sale deed. The family of the plaintiff owns a factory and as many as 8 houses. Sh. Phool Singh is not proved to be a drunkard in the year 1972.
The entry in the *'Goshwara'* is with respect to the year 1978. One incident of challan and a fine of Rs.20/- would not be sufficient to hold that Sh. Phool Singh was drunkard, particularly when it is admitted fact that he was running a flour mill industry and cotton ginning industry.

25. The learned Senior counsel representing the respondents has laid much stress on the fact that the appellants have not furnished security for mesne profit as ordered by the Court on 14.05.1990. Subsequently, the plaintiff also filed application for directing the vendees to furnish security for mesne profit. The failure on the part of the vendees (appellants) would not entail dismissal of the appeal. It would have resulted in an automatic vacation of interim order which was granted subject to appellant furnishing security for mesne profit. However, that itself would not be sufficient to dismiss the vendees appeal.

26. It will be noted here that in ***Rani and another Vs. Santa Bala Debnath and others, (1970) 3 SCC 722***, the supreme Court in para 10 and 11 laid down as under:-

> *"10. Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited owner. She was competent to dispose of the whole estate in the property for legal necessity or benefit to the estate. In adjusting whether the sale conveys the whole estate, the actual pressure on the estate, the danger to be averted, and the benefit to be conferred upon the estate in the particular insistence must be considered. Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of providing legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity.*
>
> *11. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The, weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force, and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially when he withholds evidence in his possession."*

27. This judgment was subsequently followed in ***Gangadharan Janardhana Vs. Mallan, (1996) 9 SCC 53***.

28. In view of the aforesaid discussion, the judgments passed by the Courts below are not sustainable. Hence, set aside. Resultantly, the plaintiff's suit shall stand dismissed.

29. Consequently, the appeal stands allowed.

30. All the pending miscellaneous applications, if any, are also

disposed of.

April 05th, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No