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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-221-1992 (O&M)**Reserved on : 07.02.2023****Date of Decision :28.02.2023**

Ram Avtar Singh

....Appellant

VERSUS

Jaipal Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjay Mittal, Advocate for the appellant.

Mr. Ashish Gupta, Advocate for the respondents.

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ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellant against the judgment and decree passed by the lower Appellate Court partly reversing the judgment and decree passed by the Trial Court which had decreed his suit for possession by way of pre-emption.

The brief facts relevant to the present lis are that the plaintiff-appellant filed a suit for possession by way of pre-emption of 12 kanals 0 marlas of land. It was the case set up by the plaintiff-appellant that he was a co-sharer in Khewat No.158 as the defendant-respondent No.3 had sold land measuring 32 kanals to him vide sale deed No.48 dated 03.04.1986. Thereafter, defendant-respondent No.3 vide sale deed dated 11.08.1987 sold 12 kanals of land in favour of defendant-respondent Nos.1 and 2. The plaintiff-appellant filed a suit for possession by way of pre-emption on the ground that he was a

co-sharer in the suit land. Defendant-respondent Nos.1 and 2 contested the suit. Defendant-respondent No.3 was given up by the counsel for the plaintiff-appellant on the basis of statement dated 10.04.1990. The contesting defendant-respondent Nos.1 and 2 filed their written statements. It was denied that the plaintiff-appellant was a co-sharer in the disputed khewat. Replication was filed by the plaintiff-appellant.

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

1. Whether the plaintiff has superior and preferential right to pre-empt the sale in dispute ? OPP
2. Whether the sale has been effected without giving any notice to the plaintiff, in the secret manner ? OPP
3. Whether the suit is time barred ? OPD
4. Whether the plaintiff has no locus standi for filing the present suit ? OPD
5. Whether the suit is not maintainable in the present form ? OPD
6. Whether the zare-panjam has not been deposited as per the order of the Court ? OPD
7. Whether the defendants have incurred the expenses of stamp and registration of the sale deed, if so to what amount ? OPD
8. Whether the defendant has spent Rs.4000/- on improvement of the suit land after purchase ? OPD
9. Whether the defendant is tenant gair morrousi even prior to the sale over the suit land ? If so to what effect ? OPD

10. Relief.

The Trial Court decreed the suit vide judgment and decree dated 20.02.1991. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-respondent Nos.1 and 2. The lower Appellate Court vide the impugned judgment and decree dated 30.09.1991 modified the decree of the Trial Court to the extent that the suit qua the suit land comprised in Khewat No.158 Khatoni No.204 Kila No.20//15/2 measuring 4 kanal 0 marlas was decreed and the suit of the plaintiff-appellant qua the suit land comprised in Rectangle No.20 Killa No.16 measuring 8 kanal was dismissed. Aggrieved by the same, the present appeal has been preferred by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant would contend that a co-sharer is considered as a co-sharer in the entire khewat and not in any specific khasra number. In support of his argument he has relied upon a Full Bench judgment of this Court in the case of **Ram Chander Vs. Bhim Singh & Ors. [2008 (3) RCR (Civil) 685]**. It is further the contention of the learned counsel that three vendors, namely, Rati Pal, who had 1/4th share in the khewat, Smt. Kashmiri, who had 1/2 share and Smt. Jayshree, who had 1/4th share sold 32 kanals to the plaintiff-appellant vide sale deed dated 03.04.1986. Though the sale deed was qua specific khasra numbers, however, the same would be deemed to be a sale of the share in the entire khewat. Learned counsel has relied upon the judgments of this Court passed in the cases of **Vijay Pal Vs. Rohtash Singh [2006 (4) RCR (Civil) 220]**; **Roop Ram Vs. Raj Kumar & Ors. [2014 (3) RCR (Civil) 215]**; **Jiya Lal (Deceased) through his LRs & Ors. Vs. Raj Kumar (Deceased) through his LRs [2021 (2) RCR (Civil) 352]**, **Ram Kishan & Anr. Vs. Daya Nand & Ors. [2019 (1) RCR (Civil) 180]**, **Bhartu Vs. Ram Sarup [1981 PLJ 204]** and a judgment of the Supreme Court in the

case of **Shyam Sunder & Anr. Vs. Ram Kumar & Anr. [2001 (3) RCR (Civil) 754]**.

Per contra, learned counsel for the defendant-respondents has contended that since Rati Pal, Smt. Kashmiri and Smt. Jayshree were the exclusive owners of the entire khewat, therefore the sale in favour of the plaintiff-appellant cannot be considered as a sale of share and would be considered a sale of a specific khasra number and hence the sale in their favour by defendant-respondent No.3 would not be pre-emptable. In support of his arguments, the learned counsel has relied upon the judgment of this Court in the case of **Bagha Ram Vs. Vidya Devi [2015 (4) RCR (Civil) 704]**.

Heard.

Before advertng to the facts of the present case, the brief history of pre-emption law as applicable to the present case may be noticed. In the case of **Lachhman Singh Sunder Singh Vs. Pritam Chand Kirpa Mal & Anr. [AIR 1970 P&H 304]**, a Full Bench of this Court held that purchase of land from a joint khewat by reference to specific killa/khasra number contained in specific rectangles would not confer the status of co-sharer in the entire joint khewat upon the vendee. In the case of **Bhartu Vs. Ram Sarup [1981 PLJ 205]** a Full Bench of this Court held to the contrary. Thereafter, in the case of **Ram Chander Vs. Bhim Singh & Ors. [2008 (3) RCR (Civil) 685]** a Full Bench of this Court was constituted to answer the question whether the purchase of land out of the joint khewat by reference to specific khasra numbers out of specific rectangle, entitles a vendee to assert his right as co-sharer in the entire joint holding/khewat comprised of other rectangle and khasra numbers. The Full Bench of this Court in **Ram Chander's** case (supra) held that the opinion recorded in the case of **Bhartu** (supra) was the correct enunciation of

law with respect to rights conferred upon a vendee who purchases land out of a joint khewat and the opinion recorded in **Lachhman Singh's** case (supra) did not lay down the correct position of law and was therefore over-ruled. It is also apt to note that the right of a co-sharer was taken away by the Haryana Amendment Act, 1995 to the Punjab Pre-emption Act, 1913. The Supreme Court in the case of **Shyam Sunder** (supra) held the amendment to be prospective in nature and it did not affect the rights of the parties to the litigation on the date of the adjudication of the pre-emption suit and the Appellate Court was not required to take into account or give effect to the substituted Section 15 introduced by the Amending Act.

In the present case the plaintiff-appellant (9/16th share) alongwith Vinod Lal (1/16th share), Kundan Lal (6/16th share) purchased 32 kanals of land vide sale deed dated 03.04.1986 from three co-sharers in the khewat, namely, Rati Pal, Smt. Kashmiri and Smt. Jayshree. The sale was qua specific khasra numbers. The defendant-respondent No.3 thereafter vide sale deed dated 11.08.1987 sold 12 kanals of land admittedly out of Khewat No.158, though by way of specific khasra numbers, in favour of the defendant-respondent Nos.1 and 2. The plaintiff-appellant claiming himself to be a co-sharer in Khewat No.158 filed a suit for possession by way of pre-emption. Learned counsel for the plaintiff-appellant has argued that it is no longer *res integra* that a specific khasra number sold out of a joint khewat would still confer the title of a co-owner on the vendee inasmuch as in **Ram Chander's** case (supra) a Full Bench of this Court held that the law as laid down in the case of **Bhartu Ram** (supra) was the correct enunciation of law.

In the present case also there is no dispute that the sale in favour of the defendant-respondent Nos.1 and 2 is from the same khewat. However, the

learned counsel for the defendant-respondents has argued, relying upon a judgment of this Court in **Bagha Ram** (supra), that where the vendor is the sole vendor and he sells a part of property by specific khasra numbers, the same gives an exclusive title to the vendee and the plaintiff has no community of interest and in the present case since the three vendors had sold their land together hence the ratio of the said judgment would be fully applicable.

The Full Bench of this Court in **Ram Chander's** case (supra), upholding the law laid down in **Bhartu's** case (supra), specifically held that a person purchasing specific khasra numbers would still be considered a co-sharer in the khewat.

In para 18 of the judgment in **Ram Chander's** case (supra), it was held as under :-

“18. It is, therefore, apparent that co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killla number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial division of the joint land into different rectangles, khasra and killa numbers.”

The argument raised by the learned counsel for the defendant-respondents deserves to be rejected in view of the law laid down by the Full Bench in the case of **Ram Chander** (supra). Further still, in the present case there were three co-owners who sold part of their shares to the plaintiff-appellant and two others by mentioning their share though by way of specific khasra numbers. On purchase of those shares, the plaintiff appellant became a co-sharer and by virtue of being a co-sharer he would have a right to pre-empt the sale.

In view of the above, the judgment passed by the lower Appellate Court cannot be sustained. The part of the judgment of the lower Appellate Court whereby the suit of the plaintiff-appellant qua Rectangle No.20 Killa No.16 measuring 8 kanals has been dismissed, is liable to be set aside. Ordered accordingly. The judgment of the Trial Court is restored. The present appeal is allowed in the above terms. Pending applications, if any, also stand disposed off.

28.02.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No