

(1996) 04 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 1975 of 1987

Dharam Singh and others

APPELLANT

Vs

Sadhu Singh (deceased by LRs) and others

RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Contract Act, 1872 — Section 25

Citation : AIR 1997 P&H 198

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

Bench : Single Bench

Advocate : R.S. Bindra and Pardeep Rajput, for the Appellant; B.M. Sharma, G.S. Jaswal and Mrs. A.K. Jaswal, for the Respondent

Judgement

1. Unsuccessful plaintiffs, namely, Dharam Singh, Harjinderjit Singh (sons), Satwant Kaur (widow), Surinder Kaur (daughter of Pritam Singh son of Sadhu Singh), residents of village Jia Sahota Kalan, Tehsil and District Hoshiarpur (Punjab), filed a suit for declaration to the effect that the plaintiffs and defendants Nos. 1 to 8 are the joint owners of land measuring 62 kanals 15 Marias situated at village Sheikhpur Khurd, District Hoshiarpur, one-third share of 130 Kanals 18 Marias agricultural land situated at village Jia Sahota Kalan, Tehsil and District Hoshiarpur, along with 8 Marias besides 21 1/2 Marias of the land along with other joint and common constructed holdings inter alia land covered by sale deed executed by Harbans Singh son of Moola Singh, in favour of defendant No. 1 and residential buildings thereon and that the sale deeds dated 29-9-1980 (Ex. D2) and 27-2-1981 (Ex. D3) executed by defendant No. 1 Sadhu Singh in favour of defendant No. 2 Jarnail Singh (his son) are illegal, collusive, without consideration, void, inoperative and ineffective as against the interests of defendants Nos. 2 to 8. The plaintiffs also prayed for consequential relief by way of permanent injunction restraining defendant No. 1 from selling, mortgaging, alienating or otherwise disposing of any part of the agricultural land mentioned in the head note of the plaint and that defendant No. 2 Jarnail Singh be restrained

from alienating in any manner the land allegedly acquired by him on the basis of sale deeds (Exhibits D2 and D3). The plaintiffs also claimed possession of the agricultural land, which was in the exclusive possession of defendants Nos. 1 and 2 as the said land is allegedly jointly owned by the plaintiffs and the defendants, being the property of the Joint Hindu Family.

2. In order to appreciate the case of the parties it will be necessary for me to reproduce the pedigree table as under:--

Nihal Singh	_____		_____			Chanda Singh
Kapur Singh		_____				Bhagwan Singh Munsha Singh Sunder Singh
	(died		issueless)		(died	issueless)

						Ujagar Singh Gurbachan Singh Sadhu Singh Bant Kaur Dhan Kaur (son)
(son)	(son)	(daughter)	(daughter)	(Def.1)		
Mohan Kaur(Wife) (pro forma Def,No.3) _____						

						Nasib Kaur Dharam Singh Pritam Singh(Deceased) Niranjn Singh
Malkait Singh	Darshan Singh	Jarnal Singh	Nirmal Singh	(Def.4)	(Plff.No.1)	
(Plff.No.2)	(Def. 5)	(Def. 8)	(Def. 7)	(Def. 2)	(Def. 6)	_____

						Harjinderjit Singh Stawant Kaur Surinder Kaur
(Plff.No.2)	(Plff.No.3)	(Plff.No.4)	(L.R.)(son)	(Widow)(L.R.)	(Daughter)L.R.	

According to the plaintiffs the family is a Joint Hindu Family and is governed by the Hindu Law and the Hindu Succession Act in the matter of alienation and succession. Nihal Singh owned 50 Ghumaon of land in village Jia Sahota Kalan, Tehsil and District Hoshiarpur and his property was inherited by two sons Chanda Singh and Kapur Singh. Chanda Singh was the head of the family and he had three sons, namely, Bhagwan Singh, Munsha Singh and Sunder Singh. Munsha Singh served in the British Army and retired on pension in 1912. He was allotted 25 Acres. of land at village 32/2-L, Tehsil Okara, District Montgomery (now in Pakistan). His brother Bhagwan Singh died issueless in the year 1922 and the property passed on to his two brothers Muniha Singh and Sunder Singh. In the year 1944 Munsha Singh also died issueless and his property at Jia Sahota Kalan in Hoshiarpur District and at 32 / 2-L in Montgomery District was transferred in favour of his only living brother Sunder Singh in the year 1946. Now Sunder Singh became head of the family and as such the Pakistan land was allotted in his name at village Sheikhpura Khurd, Tehsil and District Hoshiarpur. Sunder Singh died in the year 1957. He had three sons and two daughters, namely, Ujagar Singh, Gurbachan Singh, Sadhu Singh, Bant Kaur and Dhan Kaur. According to the Hindu Succession Act, 1956 the property was to go to his three sons and two daughters, namely, Bant Kaur and Dhan Kaur relinquished their share in favour of their three brothers, namely, Ujagar Singh, Gurbachan Singh and Sadhu Singh. In this manner the land and other properties of Jia Sahota Kalan and Sheikhpur Khurd were inherited by the three sons of Sunder Singh in equal shares. Sadhu Singh (defendant No. 1) inherited one-third share of the

total property of Sunder Singh in both the villages. He never acquired or added any property to the said ancestral property by his own personal efforts. The plaintiffs and defendants Nos. 5 to 8 also purchased 8 + 21 1/2 Marias of land comprised in Khasra No. 91 including Ghair Mumkin land from Harbans Singh son of Mula Singh of village Jia Sahota Kalan with the money supplied by the plaintiffs and defendants Nos. 5 to 8. This sale deed was got executed in favour of Sadhu Singh (defendant No. 1) being the Karta and being the head of the family and as such he is merely a Benamidar of the land covered by the sale deed executed by Harbans Singh. As such all the properties in the hands of Sadhu Singh was ancestral and the plaintiffs and the defendants were co-sharers. Besides this the construction on the ancestral plot subject-matter of the sale deed dated 29-8-1980 executed by defendant No. 1 Sadhu Singh in favour of defendant No. 2 Jarnail Singh was also done with the finances provided by the plaintiffs and defendants Nos. 5 to 8. So, Sadhu Singh defendant No. 1 only remained a manager of the Joint Hindu Family property and the Joint Hindu Family comprised of his wife, one daughter and seven sons. Moreover, the tubewells installed on the land situated in village Jia Sahota Kalan and village Sheikhpur Khurd were also installed by the pro forma defendants Nos. 6 and 8, namely, Nirmal Singh and Malkiat Singh, who incidentally got the electricity connection on priority basis from the military quota, as they were military personnel. The plaintiffs alleged that the joint family was living peacefully and the joint properties were never partitioned. However, one of the co-sharers, namely, Jarnail Singh defendant No. 2, joined hands with Sadhu Singh defendant No. 1 and took illegal and undue advantage of the old age of defendant No. 1, who lost his eye-sight etc. and became weak and feeble. Said Jarnail Singh defendant No. 2 got two sale deeds out of the ancestral land in his favour vide sale deed dated 29-8-1980 of the land measuring 8 Kanals 10 Marias (Exhibit D2) and of the agricultural land measuring 36 Kanals 7 Marias vide sale deed dated 27-2-1981 (Ex.D3). Both the sale deeds are illegal and do not confer any right, title or interest on defendant No. 2 because the properties were Joint Hindu Family properties. The sale deeds in favour of the defendant No. 2 have been executed by Sadhu Singh defendant No. 1 in an illegal manner and are collusive transactions. There was no legal necessity on the part of defendant No. 1. The sale deeds were without any consideration and have been executed for a notional price of Rs.3,000/- and Rs. 16,000/- of Exhibits D2 and D3, respectively, whereas the market value of the land at the time of alleged sale deeds was Rs. 1,00,000/-. Otherwise also, the said sale deeds have been executed in order to cheat the Government of the stamp duty. No considerations have ever passed to defendant No. 1 on behalf of defendant No. 2. Defendant No. 1 was suffering from infirmity. Defendant No. 2 had no independent source of income to pay the alleged sale consideration to defendant No. 1. The sale deeds have not been attested by credible and reliable witnesses. The tubewell on the land purported to have been sold to defendant No. 2 belongs to Nirmal Singh defendant No. 6, and there is no mention of the tubewell in the sale deed dated 27-2-1981 (Ex.D3). In the record of the Municipal Committee the name of Nirmal Singh still

exists. The amount of security was also deposited by Nirmal Singh, who was one of the co-sharers of the land in dispute. The actual value of the land covered by sale deed (Ex.D2) was Rs.90,000/- and not Rs. 3,000/-. With the sale deeds (Exhibits D2 and D3) a cloud has been cast on the title of the plaintiffs and defendants Nos. 3 to 8. Moreover, defendant No. 1 still threatens the plaintiffs and defendants Nos. 3 to 8 that he would alienate the rest of the Joint Hindu Family property detrimental to the interest of the plaintiffs and other co-sharers. Hence the suit.

3. The suit was contested by defendant No. 1 Shri Sadhu Singh and defendant No. 2 Shri Jarnail Singh, who filed separate written statements. According to defendant No. 1, the suit of the plaintiffs is not maintainable in the present form; that it is time barred. Defendants Nos. 1 and 2 are in exclusive possession of the land in dispute and they are the absolute owners. Defendant No. 2 also took the stand that Nihal Singh was not the owner of the property in the hands of defendant No. 1 and it was his self-acquired property. In the alternative it was pleaded that if it is proved that the property was ancestral, defendant No. 1 sold the property in favour of defendant No. 2 for legal necessity. It was also denied by defendant No. 1 that any land was purchased from Harbans Singh from the income of the ancestral property or that he was benamidar of the said property. The construction over the land was not financed by the joint family funds. The plaintiffs are not the co-sharers; nor they are in joint possession. The tubewell was installed at the expense of Sadhu Singh defendant No. 1, who validly sold the land measuring 8 Kanals 10 Marias in favour of defendant No. 2 Jarnail Singh for a sum of Rs. 3,000/- vide registered sale deed dated 29-8-1980. Defendant No. 1 also validly sold the land measuring 36 Kanals 7 Marias vide sale deed dated 27-2-1981 for a consideration of Rs. 16,000/-. Defendant No. 1 also took the stand that he needed the money for the marriage of his niece and maternal grand daughters and for the purpose of installation of tubewell and for the purchase of engine and for the repair of the house and also for his personal expenses as he was ailing. The consideration money was paid to him from the personal income of defendant No. 2. Defendant No. 2 took the stand that the sales in his favour were bona fide transactions and for consideration. The property in the hands of his father Sadhu Singh was not the Joint Hindu Family property. It was also denied that the sons, wife and daughter of defendant No. 1 constituted Hindu Undivided Family. The tubewell was installed at the expenses of Sadhu Singh and he validly sold the land. The sale deeds in favour of defendant No. 2 have been witnessed by respectable persons. The electric connection in the name of Nirmal Singh does not make him owner of the tubewell. The property was not ancestral. Sadhu Singh defendant No. 1 has every right to sell the same. The stand of defendant No. 2 is the same as of defendant No. 1.

4. The plaintiffs filed replication to the written statements filed by the defendants Nos. 1 and 2 and reiterated their allegations made in the plaint by denying those of the written statement. From the above pleadings of the parties the learned

trial court framed the following issues:--

"1. Whether the plaintiffs and defendants are governed by Hindu Law and they constituted a Joint Hindu Family? OPP.

2. Whether the property in dispute is the Joint Hindu Family Property? OPP.

3. Whether the sale deeds dated 29-8-1980 and 27-2-1981 were got executed by defendant No. 1 in favour of defendant No. 2 clandestinely and surreptitiously in order to cause wrongful loss to the other co-sharers and the sales are illegal? OPP.

4. Whether the abovesaid sales were for consideration and legal necessity and for act of good management? OPD.

5. Whether the suit is not within time? OPD.

6. Whether defendant No. 2 is a bona fide purchaser for consideration in good faith without notice? OPD.

7. Whether the plaintiffs are estopped by their act and conduct? OPD.

7-A. Whether the suit for possession is not maintainable? OPD.

7-B. Whether the defendants Nos. 1 and 2 have become the owners by adverse possession? OPD.

8. Relief.

The parties led oral and documentary evidence in support of their case. Vide judgment dated 31-10-1984 the trial Court held while deciding issues Nos. 1 and 2 that the entire property except that of 1 Kanal 19 1/2 Marlas, which was purchased vide sale deed Ex.D1 situated in village Jia Sahota Kalan was the Joint Hindu Family property, and that the parties are Jats and are governed by Hindu Law in the matter of succession. However, the trial Court while disposing of issues Nos. 3, 4, 6 and 7A gave the finding that sale deeds Ex.D2 and D3 were executed by Sadhu Singh in the capacity of Karta of the Joint Hindu Family and for legal necessity and his acts were performed in good management. Further it was held that defendant No. 2 was a bona fide purchaser for consideration in good faith and without notice. Resultantly, all these issues were decided in favour of the contesting defendants. Issues Nos. 5, 7 and 7B were also decided against the defendants and finally the suit was dismissed.

5. Aggrieved by the judgment and decree of the trial Court, the unsuccessful plaintiffs filed the first appeal in the Courts of Additional District Judge, Hoshiarpur, who vide judgment dated 28-2-1987 dismissed the appeal and held that the property in the hands of defendant No. 1 Sadhu Singh was not ancestral. In the alternative it was held that even if it is assumed for the sake of argument that the property in the hands of Sadhu Singh was ancestral, the sale deeds Ex.D2 and D3 were for legal necessity. Resultantly the appeal was found to be devoid of any merit. While maintaining the judgment and decree of the trial

Court, the appeal filed by the plaintiffs was dismissed. Aggrieved by the judgment and decree dated 28-2-1987 passed by the first appellate Court, the present appeal has been filed.

6. I have heard the learned counsel for the parties and with their assistance have gone through the record of this case.

7. A perusal of the above pleadings would show that the property in the hands of Sadhu Singh defendant No. 1 was not ancestral property vis-a-vis plaintiffs and defendants Nos. 3 to 8. Admittedly the plaintiffs are the Jat Sikhs and they are governed by the principles of Hindu Law in the matter of succession and alienation. The property in the hands of Sadhu Singh would become ancestral if it is established that it came to his hands from his father Sunder Singh or from his father's father Chanda Singh or from his father Nihal Singh. In this regard the pleadings of the plaintiffs are very relevant. In para No. 2 of the plaint it has been averred that Nihal Singh owned 50 Ghamauns of land in village Jia Sahota Kalan, Tehsil & District Hoshiarpur, and his property was inherited by his two sons Chanda Singh and Kapur Singh. Chanda Singh had three sons Bhagwan Singh, Munsha Singh and Sunder Singh. Munsha Singh served in the British Army and he was allotted 25 Acres of land in 32/2-1, Tehsil Okara, District Montgomery (Pakistan), Bhagwan Singh died issueless in the year 1922 and his property passed on to his two brothers, namely, Munsha Singh and Sunder Singh. In 1944 Munsha Singh died issueless and his property both in village Jia Sahota Kalan in Hoshiarpur District and at 32/2-1 in Montgomery District was transferred in favour of his only brother Sunder Singh. In this manner it can be safely concluded that the property of Nihal Singh and that of his two sons Bhagwan Singh and Munsha Singh intermingled and both the properties came in the hands of Sunder Singh. Also pleaded in para no. 3 of the plaint that in lieu of the land situated in Pakistan some land was allotted in village Sheikhpur Khurd, Tehsil and District Hoshiarpur. Now it is to be seen whether the plaintiffs in this case was successful in proving that the land which was sold by Sadhu Singh in favour of his son Jarnail Singh defendant No. 2 was the property which was at one point of time held by his great grand father Nihal Singh or his grand hither Chanda Singh. If the identity of the property in the hands of Sunder Singh is lost with the accumulation of properties left by Munsha Singh and Bhagwan Singh (his two brothers), certainly it can be said that the property in the hands of Sunder Singh would be treated as non-ancestral. The onus was upon the plaintiffs to establish that they constituted a Joint Hindu Family or that the property was co-parcenary/ancestral. Not an iota of evidence was led to prove that Chanda Singh was the owner of the suit property or that it devolved upon his three sons, namely Bhagwan Singh, Munsha Singh and Sunder Singh by inheritance. Once Sunder Singh has acquired the land situated in village Sheikhpur Khurd through his brother Munsha Singh, it cannot be held to be an ancestral property vis-a-vis the plaintiffs in the hands of Sunder Singh. Again Bant Kaur and Dhan Kaur are admittedly the daughters of Sunder Singh and they did not claim any share in the succession of their father. Meaning thereby that

Sadhu Singh defendant No. 1 along with his two brothers Ujagar Singh and Gurbachan Singh got two-third share of his sisters, namely, Bant Kaur and Dhan Kaur. Once again when the land falling to the shares of Bant Kaur and Dhan Kaur comes in the hands of Sadhu Singh, the nature of the property in the hand of Sadhu Singh is changed and the plaintiffs cannot claim that the shares of Bant Kaur and Dhan Kaur were ancestral. The counsel for the plaintiffs appellants submitted that in the revenue record it is mentioned that Sadhu Singh is the owner of the disputed property to the extent of one-third share. Meaning thereby that he inherited this property from his father Sunder Singh and in this regard the property was ancestral vis-a-vis the plaintiffs. This argument cannot be proved because as per Exhibit PA mutation No. 582 it is established that Bant Kaur and Dhan Kaur relinquished their two-fifth share in favour of their three brothers. In this manner the share of Sadhu Singh increased from one-fifth to one-third share. As per the Jamabandi for the year 1973-74 (Ex. P5) and Jamabandi for the year 1979-80 (Ex. P4) the land measuring 62 Kanals 15 Marias situated in village Sheikhupur Khurd has been entered in the name of Sadhu Singh as owner, but the property cannot be held to be purely ancestral in view of the reasons explained above. For the sake of repetition it is mentioned that Sunder Singh got interest in the land through his brothers Bhagwan Singh and Munsha Singh and similarly Sadhu Singh enhanced his share from one-fifth to one-third with the help of relinquishment by his two sisters Bant Kaur and Dhan Kaur. If the land measuring 62-Kanals 15 Marias in the hands of Sadhu Singh is held to be non-ancestral, then Sadhu Singh was competent to sell the land measuring 36 Kanals 7 Marias vide Ex. D3 on 27-2-1981 in favour of his son Jarnail Singh defendant No. 2, treating it as his self-acquired property and the plaintiffs had no locus standi to give challenge to the sale deed (Ex. D3) in favour of Jarnail Singh. The principles of legal necessity or the act of good management would not come in his way in that eventuality.

8. Coming to the land situated in village Jia Sahota Kalan, as per Jamabandi for the year 1970-80 (Ex. P9) it stands proved that the land measuring 130 Kanals 18 Marias has the ownership of Sadhu Singh and his brother Gurbachan Singh and the remaining one-third share is in the name of Tarlok Singh, who is the son of Ujagar Singh. Again it is to be seen if the land of this village devolved upon Sunder Singh from his ancestors, namely, Chanda Singh and Nihal Singh. The plaintiffs can succeed only if it is established that the land in the hands of Sunder Singh was the ancestral/co-parcenary property and that Sadhu Singh sold this land vide Ex. D2 without any legal necessity. The learned counsel for the plaintiff-appellants relied upon Ex. P1 Jamabandi for the year 1950-51 to establish that it has been mentioned therein that Sunder Singh has one-half share and it should be inferred that after the death of Sunder Singh the property in the hands of Sadhu Singh became ancestral. The argument is not acceptable to this Court because it is not established that the land mentioned in Ex. P1 is the same as mentioned in Exhibit P9.

9. Learned counsel for the appellants also relied upon mutation No. 582 dated

20-9-1958 (Ex. PA) to establish the ancestral nature of the land in the hands of Sadhu Singh, but it is not established that the land in dispute was allotted in consolidation of the land holding in lieu of the area measuring 32 Kanals 17 Martlas as mentioned in the Jamabandies (Exhibits P4/4 and P4/5). Once the chain is broken on account of the interruption created by Bhagwan Singh and Munsha Singh at the first instance, and subsequently by Bant Kaur and Dhan Kaur, it cannot be held that Sadhu Singh, the last holder of the property in dispute, had inherited directly from his ancestors, namely, under Singh, Chanda Singh or Nihal Singh. As I stated above, the onus to establish the ancestral nature of the properties was upon the plaintiffs and they have miserably failed to establish that Sadhu Singh was holding the ancestral properties in the capacity of a Karta of the Joint Hindu Family property. Therefore, defendant No. 1 was free to deal with these properties treating it as his non-ancestral and the principles of Hindu Law in the matter of alienation vis-a-vis the ancestral property would not come into play. I fully agree with the reasons advanced by the learned first appellate Court when it finally held that it has not been proved on the record that the property was ancestral co-parcenary property in the hands of Sadhu Singh defendant No. 1.

10.11, Now it is to be seen whether the sale deeds (Exhibits D2 and D3) are for legal necessity and for act of good management, as pleaded by the plaintiffs, and assuming on the premise that the property in the hands of defendant No. 1 was ancestral. The attack has been made on these sale deeds by the plaintiffs on the premises that Sadhu Singh defendant No. 1 executed the sale deeds without any legal necessity. In this regard we have to see the recitals. It has been mentioned in the sale deed that the executant has received a sum of Rs. 1400/- in the presence of the Sub Registrar. The sale deed (Ex. D3) dated 27-2-1981 is for a sum of Rs. 16,000/- and the entire consideration has been paid to the seller by defendant No. 2 before the Sub Registrar. The receiver of the amount, i.e., defendant No. 1, while appearing as D.W. 1 admitted the execution of the sale deeds and he also admitted that he received the sale consideration as mentioned in the sale deeds. Sadhu Singh further admits that out of the sale consideration of Rs. 16,000/-, he spent Rs. 4,000/- on the installation of tubewell, he purchased the engine for the tubewell costing Rs. 4,000/-, and spent Rs. 3,000/- on the marriage of his Dohti (daughter's daughter) besides incurring a sum of Rs. 3,000/- on the repairs of his house. Exhibit D.W.9/1 is the receipt proved by D.W.3 that a sum of Rs. 1,000/- was paid by Sadhu Singh towards labour charges for the tubewell on 21-10-1980. D.W.11/1 is the other cash memo, dated 15-10-1980 relating to the purchase of tubewell boring material by Sadhu Singh defendant No. 1. In order to prove bona fide a purchaser is not supposed to see the actual application of the funds received by the Karta selling the ancestral property. But in the present case evidence on the record is forthcoming that Sadhu Singh applied the sale consideration for legal necessity. He was an agriculturist and incurring of the expenses on agricultural purposes will be considered as an act of good management and for legal necessity. Otherwise also

both the Courts below have given concurrent findings that defendant No. 2 was the bona fide purchaser for valuable consideration. The sale deeds Exhibits D2 and D3 cannot be set aside on the mere ground that the sale considerations are meagre. Section 25 of the Contract Act lays down that if a consideration has passed, it is a valid sale. In the present case it is not proved that Sadhu Singh was the holder of ancestral property. Rather the property was non-ancestral and he could dispose it of, calling no challenge to it. It is not even alleged by the plaintiffs that Sadhu Singh was having bad habits or that he was involved in the acts of monetary waste. The case set up by the plaintiffs in the plaint was that Sadhu Singh was in a weak state of mind and for this reason he squandered the property by executing sale deeds Exhibit's D2 and D3. Mere weakness of mind is not a good ground to challenge the Sale transaction. It is not on the record to show that there is no marriage of the Dohti of Sadhu Singh or that he never spent the sale proceeds for the repair of his house or that there was no installation of the tubewell.

12. Learned counsel for the respondents has relied upon *Khem Chand v. Kamal Kishore* 1986 Cri LJ 661 and argued that concurrent finding of fact is binding on the High Court. He submitted that in this case both the Courts below have held that the property in the hands of Sadhu Singh was non-ancestral and, therefore, this Court should not interfere into the findings of the fact lightly. I fully agree with the contention raised by the learned counsel for the respondents. Even otherwise on going through the evidence, I have come to the conclusion that with the merger of interest of Bant Kaur and Dhan Kaur, it cannot be said that the property in the hands of Sadhu Singh was non-ancestral. I have already held above that if Sadhu Singh was competent to alienate the property, treating it to be personal, the plaintiffs have no case.

13. Learned counsel for the respondents also relied on *Ramrichpal v. The Bikaner Stores Supply and Trading Co.* AIR 1966 Raj 187, and submitted that the recitals of legal necessity as mentioned in the impugned sale deeds are admissible in evidence. No doubt, the recitals are admissible, but those themselves are not the evidence of legal necessity without corroboration. In the present case this authority may not be helpful much for the respondents in view of the findings that Sadhu Singh could alienate the property even without legal necessity, treating it as his personal property, in view of the devolution from Bhagwan Singh and Munsha Singh at the first instance and then from Bant Kaur and Dhan Kaur.

14. Even if it is assumed for the sake of argument, though not proved on record, that the property in the hands of Sadhu Singh was to some extent ancestral, as inherited by him from his father Sunder Singh, still it is proved on the record that his actions are fully covered for necessity. The recitals made in the documents are admissible and there is enough documentary evidence on the record discussed by the trial Court as well as by the first appellate Court from which it stands established that Sadhu Singh applied the sale proceeds for good

management when he incurred expenses on the marriage of his Dohti (grand daughter) and purchased agricultural implements. This Court is not inclined to interfere with the consistent findings of the trial Court as well as the first appellate Court on issues Nos. 3, 4 and 6.

15. To sum up it is held that the plaintiffs have miserably failed to prove that the property in the hands of defendant No. 1 Sadhu Singh was ancestral property and that he was not entitled to deal with the same except for legal necessity and acts of good management. Rather it is established on the record that Sadhu Singh defendant No. 1 was competent to deal with the non-ancestral property and he sold the properties, which are subject-matter of sale deeds Exhibits D2 and D3, in favour of Jarnail Singh defendant No. 2 (his son). Close relationship between Sadhu Singh and Jarnail Singh is no ground to jump to the conclusion that defendant No. 2 manoeuvred in his favour the sale deeds (Exhibits D2 and D3). The backbone of this case was to determine the controversy about the nature of the property which has been cogently proved to be non-ancestral/self-acquired in the hands of Sadhu Singh. The plaintiffs are the sons, grandson, grand daughter and widow of the deceased son of Sadhu Singh. They could succeed in the suit only on establishing that Sadhu Singh got the property from his father Sunder Singh and grandfather Chanda Singh and that he sold the property without legal necessity. Since the onus has not been discharged by the plaintiffs successfully, I do not find any illegality in the findings of the first appellate Court when it tightly dismissed the appeal of the plaintiff-appellants.

16. Resultantly, I dismiss the appeal by affirming the judgments and decrees of the first appellate Court as well as of the trial Court, leaving the parties to bear their own costs.

17. Appeal dismissed.