

(2000) 12 P&H CK 0168

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 4172 of 2000

Ram Jiwan

APPELLANT

Vs

Heera Lal

RESPONDENT

Date of Decision: Dec. 6, 2000

Citation: (2001) 4 RCR(Civil) 278

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. R.S. Sihota, for the Appellant;

Final Decision: Dismissed

Judgement

R.L. Anand, J.

This is a defendant's appeal and has been directed against the judgment and decree dated 24.8.2000, passed by the Addl. Distt Judge, Rewari, who affirmed the judgment and decree dated 7.1.2000 passed by the Civil Judge (Jr. Division), Rewari, who decreed the suit of the plaintiff- respondents by giving a declaration that the sale deed dated 1.8.1989, which was executed by Heera Lal in favour of the present appellants is void and not binding upon the rights of the plaintiffs, who admittedly are co-sharers in the joint property.

2. The brief facts of the case are that Amarjit Singh and Ajit Singh, minor sons of Heera Lal, through their guardian Kaushliya filed a suit for declaration against Ram Jiwan, Smt. Dakha and Heera Lal, seeking a declaration that the sale deed dated 1.8.1989 executed by Heera Lal in favour of defendants 1 and 2 is illegal as the same has been executed without any legal necessity.

3. The plaintiffs and Heera Lal, defendant No. 3 were the owner and in possession of the suit property by way of mutation No. 214. As per the plaintiffs, the property in dispute was possessed by defendant No. 3 as joint Hindu Family Property and they have equal shares in the same. It is alleged by the plaintiffs that defendants No. 3 was a spend thrift person. He is a drunkard and he alienated the property to the

extent of 24 Kanals to defendant No. 1 for a consideration of Rs. 1,60,000/- by way of a registered sale deed dated 1.8.1989, which was registered on 28.8.1991. It is further alleged by the plaintiffs that defendant No. 1 suffered a consent decree of the land in question in favour of defendant No. 2, who was bent upon to alienate the suit property in an illegal manner. In short, the case of plaintiffs was that the sale deed executed by Heera Lal in favour of defendant No. 1 was without any legal necessity and since the plaintiffs had the right, title and interest in the suit property by way of birth, therefore, the sale deed executed by Heera Lal in favour of defendant No. 1 and the decree suffered by defendant No. 1 in favour of the defendant No. 2 is not binding upon them.

4. Notice of the suit was given to the defendants. The suit was contested by defendants 1 and 2 on the plea that defendant No. 3 was not a spend thrift person. They are bona fide purchasers for consideration. The sale has been executed for a legal necessity. Therefore, the suit is required to be dismissed.

5. The plaintiffs filed a rejoinder to the written statement in the trial Court in which they reiterated their allegations made in the plaint while denying those of the written statement.

6. From the pleadings of the parties, the trial court framed the following issues :-

"" 1. Whether the suit land is the ancestral property of joint Hindu family comprising of plaintiff and defendant No. 3 Heera Lal ? OPP

2. Whether the defendant No. 3 is not serious spend thrift as alleged, if so to what effect ? OPP

3. Whether the plaintiffs are minor and the impugned sale is not binding on them as pleaded in the plaint in the plaint as alleged ? OPD

4. Whether the plaintiffs have no locus standi to file the present suit ? OPD

5. Whether the suit is not maintainable in the present form ? OPD

6. Whether the suit is time barred ? OPD

7. Whether the suit has been initiated on the instance of defendant No. 3? OPD

8. Relief."

7. The parties led evidence in support of their case and on the conclusion of the trial, the suit was decreed vide judgment and decree dated 7.1.2000. Aggrieved by the judgment and decree of the trial court, the defendants filed the first appeal in the court of Addl. Distt. Judge, Rewari, who vide the impugned judgment and decree dated 24.8.2000, dismissed the appeal of the appellants. Not satisfied with the judgment and decree of the courts below, the present appeal, which I dispose of in limine with the assistance of the counsel for the appeal lants.

8. Counsel for the appellants vehemently submitted that it is proved on the record that Heera Lal performed an act of good management when he purchased one car and four wheeler out of the sale consideration. The sale has been executed for legal necessity of the family and, in these circumstances, both the courts have fell in error.

9. I am not convinced with the submission of the counsel for the appellants. The plaintiffs and defendant No. 3 are agriculturists by profession. Even if it is assumed for the sake of arguments that Heera Lal purchased one car and four wheeler, it is not a good act of management nor it is for the benefit of the estate. There is no evidence on the record to even show that the car and the four wheeler were purchased by Heera Lal. No registration certificate has been placed on the record. Even it is not established on the record that Heera Lal is utilising the income of the car and the four wheeler for the benefit of the family. Also, it is not established by the present appellants that Heera Lal was in necessity of selling the agricultural land in favour of defendants 1 and 2. In order to succeed, it was obligatory on the part of the present appellants to establish that they were the bona fide purchasers. They might have paid the consideration to Heera Lal, but if their bona fides are in doubt, no valid right, title or interest can pass to them.

10. It was, then, submitted that from a very large chunk of land, Heera Lal has sold only 24 kanals of land and the rest of the land is still lying in the joint family for the benefit of the plaintiffs.

11. I am not convinced with the submissions raised by the counsel for the appellants. We all know that in the concept of coparcenary, every coparcener has a right by birth in every inch of the joint family property. Admittedly, the property has not been partitioned between the father and the sons. In these circumstances, the interest of the co-parceners, especially that of the minors, could not be sold by Heera Lal except for legal necessity benefit of estate or an act of good management. Nothing in this regard has been established on the record. So much so, there is no plea taken by the defendant-appellants that a large chunk of land has been kept reserved for the benefit of the plaintiffs by Heera Lal.

12. In this view of the matter, I do not see any illegality or impropriety in the impugned judgment. No substantial question of law is involved in the present appeal, which is hereby dismissed in limine. No costs.

13. Appeal dismissed.