

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU**

*Reserved on : 21.11.2023
Pronounced on: 28.12.2023*

MA No.459/2012

Mohd. Farooq

.... Petitioner/Appellant(s)

Through:- Mr. R. Kaul, Advocate

V/s

Abdul Latif Bhagwan & anr.

.....Respondent(s)

Through:- Mr. A. A. Hamal, Advocate

Coram:

**HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
ORDER**

1. The instant petition has been filed by the appellant against the order dated 03.11.2012 passed by the learned District Judge, Kishtwar in File No.38/Civil Appeal, whereby order dated 21.05.2011 passed by the learned Sub-Judge, Kishtwar has been set aside.
2. The order dated 03.11.2012 is being challenged in this petition precisely, on the grounds that the finding of the Appellate Court is contrary to the material brought on record and the findings that the issue could not be treated as a preliminary objection is bereft of any legal support; that the Sale Deeds could be taken into consideration as has been rightly done by the trial Court without its formal proof, since no challenge was made against its execution by the respondent No. 1; that the very object of Right of Prior Purchase Act was nullified in the present case, since co-

sharers had already inducted strangers to the land in question to which no objection was ever raised by respondent No. 1 and thus he was not entitled to seek partial preemption and the suit was rightly dismissed by the trial Court.

3. Briefly stating the case of the appellant –Mohd Farooq is that he purchased land measuring 1 ½ Marlas falling in Khasra No. 2198 min situated at Village Kishtwar from Gulam Mohd-respondent No. 2 and a Sale Deed was executed and registered on 23.10.2007. The respondent No.1 Abdul Latif Bhagwan challenged the said Sale Deed before the Court of learned Sub-Judge, Kishtwar under the Right of Prior Purchase Act on the ground that he along with respondent No. 2 is a co-sharer. The appellant/defendant resisted the suit and took a ground that there had been Sale Deeds already executed between the different persons in the land in question by other co-sharers thus, petitioner/respondent No. 1 cannot claim any right under the Right of Prior Purchase Act because he has not challenged the aforesaid Sale Deeds.
4. The trial Court after framing the issues passed an order dated 21.05.2011 by holding that plaintiff/respondent No. 1 was debarred from seeking a partial preemption. The trial Court had relied upon the Sale Deeds executed prior to the Sale Deed dated 23.10.2007 executed by (1) Ghulam Mohd in favour of Shah Nawaz and others vide Sale Deed dated 20.08.1998 (2) Mohd Saban in favour of Lases vide Sale Deed dated 23.08.2004 (3)

Mushtaq Ahmed in favour of Rukhsana Begum vide Sale Deed dated 09.07.1999 and (4) Mushtaq Ahmed in favour of Bahar Firdous. The trial Court without seeking proof of the aforesaid documents, dismissed the suit of the plaintiff/respondent No. 1 on the basis of the certified copies of the Sale Deeds by holding that he is debarred from seeking a partial preemption. The ground on which the plaintiff/respondent no. 1 has been held to be not entitled to seek partial preemption was that the land out of the same khasra number even same khewat number had already been alienated vide different Sale Deeds and the plaintiff/respondent no. 1 has sought to exercise his right of preemption with regard to those transactions, therefore, the suit was hit by doctrine of partial preemption.

5. The question before the trial Court which was involved was mixed question of fact as well as law. The trial Court had relied upon the certified copies of the Sale Deeds without contents of the said Sale Deeds being proved by adducing evidence, the documents and contents of which are to be proved either by primary or secondary evidence and merely filing of documents more particularly copies of the same does not prove the transaction unless admitted by the other side. The execution of the said Sale Deeds were thus yet to be proved, but the trial Court while relying upon the aforesaid Sale Deeds and without there being any proof vide order dated 21.5.2011 has dismissed the suit of the plaintiff/respondent no. 1.

6. The order dated 21.05.2011 was challenged by the plaintiff/respondent No. 1 before the Court of learned District Judge, Kishtwar. The Appellate Court after hearing learned counsel for the parties and going through the record has rightly held that the trial Court has fallen in error while relying upon the Sale Deeds without the said documents having been proved, thus, committed error, therefore, has rightly remanded the matter back to the trial Court.
7. The above discussion makes it clear that the trial Court has dismissed the suit of the plaintiff/respondent No. 1 without there being any proof with regard to the documents relied upon by the defendants, even no evidence was recorded to prove the contents of the said documents. As such, Appellate Court has rightly remanded back the matter to the trial Court for passing fresh order after hearing both the parties.
8. In view of the above, I do not find any merit in the instant appeal. The impugned order dated 03.11.2012 passed by the Appellate Court is well reasoned and the same is upheld.
9. The instant appeal is, accordingly, dismissed.

(VINOD CHATTERJI KOUL)
JUDGE

Jammu
28.12.2023
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