

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

**RSA No.1678 of 1988 (O&M)
Date of decision: 02.09.2015**

Sat Narain and others ... Appellants

Vs.

Karan Singh and others ... Respondents

RSA No.1645 of 1988 (O&M)

Sat Narain and others ... Appellants

Vs.

Karan Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Alok Jain, Advocate
for the appellants (in both appeals).

Mr. Ashish Kapoor, Advocate
for the respondents (in both appeals).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals, bearing Nos.1678 and 1645 of 1988.

Karan Singh and another filed a civil suit for possession by way of pre-emption on the ground that plaintiff and defendants

No.1 and 2 were co-sharers in the land in question measuring 70 kanals 8 marlas in all, situated, in the revenue estate of village Katwara, Tehsil and District Rohtak. The defendants No.1 and 2 have sold their, entire one half share in the land in question to the defendants No.3 to 9, vide sale deed executed on 23.06.1981 and registered on 25.06.1981, therefore, cause of action arose to file the suit as they had preferential right for purchasing the property. It was further submitted that the land in question was allegedly sold for a consideration of ₹ 40,000/- in order to scare away the subsequent pre-emptors.

The aforementioned suit was decreed by the trial Court vide judgment and decree dated 07.01.1987 and the plaintiffs were called upon to deposit a sum of ₹79,000/- (₹70,000/- as sale consideration, ₹8750/- as stamp registration and ₹250/- as other miscellaneous charges) minus the 1/5th pre-emption amount already deposited on or before 07.02.1987.

The aforementioned judgment and decree was assailed by the plaintiff-Karan Singh by filing the appeal before the lower Appellate Court, which has been allowed in part, ₹70,000/- has been reduced to ₹60,000/- and the appeal filed by the defendants No.1 and 2 has been dismissed.

It is in these circumstances that the aforementioned two appeals have been filed.

Mr. Alok Jain, learned counsel appearing on behalf of the

appellants submits that as per ratio decidendi culled out by the Hon'ble Supreme Court in **Atam Parkash vs. State of Haryana** 1986 AIR (SC) 859, the right of pre-emption given to co-shares and tenants is valid and constitutional but the right given under Section 15(2) of the Punjab Pre-emption Act, 1913 had been taken away.

He further submits that aforementioned judgment was delivered on 27.02.1986 when the suit was pending and in view of the penultimate paragraph 14, it was directed by the Hon'ble Supreme Court that the said suits and appeals shall be decided in accordance with the declaration in Atma Parkash's case (supra). Defendants had already taken a stand that suit was not maintainable. Property came to the share of the defendants through their mother Chanan Kaur, therefore, protection as per Section 15(2) of the Act is available.

For the sake of brevity paragraph 14 of the judgment of the Hon'ble Supreme Court in Atma Parkash's case (supra) is reproduced herein below:-

“14. We are told that in some cases suits are pending in various Courts and, where decrees have been passed, appeals are pending in appellate Courts. Such suits and appeals will now be disposed of in accordance with the declaration granted by us. We are told that there are a few cases where suit have been decreed and the decrees, have become final, no appeals having been filed

against those decrees. The decrees will be binding inter partes and the declaration granted by us will be of no avail to the parties thereto”

Mr. Ashish Kapoor, learned counsel appearing on behalf of the respondents submits that there is no illegality and perversity in view of the ratio decidendi culled out by the Hon'ble Supreme Court in Atma Parkash's case (supra).

Mr. Alok Jain, in rebuttal, submits that in view of the Haryana Amendment Act 10 of 1995 (hereinafter referred to as the Act 10 of 1995), right of pre-emption of co-sharer in respect of sale is taken away but the same was assailed and the Hon'ble Supreme Court in **Pirithi vs. Mohan Singh and others** (2011) 9 Supreme Court Cases 107 held that amendment would be prospective in nature and it has to be seen:-

- i) When cause of action had accrued;
- ii) When the sale was made; and
- iii) Whether it was available on the date of filing of the suit and decree of the Court at first instance.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

It is a matter of record that decree of the first Court is of 07.01.1987 and therefore, the Act 10 of 1995, would not apply in view of the judgment in Pirithi's case (supra). Even otherwise, ratio decidendi culled out by the Hon'ble Supreme Court in Atma

Parkash's case (supra) is squarely applicable to the facts and circumstances of the present case as the protection under Section 15(2) of the Act 10 of 1995 is no longer available to the appellants which has been held to be un-constitutional.

In view of the aforementioned facts, there is no illegality and perversity in the impugned judgments and decrees of the Courts below. However, there is justification in the submission made by Mr. Alok Jain, Advocate that finding with regard to reduction of the amount of ₹70,000/- to ₹ 60,000/- is erroneous.

I am in agreement with the aforementioned submission made by learned counsel for the appellants. It is held that the decree passed by the trial Court dated 07.01.1987 shall be restored back and the respondent-plaintiffs will be liable to deposit ₹ 70,000/- as ordered by the trial Court.

In view of the aforementioned observations, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

September 02, 2015
savita