

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3264 OF 2011

Kehar Singh (D) Thr.
L.Rs. & Ors.

.. Appellant(s)

Versus

Nachittar Kaur & Ors.

.. Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed by the legal representatives of the original plaintiff against the final judgment and order dated 20.04.2006 passed by the High Court of Punjab & Haryana at Chandigarh in R.S.A. No. 1734 of 1968 whereby the High Court allowed the appeal filed by the respondents(defendants) and dismissed the suit filed by the original plaintiff.

2) In order to appreciate the factual and legal controversy involved in the appeal, it is necessary to state the facts in detail *infra*.

3) The appellants are the legal representatives of the original plaintiff whereas the respondents are the legal representatives of the original defendants, who were brought on record during the pendency of this litigation consequent upon the death of both plaintiff and the defendants.

4) The dispute in this appeal is between the son, father and the purchasers of the suit land from father. It relates to a land measuring around 164 Kanals 1 Marla entered in rectangle No.46 Killa Nos. 8/1, 19/2, 21/2, 22/2, 23, 24 and rectangle No.52, Killa Nos. 1/2, 2, 3, 4, 5, 6, 7, 8, 12/1, 13, 14, 15, 16, 17, 18, 23, 24, 25 entered in Khata No.6/9 Jamabandi 1957-58 at present entered in Khata No.2/2 Jamabandi 1962-63 situated in Village Bhamian Kalan, Tehsil Ludhiana (hereinafter referred to as "suit land").

5) One Pritam Singh(defendant No.1) was the owner of the suit land. He sold the suit land on 25.04.1960 by registered sale deed to Tara Singh(defendant No.2) and Ajit Singh(defendant No.3) for Rs.19,500/-. Both vendees namely, Tara Singh and Ajit Singh were placed in possession

of the suit land.

6) On 27.11.1964, Kehar Singh s/o Pritam Singh filed a civil suit (Case No. 429/325 of 1964) against Tara Singh and Ajit Singh in the Court of Sub-Judge 2nd class, Ludhiana.

7) The suit was founded *inter alia* on the allegations that the suit land was and continues to be an ancestral property of the family of which the plaintiff is one of its members along with his father- Pritam Singh, that the plaintiff's family is governed by the custom, which applies to sale of family property *inter se* family members, that the plaintiff has a share in the suit land along with his father- Pritam Singh as one of the coparceners, that Pritam Singh had no right to sell the suit land without obtaining the plaintiff's consent, which he never gave to his father for sale of the suit land, that there was no legal necessity of the family which could permit Pritam Singh to sell the suit land to defendant Nos. 2 and 3, that the suit land and the rights of the parties to the suit are governed by the provisions of the Punjab Custom (Power to Contest) Act, 1920 (hereinafter referred to as "the Act").

8) The plaintiff prayed for a relief of declaration on the aforementioned allegations that first, the sale made by his father-Pritam Singh in favour of Tara Singh and Ajit Singh vide sale deed dated 25.04.1960 in relation to the suit land be declared as not binding on the plaintiff; Second, the sale in question is void and does not convey any right, title and interest in favour of defendant Nos. 2 and 3.

9) The defendants contested the suit. According to them, the suit land was not ancestral one; that the parties were not governed by any custom; that the sale deed in question was executed for consideration and for legal necessity of the family; that the sale was made for discharge of family debts and for improving the farming; that the defendant Nos.2 & 3 are the *bona fide* purchasers of the suit land for consideration.

10) The Trial Court framed issues. Parties adduced their evidence. By Judgment/decree dated 17.12.1966, the Trial Court decreed the plaintiff's suit. It was held that the suit land was an ancestral property and there was no legal

necessity to sell the suit land.

11) Defendant Nos.2 & 3 felt aggrieved and filed first appeal (C.A. No.31 of 1967) before the first Appellate Court. By judgment/decreed dated 11.06.1968, the first Appellate Court partly allowed the defendants' appeal and modified the judgment/decreed of the Trial Court.

12) It was held by the first Appellate Court that the suit land was an ancestral property of the family; that the parties to the suit are governed by the custom; that defendant Nos.2 & 3 were able to prove legal necessity for the family partially to the extent of Rs.7399/- ; and lastly, the reversioners of Pritam Singh would, therefore, be entitled to get possession of the suit land after the demise of Pritam Singh on payment of Rs.7399/- and the sale in question would not be binding on their reversionary interests.

13) Defendant Nos. 2 and 3 (purchasers of the suit land) felt aggrieved and filed second appeal before the High Court. During the pendency of second appeal, the Punjab Custom (Power to Contest) Amendment Act, 1973 came into force

w.e.f. 23.01.1973.

14) The High Court, by order dated 22.04.1974, allowed the second appeal and dismissed the suit in view of the law laid down by the High Court of Punjab & Haryana in the case of **Charan Singh vs. Gehl Singh**, 1974 PLR 125 wherein it was held that the Amendment Act of 1973 was retrospective in nature and, therefore, in the light of the amendment, the plaintiff had no right to challenge the alienation made by his father under the custom prevailing at the relevant time.

15) The plaintiff felt aggrieved and filed appeal in this Court. This Court disposed of the said appeal along with other appeals involving the similar point (See **Darshan Singh vs. Ram Pal Singh & Anr.**, AIR 1991 SC 1654). It was held by this Court that the Amendment of 1973 made in the Act is retrospective in nature and that the law laid down by the High Court of Punjab & Haryana in the case of **Charan Singh** (supra) is correct and does not need any reconsideration. It was also held that since the High Court while deciding the second appeal did not examine the question involved in the

appeal in the context of principles of Hindu Law, the matter has to be remanded to the High Court for deciding the second appeal afresh in the light of the principles of Hindu law. This is how the matter was remanded to the High Court for deciding the second appeal afresh.

16) On remand, the High Court asked the parties as to whether they want to lead any additional evidence to enable the High Court to decide the appeal, as directed by this Court. The parties stated that they do not want to lead any additional evidence and the High Court could decide the appeal on the basis of evidence already adduced.

17) By impugned order, the High Court allowed the appeal filed by the defendants and dismissed the suit. It was held that the suit land was an ancestral property of the family; that Pritam Singh being a Karta had a right to sell the suit land; that there did exist a legal necessity of the family for which the suit land was required to be sold by Karta; that there were two debts (Taccavi loan and one private loan) on the family and secondly the family had an agriculture land

which needed improvement; that with a view to discharge the loan liability and to undertake the improvement on the land, the Karta-Pritam Singh sold the suit land for valuable consideration; that these facts were duly mentioned in the sale deed in question; that the sale was, therefore, *bona fide*, legal and made for valuable consideration. It is, therefore, binding on the plaintiff.

18) The plaintiff felt aggrieved and filed the present appeal by way of special leave in this Court.

19) Heard learned counsel for the parties.

20) The main question, which now survives for consideration in this appeal, is whether the High Court was justified in holding that the sale made by defendant No.1-Pritam Singh in favour of defendant Nos. 2 and 3 was for legal necessity and, if so, whether it was legal and valid sale.

21) So far as the nature and character of the suit land is concerned, it was held to be ancestral land and since no challenge was made to this finding, it is not necessary to examine this question in this appeal.

22) Mulla in his classic work "Hindu Law" while dealing with the right of a father to alienate any ancestral property said in Article 254, which reads as under:

"Article 254

254. Alienation by father – A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

- (1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;**
- (2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes(Article 294)."**

23) What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:

"Article 241

241. What is legal necessity- The following have been held to be family necessities within the meaning of Article 240:

- (a) payment of government revenue and of debts which are payable out of the family property;**

- (b) Maintenance of coparceners and of the members of their families;**
- (c) Marriage expenses of male coparceners, and of the daughters of coparceners;**
- (d) Performance of the necessary funeral or family ceremonies;**
- (e) Costs of necessary litigation in recovering or preserving the estate;**
- (f) Costs of defending the head of the joint family or any other member against a serious criminal charge;**
- (g) Payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a pre-existing debt;**

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity.”

(see Hindu Law by Mulla “22nd Edition”)

24) The High Court, after taking note of the aforementioned legal principles of Hindu law, dealt with this question on facts in para 12, which reads as under:

“12. In the light of the aforesaid legal position, now it

has to be examined as to whether the defendants have discharged their onus to prove the existence of the legal necessity at the time of the impugned sale deed. Defendant Tara Singh, while appearing as DW 13 has stated that amount of Rs.5,500/- was paid by him as earnest money, Rs.500/- was spent for payment of Taccavi loan and registration of sale deed and Rs.934/- was paid to the vendor, about 3-4 days prior to the registration of the sale deed, for payment of Taccavi loan an amount of Rs.12,566/- was paid at the time of registration of the sale deed. DW 1 Shri Gopal, who was an Assistant in the DC office, Ludhiana has stated that Pritam Singh vendor was granted loan of Rs.3,000/- in the year 1995 and he did not pay a penny from the said loan till 20.11.1964. DW 2 Ram Dass, a tubewell mechanic has proved that Pritam Singh had spent Rs.4,000/- for installing a tubewell in the year 1963. DW 9 Sat Pal, Additional Wasil Baqa Nawis, Ludhiana has proved that the vendor Pritam Singh had taken various loans from the department for purchase of seeds bag. Rs.500/- for repair of house and Rs.2,500/- for purchasing pumping set. This witness further stated that Pritam Singh had purchased a Rehri for Rs.1,025/- from him in the year 1961. DW 11 Dalip Singh has proved that Pritam Singh had borrowed a sum of Rs.3,000/- from him in the year 1959 by executing a pronote. This witness has also stated that Pritam Singh had performed marriage of his 5 children.”

25) In our considered opinion, the approach, reasoning and the conclusion arrived at by the High Court on the question of legal necessity as to whether it existed in this case while selling the suit land by Pritam Singh or not does not call for any interference as the same was rightly dealt with by the

High Court while appreciating the evidence on record.

26) It has come in evidence that firstly, the family owed two debts and secondly, the family also needed money to make improvement in agriculture land belonging to the family. Pritam Singh, being a Karta of the family, had every right to sell the suit land belonging to family to discharge the debt liability and spend some money to make improvement in agriculture land for the maintenance of his family. These facts were also mentioned in the sale deed.

27) In our considered opinion, a case of legal necessity for sale of ancestral property by the Karta (Pritam Singh) was, therefore, made out on facts. In other words, the defendants were able to discharge the burden that lay on them to prove the existence of legal necessity for sale of suit land to defendant Nos. 2 and 3. The defendants thus satisfied the test laid down in Hindu law as explained by Mulla in Article 254 (2) read with Article 241 (a) and (g) quoted above.

28) Once the factum of existence of legal necessity stood proved, then, in our view, no co-coparcener (son) has a right to challenge the sale made by the Karta of his family. The plaintiff being a son was one of the co-coparceners along with his father-Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all.

29) We are, therefore, of the considered opinion that the reasoning and the conclusion arrived at by the High Court is just and proper. We, therefore, concur with the view taken by the High Court calling for no interference.

30) In view of the foregoing discussion, the appeal fails and is accordingly dismissed.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[SANJAY KISHAN KAUL]

New Delhi;
August 20, 2018