

(2008) 12 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 184 of 1983

Suba Singh

APPELLANT

Vs

Madan Singh (minor) through Gurnam Kaur his mother &
others

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Citation : (2009) 5 RCR(Civil) 734

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. C.M. Munjal, Advocate. Mr. D.S. Brar, Advocate and Mr. S.S. Brar, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.—The defendantappellant has challenged the judgment and decree passed by the learned Additional Distinct Judge, Faridkot by way of this regular second appeal.

2. Mohan Singh minor son of Arjan Singh and Arjan Singh as person of unsound mind through their next friend Gurnam Kaur brought a suit for possession of land (i) measuring 24 Kanals and (ii) measuring 4 Kanals 12 Marlas situated in the area of village Vandar Jatana said to have been sold to defendants No. 1 & 2 by Arjan Singh plaintiff. The plaintiff claimed that plaintiff No. 1 was minor whereas plaintiff No. 2 was mentally infirm and was of unsound mind. It was the case set up by the plaintiffs that he was suffering from mental illness i.e. senile dementia for many years and was incapable of making rational judgment.

3. It was alleged that respondentplaintiff No. 2 sold away land measuring 24 Kanals to defendant No. 1 by a registered sale deed dated 23.8.1987 for a consideration of Rs. 9000/. He further sold away 4K 12Ms of land to defendant No. 2 by a registered sale deed dated 3.11.1978 for a consideration of Rs. 5000/. The case set up was that before as well as on the dates of these two sale deeds, plaintiff No. 2 suffered from senile dementia. He was mentally infirm and incapable of making any rational judgment or entering into any contract. It was claimed that both the sales were void and ineffective.

4. It was further claimed that the plaintiffs were joint in food, worship and residence and constitute a joint Hindu family. The suit land was said to be ancestral, coparcenary property of the plaintiffs in which the plaintiff No. 1 had got interest from his birth being son of plaintiff No. 2. The sales were said to be without consideration and legal necessity. It was claimed that the sale were acts of reckless waste. It was also the case set up by the plaintiffs that defendantvendees had taken undue advantage of mental deficiency of plaintiff No. 2 and thus it was claimed that respondent plaintiffs were entitled to get back the possession of the suit land.

5. It was also claimed that in case plaintiff No. 2 was held to be mentally sound, then, in that case also land being ancestral and sales having been effected without consideration and legal necessity were not binding on plaintiff No. 1. It was also claimed that Naginder Singh father of defendant No. 1 is grandson of the uncle of plaintiff No. 2 and due to the mental deficiency of plaintiff No. 2, Gurnam Kaur used to manage and look after the affairs of plaintiff No. 2. It was claimed that taking advantage of mental weakness Naginder Singh succeeded in getting the sale deed in favour of his son defendant No. 1.

6. The suit was contested. The appellantdefendant No. 1 in the written statement denied the allegation that plaintiff No. 2 was of unsound mind. It was claimed that the sales were for consideration and the total sale money was received by plaintiff No. 2. It was claimed that respondentplaintiff No. 2 was in full senses at the time of the sales. It was denied that the property was ancestral or coparcenary property. The allegation that respondent No. 2 was of unsound mind, were also denied. It was claimed that he was of simple nature but was competent to alienate the property.

On the pleadings of the parties, following issues were framed :

"1. Whether Arjan Singh plaintiff is of unsound mind and is competent to sue through a next friend ? If not, its effect ? OPP

2. Whether the sales dated 23.8.1976 and 3.11.1978 effected by Arjan Singh in favour of defendant Nos. 1 and 2 are void as he was mentally infirm and insane as alleged ? OPP

3. Whether both the plaintiffs constituted as joint Hindu family and the suit property was the coparcenary property of such joint Hindu family as alleged ? OPP

4. If issue No. 3 is not proved, were the impugned sales dated 23.8.1976 and 3.11.1978 effected by Arjan Singh for consideration, legal necessity and for the benefit of the estate and family?

5. Relief."

7. The learned trial Court decided issue No. 1 in favour of plaintiff and held that Arjan Singh respondent was of unsound mind on the date of filing of suit and,

therefore, the suit was rightly filed by his next friend Gurnam Kaur i.e. his wife.

8. On issue No. 2, the learned trial Court held that Arjan Singh was not of unsound mind on the date of sale deed when the sale was executed in favour of defendant No. 1. Consequently, issue No. 2 was decided in favour of defendant No. 1.

On issue No. 3, it was conceded that the property was ancestral coparcenary property of the plaintiffs.

On issue No. 4, it was held that Arjan Singh being Karta could alienate the property to the extent of his own share and as the sale did not exceed his share, therefore, it was not necessary to decide as to whether the sale was for legal necessity or not and it was held that the sale in favour of defendant No. 1 was held to be made by person of sound mind, thus, not void. However, sale in favour of defendant No. 2 was held to be void. Consequently, the suit was partly decreed against defendant No. 2 and the plaintiff respondents were held entitled to decree for possession of land measuring 4K 12Ms qua the sale concerning defendant No. 2. However, suit against appellantdefendant No. 1 was ordered to be dismissed.

9. Two appeals were preferred against the judgment and decree passed by the learned trial Court; one by the plaintiffrespondent and other by Jangir Singh. The learned lower appellate Court accepted the appeal filed by plaintiffrespondent and held that the sale dated 23.8.1976 in favour of appellant Suba Singh defendant No. 1 was also void as the same was unconscionable and made by a person who was not of normal state of mind.

10. The learned lower appellate Court in order to record this finding placed reliance on the statement of PW3 Dr. D.C. Bansal, Professor of Medicines, Medical College and Hospital, Rohtak. In his statement he has stated that Arjan Singh was admitted to hospital on 14.12.1978 and discharged on 21.12.1978. He was found to be suffering from dementia possibly senile dementia.

11. It was in evidence that he was conscious and walking about but had complete loss of interest in his surroundings and was indifferent and not answering any questions. It was further in the evidence of the attendants of the patient that he had been in similar state for about five years. The learned lower appellate Court referred to Modi's Medical Jurisprudence 1975, Edition, wherein at page 390 the decease of senile dementia is described as below :

"This condition results from the gradual decay of the body as well as the brain during old age, and depends upon the degenerative changes of the arteries. It affects those people, who have a hereditary taint of mental aberration, and we have led a strenuous life."

In this form the patient is forgetful, unable to fix attention on any subject, is dirty in his habits and erotic in his tendencies. He begins to suspect his own near and dear relatives, and is often affected by hallucinations of sight and hearing

and delusions of persecution. He imagines that he has become poor and destitute. He becomes melancholic and lastly becomes a perfect dement. Suicide is also common in such a condition. Maniacal excitement is very rare, though garrulity and continuous and aimless movements are sometimes seen.

12. The learned lower appellate Court took note of the statement of DW5 Basant Singh, who was a Lambardar of the village and had stated that Arjan Singh had not been taking interest in domestic affairs for the last 8/10 years and remained silent and the management of the property were being done by the ladies of the Arjan Singh's house.

Thus, on appreciation of evidence brought on record the learned lower appellate Court reversed the finding recorded by the learned trial Court and held that Arjan Singh was not of normal mental state of mind on the date of sale deed dated 23.8.1976.

The evidence of Shri Deep Chand, Sub Registrar cum Tehsildar, DW4 was also not relied upon keeping in view the fact that mutation with regard to the sale was attested by him on 24.8.1976 itself whereas evidence brought on record showed that the sale deed after registration was returned to the vendees only on 27.8.1976. The Court also held that the price paid for the land was also unconscionable and did not depict the market value.

13. The learned lower appellate Court further on issue No. 4, held that the sale was also liable to be set aside as it was without legal necessity. In view of the reversal of the finding on issue No. 2, issue No. 4 was also reversed and consequently, the suit was decreed in toto.

Mr. C.M. Munjal, learned counsel appearing on behalf of the appellant contends that the following substantial questions of law arise for consideration in the present appeal :

"1. Whether the judgment and decree passed by the learned lower appellate Court is outcome of misreading of oral and documentary evidence on record ?

2. Whether the learned lower appellate Court was justified in reversing the findings recorded by the learned trial Court with regard to the mental state of Arjan Singh."

14. The learned counsel appearing on behalf of the appellant vehemently contends that the learned trial Court was fully justified in recording the finding that there was no evidence on record to prove the mental state of Arjan Singh on the date of sale in favour of the appellate Suba Singh.

The contention of the learned counsel for the appellant was that in the present case the evidence was brought on record with regard to the mental state of affairs of Arjan Singh during the period between 14.12.1978 and 21.12.1978, whereas there was no evidence with regard to the condition of Arjan Singh on 23.8.1976 when the sale deed in favour of appellant was executed and also when

sale deed in favour of defendant No. 2 was executed i.e. on 3.11.1978.

15. The plea of the learned counsel for the appellant cannot be accepted. The learned lower appellate Court has rightly observed that on the date of examination, the person attending on Arjan Singh had categorically stated that mental state of the patient as on date of examination was from the last five years which would cover the time when the sale was executed in favour of the appellant.

16. It is not only the statement of the Doctor which has been considered by the learned lower appellate Court but the Court has also taken note of the statement made by the defendant's witness i.e. the Lambardar of the village to the effect that respondent Arjan Singh used to remain silent for the last 8/10 years. This evidence totally supported the version of the plaintiff that Arjan Singh was not of sound mind. The learned Court has also taken note of the conduct of the Sub Registrar and the price for which the property was sold to record a finding of fact that Arjan Singh was not of sound mind on the date of sale.

17. The questions formulated are in fact questions of fact. Merely because on appreciation of evidence other view may be possible would not clothe the High Court to assume the jurisdiction to interfere under Section 100 of the Code of Civil Procedure by terming the question as substantial question of law. In this case issues No. 1 & 2 as framed are admittedly issues of fact, which the learned lower appellate Court being last Court of fact has decided in favour of plaintiff/respondent. There is no jurisdiction to disturb the findings by substituting its own opinion specially when it is not a case of misreading of evidence.

18. In the present case the finding has been recorded by the learned lower appellate Court on appreciation of evidence holding that Arjan Singh was of unsound mind on the date of sale in favour of the appellant. It cannot be held that the findings recorded is outcome of misreading of oral and documentary evidence and therefore the substantial question of law as framed by the learned counsel for the appellant does not arise for consideration in this appeal.

19. The second question of law also does not arise as the learned lower appellate Court has reversed the finding recorded by the learned trial Court by giving cogent and valid reasons. The learned lower appellate Court has taken note of the evidence brought on record i.e. the statement of Doctor, statement of defendants witnesses as well as sale consideration to reverse the finding on issue No. 2. The reasons given can not be said to be perverse or not capable of arising out on the basis of evidence brought on record.

20. There is another aspect of the matter. In the present case it may be noticed that both the Courts below have recorded concurrent finding of fact that the property in dispute was joint Hindu coparcenary property in the case of Arjan Singh. The learned Courts below have placed reliance on the judgment of this Court on the case of Jowala Singh v. Lachhman Dass, AIR 1974 (P&H) 188 to hold that even if the legal necessity was not proved, yet sale could be

binding on the undivided share of Karta. The judgment relied upon by the learned Courts below is of the Hon''ble Single Bench. Whereas Division Bench of this Court in the case of Sardar Raghbir Singh v. The commissioner of Income Tax, 1958 P.L.R. 104 has been pleased to lay down as under :

"According to the Hindu Law as interpreted in the Punjab no member of a joint Hindu family can, in the absence of custom to the contrary, alienate even his own share in the undivided estate without the consent of his coparceners; but such an alienation is an act which is not necessarily and ipso facto void, it is merely voidable by the cosharers if they choose to alienate it."

21. This view of the Hon''ble Division Bench finds support from Mulla's principles of Hindu Law wherein it has been mentioned as under :

"260. Sale or mortgage of undivided interest Other States. According to the Mitakshara law as administered in West Bengal and Uttar Pradesh no coparcener can alienate even for value his undivided interest without the consent of the other coparceners [Madho Parshad v. Mehrbn Singh, (1891)18 Cal. 157, 171A, 194; Sadabart Prasad v. Foolbash, (1869)3 Beng.L.R.F.B.R. 31; Kali Shankar v. Nawab Singh, (1909) 31 All.507 : 31.C.909; Balgobind Das v. Narain Lal, (1893)15 All. 339 : 351, 20 I.A. 16, 125; Manna Lal v. Karu Singh, (1919) 1 Pat. L.T.6, 56 I.C.766, ('19) A.P.C. 108; Chandradeo v. Mata Prasad, (1909) 31 All. 176 : 1 I.C. 479 [F.B.]. Shamboo v. Ramdeo, (1982) A.All. 508. For other cases, see { 269 below.}, unless the alienation be for legal necessity [\$242], or for payment by a father of antecedent debts [{295}]. The consent of the other coparceners is necessary even if the alienation is made in favour of a coparcener (Chander v. Danpat, (1894)16 All. 369].

The same rule applies to cases governed by the Mitakshara law as administered in Bihar and Orissa [Jwala Prasad v. Maharajah Protab, (1916) 1 Pat.L.J. 497 : 37 I.C. 184, ('16) A.P. 203; Ajmer Dayal v. Har Pershad, (1920) 5 Pat. L.J. 605 : 58 I.C. 72, ('20) A.P. 433; Krishnadeb v. Jokhilal ('56) A.P. 290], the Punjab [Piare v. Ram, (1912) P.R. No. 21, p.75, 11 I.C. 443; Ralla Ram v. Atma Ram, (1933) 14 Lah. 584 : 150 I.C. 184, ('33) A.L. 343], and in Oudh [(1891) 18 Cal. 157, 171.A. 194, supra; Angraj v. Ram Rup, (1931) 6 Luck. 158, 127 I.C. 38, ('30) A.O. 284, Puttoo Lal v. Raghubir Prasad (1934) 9 Luck 237, 147 I.C. 540, ('33) A.L. 535.]"<>/UL

22. The learned counsel for the appellant referred to judgment of Hon''ble Supreme Court in the case of Hardeo Rai v. Sakuntala Devi and others 2008(3) RCR(Civil) 196 : 2008(3) RAJ 489 to contend that coparcener can sell his undivided share in coparcenary property, subject to condition that purchaser cannot get possession but acquires a right to sue for partition. The authority relied upon by the learned counsel for the appellant can not advance the case of the appellant. In the present case definite share of coparcener was not determined, under Section 14 of the Hindu Succession Act, 1956, as was in the case before the Hon''ble Supreme Court.

23. Thus, it would be seen that in the present case the sale of coparcenary Hindu undivided family was for without legal necessity and, therefore, was not binding.

24. The substantial questions of law as raised by the learned counsel for the appellant do not arise for consideration by this Court.

There is no merit in this appeal, which is accordingly ordered to be dismissed but with no order as to costs.