

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

**RSA No.2495 of 1988
Date of Decision: 04.09.2015**

Bagha Ram

....Appellant

Vs

Smt. Vidya Devi

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Som Nath Saini, Advocate
for the appellant.

Mr. Ashok Verma, Advocate
for the respondent.

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

RAJ MOHAN SINGH, J.

[1]. Plaintiff-Bagha Ram is in second appeal against the judgment and decree dated 13.10.1988 passed by District Judge, Sirsa whereby judgment and decree dated 20.05.1988 passed by Senior Sub-Judge, Sirsa has been reversed.

[2]. Brief facts of this case are that plaintiff-Bagha Ram filed a suit for possession by way of pre-emption on the ground that vendor Karam Chand sold 3 *Kanals* 6 *Marlas* of land in Rect. No.44//2/2 (1-18) and Killa No.37//23/1 (1-8) situated in village Moujdin along with rights appurtenant thereto in favour of defendant Smt. Vidya Devi vide registered sale deed dated 26.11.1985. Plaintiff claimed that in fact real sale consideration was only for Rs.20,000/-, but in

order to defeat right of pre-emption of the plaintiff/appellant, a fictitious sale consideration of Rs.24,500/- was got recited in the sale deed. Plaintiff claimed superior right of pre-emption against the defendant-vendee who is a stranger.

[3]. Defendant contested the suit on all customary pleas. Superior right of the plaintiff for pre-emption was declined. Suit was claimed to be not maintainable. After filing replication by the plaintiff, trial Court framed the following issues:-

- “1 Whether the plaintiff has a superior right to pre-empt the sale in question on the ground of his being a co-sharer in the suit land ? OPP*
- 2. Whether the entire sale consideration was actually paid or fixed in good faith ? OPD*
- 3. If issue No.2 is not proved, what was the market value of the suit land at the time of sale? OPP.*
- 4. Whether the suit is bad for partial pre-emption ? OPD.*
- 5. Whether the suit is not maintainable in its present form? OPD*
- 6. Whether the defendant is entitled for stamp and registration charges in the event of suit being decreed? OPD*
- 7. Whether the defendant is entitled for Rs.2000/- on account of the improvements on the suit land? OPD.*
- 8. Relief.”*

[4]. Both the parties led evidence, trial Court decreed the suit by recording that Karam Chand has been recorded to be in possession of the suit having purchased 14 *Kanals* 6 *Marlas* of land from S/Shri Banwari Lal, Dwarka Parshad, Parshotam Lal and Jai Parkash (original owners). Mutation was also sanctioned on 13.10.1984 vide Ex.PX. Karam Chand was owner in possession of 14 *Kanals* 6 *Marlas* of land referred to above on the basis of registered sale deed dated 25.05.1984. Thereafter vide civil Court decree dated 07.11.1984, Karam Chand transferred 9 *Kanals* of land in Rect. and Killa Nos.37//24/1(4-8), 23(4-12) to Plaintiff Bagha Ram by means of family settlement. Plaintiff was held to be co-sharer with vendor Karam Chand on the strength of aforesaid transfer of land by way of civil Court decree dated 07.11.1984.

[5]. After the aforesaid decree Karam Chand sold 3 *Kanals* 6 *Marlas* of land of Rect. and Killa Nos.44/2/2 (1-8), 37/23/1 (1-8) in favour of vendee. This sale was sought to be pre-empted by the plaintiff. Trial Court did not accept the plea of the defendant that plaintiff could have been co-sharer with the vendor only if vendor had transferred a share in favour of the plaintiff. The trial Court noted the concept of co-sharership emerged on the basis of interpretation done by this Court in **Lachhman Singh v. Primtam Chand and another,1970 PLR 341** (Full Bench) and **Bhartu v. Ram Sarup 1981 PLJ 204** (Full Bench) and ultimately held that even if sale of share of specific Killa Number has been made out of joint land, the same amounted to sale of share unless and until suit land is

partitioned by metes and bounds. Trial Court decreed the suit.

[6]. However in appeal, judgment and decree of the trial Court was reversed. The Lower appellate Court held that Karam Chand purchased entire land from his vendors namely S/Shri Banwari Lal, Dwarka Parshad, Parshotam Lal and Jai Parkash and thereafter the vendors had no right or title in the suit land. The vendee Karam Chand did not get any right in rest of the property in the same *khewat*. It was not a case where Karam Chand might have become co-sharer in *Khewat* No.78 owned by his vendors Banwari Lal and etc.

[7]. Learned counsel for the appellant seeks to project following substantial questions of law for consideration of this Court:-

- (i) Whether by virtue of civil Court decree dated 07.11.1984 out of total land measuring 4 *Kanals* 6 *Marlas*, plaintiff/appellant became co-sharer and thereafter qua the suit land, he has superior right of pre-emption?
- (ii) Whether sale of specific *khasra* number out of joint land amounted to sale of share till land is partitioned by metes and bounds?

[8]. There is no dispute regarding the aforesaid proposition that sale of specific *khasra* number out of joint land amounts to sale of share till the land is formally partitioned by metes and bounds. It is a settled principle of law that every co-sharer would be deemed to be in possession of every inch of land till the land is partitioned.

[9]. Here the point in issue is that right of co-sharer to pre-empt the land has to be tested on the premise that whether a co-sharer is a person having share in community of interest having a right of partition with other co-sharers and vendee of specific *khasra* number from a sole owner whether would get status of a co-sharer with his vendors with a right of pre-emption of subsequent sale? Secondly whether the sale made in favour of lady is amenable to pre-emption under Section 15(1)(b) of the Punjab Pre-emption Act (for short' the Act')?

[10]. On the aforesaid premise, learned counsel for the respondent submitted that vendee of specific *Killa* number from a sole owner does not get status of co-sharer with his vendors. The exclusive owner of the land will give an exclusive title to the vendee even if part of *khasra* number is sold. Learned counsel relies upon **2007(1) RCR (Civil) 552, Rajinder Singh and others v. Pirthi and others**. Para 15 of the aforecited judgment reads as under:-

*“15. Rather, the facts of this case are more similar to the facts of the judgment reported as **Inder Singh and Ors. v. Om Parkash and Ors. 1990(1) RRR 62 (P&H) : 1989 P.L.J. 754** as is clear from para No. 2 of the judgment which reads as under:*

The undisputed facts are: Vas Dev was owner of land measuring 34 Kanals 2 marlas comprised in Khewat No. 240/327, Khatoni No. 395, Rectangle No. 133, Killa Nos. 5, 6, 15 and Rectangle No. 134, Killa Nos. 10 and 11 as entered in Jamabandi Ex.P3 for the year 1981-82. He transferred the land measuring 19 kanals 4 marlas comprised in

Khewat No. 240/237, Khatoni No. 395, Rectangle No. 133, Killa Nos. 5(4-16), 6(6-18) and 15(7-10) vide sale deed dated January 18, 1984 to Om Parkash and others (hereinafter referred to as the plaintiffs) and vide sale deed dated May 17, 1985, he sold the land measuring 14 kanals 18 marlas comprised in Khewat No. 240, Khatauni No. 395, Rectangle No. 134, Killa Nos. 10(8-0) and 11(6-18) to Inder Singh and others (hereinafter referred to as the vendees).

Dealing with the law of pre-emption, it was observed by this Court in Inder Singh's case (supra) as under:

A co-sharer is the person, who has share in the community of interest whether the same is fixed or flexible along with others in a joint property held by them all. When land or property belongs to two or more persons jointly and is undivided, each of them is a co-sharer with the other in the joint property. The concept of joint property used in Section 15(1)(b) of the Act. presupposes that it belongs to a person or persons other than the vendor. In the instant case, Vas Dev was the sole owner of land measuring 34 kanals 2 marlas. He transferred specified field numbers in Rectangle No. 133 Killa Nos. 5(4-16), 6(6-18) and 15(7-10) to the plaintiffs vide sale deed January 18, 1984 and put them in possession thereof. He was also owner of another Rectangle No, 134 bearing separate Killa numbers, namely 10(8-0) and 11(6-18) and transferred the same to the vendees vide sale deed dated May, 17, 1985. The purchaser of a share of specified Killa numbers in specified Rectangle will not become a co-sharer in the

Khewat. The plaintiffs did not purchase an undivided share of the joint land Khata is equivalent to a Khewat and in the matter of finding out for the exercise of preferential right of pre-emption, the status of the party as a co-sharer has to be seen in a Khata or Khewat. In the present case, the plaintiffs are purchasers of specified field numbers in specified Rectangle only and not in the whole joint land and they will not become co-sharers in the Khewat or Khata. The word co-sharer' in the context of pre-emption law denotes a person who holds a share or shares in the whole of the property of properties of which another share or other shares were the subject matter of sale. The plaintiffs will thus not become co-sharers."

[11]. Even on second principle admittedly vendee is a lady. Sale effected in favour of lady is not pre-emptable under Section 15(1)(b) of the Act. I am squarely fortified in my view on the strength of judgment rendered in **Bal Ram vs. Smt. Sarbati, 2010(3) RCR (Civil) 561.**

[12]. The contention of learned counsel for the appellant that the sale of specific *Killa* number amounts to sale of share in a case of joint holding is not attracted in the present case because exclusive owner will give exclusive title to the vendee even if part of *khasra* number is sold. The plaintiff had no community of the interest and he does not get status of co-sharer with his vendor with a right of partition and pre-emption of the sale in question.

[13]. In **Bhartu Ram's** case (supra) vendor was a joint owner/co-

sharer. He had sold 2 square yard out of 4 *kanals* 2 *marlas* of land in one *khasra* number. The right of partition had become available to the vendee and, therefore, this Court was pleased to held that vendor will sell only that right which he had in the suit land. Conversely, if the vendor was the exclusive owner, then he would confer right of exclusive ownership on the land sold, but if he was a joint owner/co-sharer, then he would confer the right of joint ownership on the vendee.

[14]. In view of above, there is no merit in the appeal and the same is dismissed, leaving the parties to bear their own costs.

September 04, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE