

Ram Kali and anr. Vs. Pardip Kumar and ors.

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Court : Punjab and Haryana

Decided On : Jul-21-1980

Reported in : AIR1980P& H345

Judge : J.V. Gupta, J.

Acts : Hindu Law

Appeal No. : Second Appeal No. 521 of 1969

Appellant : Ram Kali and anr.

Respondent : Pardip Kumar and ors.

Judgement :

1. Defendant-appellants have filed this regular second appeal against the judgment and decree of the Additional District Judge Gurgaon, dated 18th December, 1988 whereby the judgment and decree of the trial Court decreeing the plaintiffs' suit has been maintain

2 Vide sale deed dated 25th June, 1985, Anand Parkash father o the plaintiffs, sold the suit land to Smt. Ram Kali defendant-appellant for a sum of Rupees 25,000/-. The plaintiffs who are the son5 of the vendor-defendant brought the present suit on the allegations that the suit property was co-parcenary property of their father and the plaintiffs. Anand Parkash had no right to sell or mortgage more than his share and that the sale and mortgage of the land by him in excess of his s

was illegal and not binding upon them because the parties being Aggarwal's were governed by Hindu Law.

The suit was contested by the defendants-appellants. It was alleged that the suit land was neither ancestral nor coparcenary property of the defendant No. 4. On the pleadings of the parties, the trial Court framed the following issues:--

- 1 Whether the plaintiffs are the sons of defendant No. 4 and grandsons of Mithan Lal as alleged and if so, to what effect?
2. Whether the land in suit is coparcenary property of the plaintiffs and the vendor?
3. Whether the transactions in dispute are for consideration and for legal necessity?
4. Whether the suit land has not been properly described in the plaint and if so, to what effect?
5. Whether the suit is bad for multifariousness?
6. Whether the suit is bad for non-joinder of parties?
- 7 Whether the suit has not been properly valued for purposes of court-fees and jurisdiction?
8. Whether the suit is time-barred?
9. Whether the suit is collusive, as alleged?
10. Whether the plaintiffs are estopped to bring this suit?

The trial Court as well as the lower appellate Court have concurrently found on issue No. 2 that the suit land is ancestral of defendant Anand Parkash qua the plaintiffs i. e. his sons, On issue No. 3, the concurrent finding of both the Courts is that the sale was for consideration but it was without legal necessity? Feeling aggrieved against this the defendant-appellants have come up in appeal to this Court.

3. The only contest in this appeal is on issue No. 2 and it has been vehemently contended by the learned counsel for the appellants that the suit land is not a coparcenary property qua the plaintiffs and the vendor. According to the learned counsel, on the admitted facts, it could not be held that the suit land was ancestral in the hands of vendor Anand Parkash. It is the common case of the parties that Anand Parkash acquired the property from Mithan Lal by way of a mutation Exhibit D. 8. The said Anand Parkash was adopted by his grand-father Mithan Lal much before the time he made the gift of the land. In his favour and on adoption by Mithan Lal he acquired the right in the said property by way of gift. Thus it has been contended that the property in the hands of Anand Parkash could not be ancestral qua his sons. In support of his contention he has relied upon *C. N. Arunachala Mudaliar v. C. A. Muroganatha Mudaliar* AIR 1953 SC 495. It has been authoritatively held in Para 13 thereof, that there is no warrant for saying that according to the Mitakshara, an affectionate gift by the father to the son constitutes 'ipso facto' ancestral property in the hands of the donee'. Earlier there was some conflict between different High Courts, but ultimately the same was settled by the Supreme Court in this judgment. Moreover, there is no gift deed on the record nor there is any mention of the same in the mutation order and in the absence of any deed the property cannot be said to be ancestral in the hands of the donee.

4. The learned counsel for the respondents relied upon *Seeyali Achari v. K. Doraiswami Achari*, AIR 1948 Mad 46, in which reliance has been placed on *Nagalingam Pillai v. Ramchandra Tevar*, (1901) ILR 24 Mad 429. He further contended that it, has been concurrently found by both the Courts below that the property is ancestral in the hands of the donee, and, therefore it being a concurrent finding of fact, cannot be interfered with in second appeal.

5. After hearing the learned counsel for the parties at great length I find force in the contentions of the learned counsel for the appellants. The view taken in *Seeyali Achari's* case (supra) has not been approved by the Supreme Court in *Arunachala Mudaliar's* case, ((AIR 1953 SC 495) (supra). Rather the conflict of judicial opinion on this point was finally settled by the highest Court of the land. In this view of the matter and on the admitted facts, the finding arrived at by the two Courts below is illegal and is thus liable to be set aside.

6. Once it is held that the suit property was not ancestral in the hands of the donee, the suit is liable to be dismissed on this ground alone as this plaintiff, then has no right to challenge the alienation.

7. For the reasons recorded above, this appeal succeeds, the judgment and decree of the lower appellate Court are set aside and the suit is dismissed with costs.

8. Appeal allowed

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