

PUNJAB AND HARYANA

Ajjan Singh

Vs

Atma Alias Atma Singh

(D.K.Mahajan, J.)

10.11.1967

JUDGEMENT

D.K.Mahajan, J.

(1.) THIS second appeal is directed against the decision of the learned Additional District Judge reversing on appeal the decision of the trial Court dismissing the plaintiffs suit.

(2.) THE land in dispute belonged to Raunaq Singh. He was a joint owner with his brother Atma Singh. Raunaq Singh sold his half share in the land measuring 19 Bighas and 10 Biswas amounting to 9 Bighas and 15 Biswas situate in village Kishanpura for Rs. 9000/- to Gajjan Singh and others. This sale was challenged by his brother Atma Singh on the usual ground that the land was ancestral qui him and the sale was not justified by necessity. The vendees' defence was that the land was not ancestral and in any case the sale was justified as an act of good management. In the sale deed the recital is that the land is being sold to purchase land in village Sondha and to purchase oxen and a cart. The trial Court dismissed the suit holding that the entire land in dispute was not ancestral, It was also found that the sale was not as an act of good management. Against this decision, Atma Singh went up in appeal to the learned District Judge. The appeal was heard by the learned Additional District Judge and the learned Judge came to the conclusion that out of the land in dispute, half was ancestral and the other half was not ancestral. The learned Judge confirmed the finding of the trial Court regarding the sale not being justified as an act of good management. Against this decision, two appeals have been preferred to this Court; one by the vendees and the other by the plaintiffs. This order will dispose of both the appeals. Mr. Gujral, Learned Counsel for the appellant, has raised the contention that the Courts below have erred in law in holding that the sale of the land in dispute is not an act of good management. The Learned Counsel contends that on the facts found the only inference that could be raised was that the sale was justified as an act of good management, the Learned Counsel also points out that besides these, two other legal errors have been committed by the Courts below; namely, (i) that it has been assumed that the land purchased with the sale proceeds of the ancestral land will not be ancestral and (ii) that the representations made by the vendor if they are

reasonable and probably, are not to be accepted and the vendee has to go further and see that the money raised by the sale is also utilised for those purposes or that the vendee has to go into the mind of the vendor to see whether the sale is justified as an act of good management. Coming back to the real question, what then are the facts found by the Courts below? The facts found are: I. That the relations between the two brothers were not cordial. (This fact is admitted by Atma Singh as P.W. ,3). II. That the vendor had left the village and had settled in Sondha where he died. III. That after the sale of the land on the 2nd of July, 1930, the vendor invested the amount of Rs. 9,000/ - and acquired mortgagee rights in land in village Seghna on the 18th of July, 1961. (This fact is noticed by the Court) below. But it has been brushed aside on the ground that the acquisition, of mortgagee rights in another village would not justify the, sale of the land. IV. The representation by the vendor to the vendee that he needed money to buy land in Sondha and also that he needed bullocks and a cart.

(3.) IN my opinion these facts lead to one and only one conclusion, namely, that the sale of land by Raunqi vender was an act of good management. No other inference is possible. The Courts below have come to a different conclusion on this part of the case -by ignoring three well settled propositions of law, namely: (1) that a male proprietor is not in the same position as a limited owner and has to nurse the estate for the reversioners. After the coming into force of the Hindu Succession Act, the position of limited owners has improved whereas the position of a male proprietor still remains where it was. No person can be tied down to the village where he has ancestral land unless it is shown that he is leaving the village or disposing of the land in the village on some false pretext. In the present case there was more than ample justification for Raunqi to leave the village and as a matter of fact he had left the village. His relations with his brother were strained, the land, was joint and therefore, the only way he thought to get clear of all trouble was to sell away the land and acquire land in the village where he had settled In this situation, the vendees were justified in accepting his representation made to them and they were not called up on to make any further enquiry. (2) Once a true representation is made by the vendor, the vendees are not to see to the application of the money. The Courts below in the present case have held that the vendee should have proved that the money was in fact utilised for a necessary purpose, i.e. purchase of land in Sondha. It may be that after selling the land. and when the money was in his hand the vendor could not find it possible to buy land in Sondha. The fact remains that the money which he acquired by that sale, he kept intact and invested it almost at the close of the year in a mortgage. (3) The Courts below are also in error in proceeding on the ground that the land purchased with the sale proceeds of the ancestral land ceases to be ancestral. The rule is firmly settled that any property acquired with the sale proceeds of ancestral property remains ancestral. As a matter of fact, in the present case, the mortgagee rights in village Seghna which were acquired with the sale proceeds of the land, will be ancestral property of vendor, if the land sold to acquire them was in fact ancestral. ;