

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision:- 28.7.2006

Raj Kumar and others

....Appellants

Versus

Hardwari and others

...Respondents

CORUM: HON'BLE MR.JUSTICE RANJIT SINGH

Present:- Mr.Gopi Chand, Advocate for the appellants.

Mr.Hemant Saini, Advocate for the respondents.

RANJIT SINGH, J.

Dispute relating to sale of 2 kanals land situated in the revenue estate of village Gothra Tappa Khorl by the ancestors of the appellant-plaintiffs is under challenge in the present RSA. The appellant-plaintiffs having failed before both the courts below are in present appeal face to face with the concurrent findings of fact and law recorded in the case.

Appellant-plaintiffs Raj Kumar, Virender Singh, Surender Singh and Narender Singh brought a suit for possession in regard to land measuring 2 kanals on the ground that it was their ancestral property and as such coparcenary in nature in which they had equal rights with defendants No.2 to 7, being members of a joint Hindu family. It is pleaded that appellant-plaintiff No.1 Raj Kumar was son of Hari Singh and the remaining plaintiffs were sons of proforma defendant Sher Singh, they both

being brothers inter se and respondents No.5 to 7, being their sisters. Registered sale deeds dated 8.1.75 and 14.7.75 executed by respondents No.2, 3 and 5 and respondent No.6 respectively for ostensible consideration of Rs.3000/- and Rs.1000/- are attacked on the ground that no sale consideration in fact had changed hands. It is, accordingly, pleaded that both the sale transactions were void and ineffective and these were neither for the benefit nor for any consideration or legal necessity. Accordingly, it is prayed that the sale deeds be ignored and possession be restored to the appellant-plaintiffs.

This suit was contested by respondent No.1- defendant pleading that the appellant-plaintiffs had no locus standi to file the suit. The averment of land being ancestral in the hands of vendors or that it was a coparcenary property was also denied. Plea of limitation was also raised. It was further pleaded that the suit was collusive between the vendors and the appellant-plaintiffs. Besides a plea of res judicata was also raised. In the alternative, it was also averred that sale transactions were validly affected for proper consideration and which was for legal necessity and for good management being for the benefit of estate of the vendors, who had migrated from the village lock stock and barrel and had settled in another village. The trial thereafter followed on the following issues:-

1. Whether the land in dispute is coparcenary property qua the plaintiffs and Hari Singh and Sher Singh vendors ?OPP.
2. Whether the alienation is without consideration and legal necessity as alleged ?OPP.
3. Whether the present suit is barred by the principle of res-judicata ?OPD.

4. Whether the suit is not maintainable in the present form ?
OPD.
5. Whether the suit is collusive and benami ?OPD
6. Whether the sale is an act of good management and for the
benefit of the estate ?OPD.
7. Whether the court fee paid is deficient ?OPD.
8. Whether the suit is barred by time ?OPD.
9. Are the plaintiffs entitled to a decree for possession on the
grounds stated in the plaint ?OPP.

Parties adduced evidence in support of their respective stands.

Learned Sub Judge concluded that the appellant-plaintiffs had locus to file the suit being related to the vendors. However, the finding on the crucial issue Nos.2 and 6 went against the appellant-plaintiffs. It was found by the trial Court that the sale transactions were for due consideration and legal necessity and the sales were for the good management of the estate of the vendors. Accordingly, the appellant-plaintiffs were non-suited. Having remained unsuccessful before the first appellate Court, the appellant-plaintiffs have filed the present regular second appeal.

Appellants claim that the following substantial questions of law would arise in the RSA:-

1. Whether prescription of correctness is attached to the
contents of a registered sale deed and the endorsement of
registration without producing the attesting witnesses,
vendee, and the registration especially regarding payment of
consideration money ?
2. Whether the findings of the courts below regarding passing

of consideration money and sale as an act of good management is based on no evidence ?

3. Whether female cannot become members of Hindu Joint Family along with male members ?

4. Whether onus to prove the non-passing of consideration amount is on the plaintiff who is not a party to the transaction?

I have heard the counsel for the parties.

On behalf of appellant-plaintiffs, it is mainly contended that burden to prove passing of the sale consideration was on the respondent-defendants and not on the plaintiff, who was not a party to the alleged sale. The counsel would then contend that no evidence regarding passing of consideration was led and hence the findings recorded by the trial court as well as by the lower appellate court in this regard cannot be sustained. As per him, the contents of sale deed Ex.D2 were not proved by respondent No.1. He has also attacked findings of the courts below whereby it was held that this sale deed was an act of good management. Counsel for the respondent No.1-defendant, however, would rebut all the submissions by referring to Exs.D3 and D4. These would show that same sale deed was challenged by the son of Jai Narain, another brother of respondent-defendants Hari Singh and Sher Singh, but the same was dismissed and Exs.D3 and D4 are orders in this regard. He would also refer to the fact that the case pertaining to the sale deed dated 14.7.75 by defendant No.6 Smt.Vidya and part of earlier sale transaction dated 8.1.75 so far as it related to the share of respondent No.5 -defendant Smt. Phool Bai, was not pressed by the appellant-plaintiffs, which would show that the sale deeds were in

fact genuine.

It was mainly contended that the vendee-defendant -respondent No.1 did not examine either the scribe or any attesting witness, who could vouch safe the passing of the sale consideration. In this regard, reliance has been placed on Hemanta Kumar Das vs. Alliantz Und Stuttgarter Life Insurance Co. Ltd. AIR 1938 Calcutta 120. This was a case where certified entries from register of death were produced by a Clerk who had no knowledge about the entries. In this background, it was held that copy of entry is admissible in evidence as proof of entry but not of the contents of the death. This case cannot be of any help to the appellants. This argument apparently cannot be accepted in view of the other material on record. Sale deed in this regard has been exhibited on record as Ex.D2. The counsel for the appellants did not point out before me if any objection was raised on behalf of the appellant-plaintiffs when this document was produced and exhibited on record. Once sale deed was proved and taken on record as exhibit, it cannot be discarded or ignored from consideration in evidence. The submission made by the counsel for the appellant-plaintiffs that the contents of the sale deed were not proved also cannot be accepted. Once this document was exhibited on record and marked as such, the contents thereof would stand proved. The sale deed contains certificate of the Sub registrar showing that the vendors had admitted having received a sum of Rs.1900/- prior to the execution of the sale deed whereas balance amount of Rs.1100/- was paid at the time of registration of this document. This in itself is sufficient evidence to show that this sale was for consideration and the consideration had indeed been passed to respondents No.2 and 3. Submission of the counsel for the appellant-plaintiffs that the burden was on

Sarala received by her before the Sub-Registrar. The High Court observed that about the payment of the balance of the consideration, namely Rupees 899/-, “there was no evidence at all on the side of the defendants that the same was paid.” In our judgment, the High court misconceived the nature of the onus, which lay upon the plaintiffs to prove that the consideration which it was recited in the deed was received by Sarala was not in fact received by her and a false recital was made. The recitals in the deed were supported by the testimony of Sailendra Nath Nandi who said that the entire consideration was received by Sarala. We are unable to accept the view of the High court that the sale deed was not supported by full consideration.”

While dealing with some what similar situation, Hon'ble Supreme Court in the case of Sri Kishore Chandra Singh Deo Vs. Babu Ganesh Prasad Bhagat and others, AIR 1954 S.C. 316 held that burden of proving that no consideration was passed under promissory note executed by a person would be on him who denies it. In the case of Shiv Dass Vs. Smt. Devki, 1978 PLR 390, it was held that registration of a document is a solemn act to be performed in the presence of competent officer whose function is to ensure that proper person was before him in his official capacity and verified by his signatures will be presumed to be in order and duly done. Thus, registered sale deed would be a proof of admission of receipt of consideration made before the Registrar. It was also submitted that adverse inference needs to be drawn against the respondent No.1-defendant for not leading any evidence regarding passing of sale consideration. Once, respondent No.1 had produced and proved on record the sale deed, the passing of sale consideration also was established. Accordingly, no adverse inference is needed to be drawn. Even the burden

was on the appellants-plaintiffs to prove the fact of non passing of sale consideration and, as such, question of drawing adverse inference against respondent No.1- defendant would not arise. Similarly, the cases relied upon by the counsel for the appellant-plaintiffs reported as Parsa Singh Vs. Smt.Parkash Kaur and others 1976 P.L.R. 21 and Gutari Vs. Shiv Charan and others, 1980 Hindu Law Reporter 273 would also be of no avail to the appellants. Both the cases related to a registered 'will' and it was held that it is not a public document and hence certified copy thereof cannot be given as secondary evidence. The submission made by the counsel for respondent No.1-defendant that the appellant-plaintiffs have not been able to explain the earlier suit filed challenging the same sale deed which was dismissed, cannot be ignored. It may also need a notice that vendors in this case were none else than the fathers of the appellants-plaintiffs and they also were not produced as witnesses. Counsel for respondent No.1-defendant is justified in submitting that they could have easily been produced to show that no consideration was received by them. Thus, the best evidence, which could have been led by the appellant-plaintiffs to show that no sale consideration in fact was passed in this case was withheld. Under these circumstances, finding any fault on the part of respondent No.1- defendant in not entering into the witness box and leading evidence through his attorney and proving Ex.D1, sale deed would be of no avail.

Finding of the courts below that this sale was an act of good management can also not be dislodged having regard to the evidence and the facts proved on record. The witnesses produced by the appellants-plaintiffs admitted during their cross-examination that the vendors had acquired some agricultural land in village Moondra and had shifted to the

said village because their holding in village Gothra Tappa Khorī (suit land) was not economical. These witnesses also conceded that vendors Hari Singh and Sher Singh in fact had migrated to village Moondra and had purchased considerable land in the said village. It is thus established on the record that the suit land was unproductive and it was sold by the vendors, who had shifted from the said village to another village. The alienation, as such, was clearly an act of good management. In this regard, even the counsel for the appellants-plaintiffs did not cross-examine DW1, who categorically stated that the vendors had migrated to village Moondra and had sold land as a matter of good management of their estate. Even suggestion was not put to this witness for him to deny this assertion made by him in examination-in-chief.

In this view of the matter, no case for interfering in the concurrent finding of fact recorded by the courts below is called for. Present appeal is, accordingly, dismissed being without any merit.

(Ranjit Singh)
Judge

July 28,2006
AS

Whether to be referred to the Reporter? Yes/No