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

**RSA No.175 of 1990 (O&M)
Date of Decision: 11.03.2015**

Jasbir Singh

.....Appellant

Vs

Joginder Singh and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.D. Bansal, Advocate
for the appellant.

Mr. Maharaj Kumar, Advocate
for respondent No.1.

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]. The present regular second appeal has been filed by the defendant-Jasbir Singh against the concurrent judgments and decrees passed by the Courts below.

[2]. Plaintiff-Joginder Singh filed a suit for possession by way of pre-emption of land measuring 5 Kanal 14 Marlas i.e. 114/2000 share out of total land measuring 100 Kanal as per plaint situated in the revenue estate of village Dachar, Tehsil Assandh, District Karnal.

[3]. The plaintiff asserted in the plaint that Gurnait Singh sold his share in the land as per para No.1 of the plaint to Darshan Singh-

defendant No.1 vide registered sale deed dated 23.08.1982 for a total sale consideration of ₹15,675/-. Plaintiff sought to pre-empt the aforesaid sale on the basis of his co-sharership in the joint land. Plaintiff further pleaded that actually the land was sold for a consideration of 14,675/- but inflated amount of ₹1,000/- was shown in order to scare away the prospective pre-emptor.

[4]. Jasbir Singh No.2 also filed a suit for pre-emption in respect of the impugned sale in favour of Darshan Singh. In the said suit Darshan Singh admitted the claim of Jasbir Singh, resulting in passing of the collusive decree in **civil suit No.887 of 1993** dated 26.04.1984. Jasbir Singh alleged to have deposited the decretal amount and became owner of the land by way of pre-emption decree passed in his favour. The plaintiff accordingly amended the plaint and arrayed Jasbir Singh as defendant No.2 in the suit.

[5]. Vendor-Darshan Singh defendant No.1 contested the suit on the ground that he was no longer owner in possession of the land because the ownership rights stood conferred on Jasbir Singh in view of decree dated 26.04.1984. Defendant No.2 Jasbir Singh also contested the suit on number of grounds. The trial Court after completion of necessary pleadings framed the following issues:-

“1. Whether the plaintiff has superior right of pre-emption? OPP

2. Whether the decree dated 26.04.1984 passed in

civil suit No.887 of 1983 is not binding on the plaintiff as alleged in para No.4(A) of the plaint?OPP

3. *Whether the sale consideration was fixed in good faith or actually paid; OPD*
4. *If issue No.2 is not proved, what was the market value of the suit land at the time of sale? OPP parties.*
5. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
6. *Whether the suit is not maintainable in the present form and in view of decree dated 26.04.1984 as alleged in Para No.3 in the preliminary objection of the written statement filed by defendant No.?OPD.*
7. *Whether the vendee-defendants have incurred stamp and registration charged?OPD*
8. *Relief.”*

[6]. Issues No.1, 2 and 6 were considered jointly by the trial Court and it was held that both the suits were filed on 23.08.1983 and were within limitation. The claim of Jasbir Singh for pre-emption was conceded by the vendee-Darshan Singh, resulting in passing of the decree dated 26.04.1984 in favour of Jasbir Singh. Therefore, Jasbir Singh had stepped into the shoes of vendee Darshan Singh. On account of the said substitution, Jasbir Singh, was entitled to

defend suit on all pleas which were available to the vendee-Darshan Singh.

[7]. The decree dated 26.04.1984 in itself was not sufficient to defeat the right of pre-emptor/plaintiff because the right of pre-emption *inter se* between plaintiff and Jasbir Singh had not been determined. The decree dated 26.04.1984 only determined the right of Jasbir Singh viz-a-viz Darshan Singh and not the right *inter se* between plaintiff and Jasbir Singh which were required to be adjudicated in the present suit. The right of pre-emption on behalf of Jasbir Singh was passed on relationship with the vendor. Jasbir Singh was required to maintain his right of pre-emption on all the material dates i.e. upto the decree passed by the trial Court. By virtue of abrogation of right of pre-emption on the basis of relationship in **Atam Parkash v. State of Haryana 1986(1) PLR 329**, Jasbir Singh could not have defeated the right of plaintiff on the basis of co-sharership. Trial Court decided the material issues in favour of the plaintiff and decreed the suit for possession by way of pre-emption in favour of plaintiff Joginder Singh vide judgment and decree dated 23.02.1987.

[8]. Defendant No.2 Jasbir Singh assailed the judgment and decree of the trial Court in appeal before the Additional District Judge, Karnal. In the memo of appeal the judgment and decree of the trial Court was assailed on many grounds but during the course of arguments before the Lower Appellate Court, appellant confined

his arguments to the point of limitation only. According to him, suit of the plaintiff had become time barred when he was impleaded as party to the suit by way of amendment and the sale of land was executed on 23.08.1982 whereas the amendment in the plaint was made on 26.09.1984. Therefore, at the time of his impleadment as a party-defendant, the suit had become time barred. Lower Appellate Court discarded the arguments of the appellant that Jasbir Singh defendant No.2 obtained the decree dated 26.04.1984 during the pendency of the suit, therefore, doctrine of *lis pendens* was squarely applicable.

[9]. Since both the suits were filed to pre-empt the sale dated 23.08.1982, therefore, both the suits should have been clubbed, but Jasbir Singh in collusion with Darshan Singh-vendee obtained the collusive decree of pre-emption in a clandestine manner. Joginder Singh was not in the knowledge of the institution of the suit, therefore, plaintiff was not bound by the decree in question and, therefore, challenge to such a decree dated 26.04.1984 passed in **civil suit No.887 of 1983** could have been made within three years. By relying upon **Sant Kaur v. Teja Singh AIR (33) 1946 Lahore,** Lower Appellate Court dismissed the appeal.

[10]. In the present appeal even though no substantial question of law has been framed by the appellant but still this Court proceeded to test the claim of the appellant on the following legal issue:-

“Whether the suit of the plaintiff had become time barred at the time when Jasbir Singh was ordered to be impleaded as party defendant No.2 in the suit?

[11]. This Court has considered the aforesaid argument as this was the solitary argument raised before the Lower Appellate Court. The contention of the learned counsel for the appellant was that the sale in question was effected on 23.08.1982 and amendment was allowed on 26.09.1984 whereby Jasbir Singh was impleaded as party to the suit, therefore, at the time of impleading Jasbir Singh as party, the suit was beyond period of limitation as provided under the Limitation Act. The rule of substitution on the passing of the decree for possession by way of pre-emption was to be seen when pre-emptor was substituted in place of vendee-defendant as if he had purchased the land from the original vendor. Jasbir Singh was substituted in place of Darshan Singh in the same manner as if he had purchased the suit land from the original vendor on 23.08.1982. This Court does not approve the contention of learned counsel for the appellant.

[12]. Even if Jasbir Singh presumed to have been substituted in place of Darshan Singh then he would have taken all the rights and liabilities which were possessed by Darshan Singh. Since the suit for pre-emption on the basis of relationship and decree thereof was a collusive affair, therefore, same did not bind the plaintiff. Therefore, the decree dated 26.04.1984 itself was assailable by the plaintiff

within a period of three years being a secret affair and was hit by doctrine of *lis pendens*. The right of pre-emption *inter se* between the plaintiff and Jasbir Singh were legally required to be adjudicated in the present suit and, therefore, being hit by doctrine of *lis pendens*. The decree dated 26.04.1984 did not advance the case of Jasbir Singh in any manner and was rightly assailed by the plaintiff for which limitation was three years from the date of decree or from the date of knowledge about the said decree.

[13]. The principles enunciated in **Sant Kaur v. Teja Singh's case** (supra) were squarely applicable to the facts of this case.

[14]. The Hon'ble Supreme Court in case of **Atam Parkash v. State of Haryana** held that right of pre-emption in favour of kinsfolk based on consanguinity is un-constitutional and declared Section 15(2) of the Pre-emption Act as *ultra vires* the Constitution. Since the defendant No.2 was required to maintain his statutory right based on relationship on the date of sale, on the date of filing of suit and at the time of passing of decree by the trial Court, therefore, having failed to stand to the scrutiny of availability of legal right as on date of decree, Jasbir Singh lost his right of pre-emption based on relationship as it was rightly taken away by virtue of judgment of the Apex Court.

[15]. In view of aforesaid, question as formulated in preceding para is decided against the defendant No.2/appellant. The suit of the

plaintiff was not hit by limitation or by any legal implication. Therefore both the Courts have rightly decreed the suit of the plaintiff.

[16.] The suit of the plaintiff was decreed on the basis of right of plaintiff as co-sharer. Even this right was also subsequently taken away but the amendment in question was prospective in nature as held in **Shyam Sunder v. Ram Kumar 2001(3) RCR (Civil) 754.**

[17.] Resultantly, no legal issue worth cognizance is found in the present appeal and the same is dismissed, leaving the parties to bear their own costs.

March 11, 2015

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**(RAJ MOHAN SINGH)
JUDGE**