

589

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2470 of 1994 (O&M)
Decided on : December 09, 2015

SINGH RAM AND ANOTHER

....Appellant

VERSUS

SWARAN SINGH AND OTHERS

....Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arvind Singh, Advocate
for the appellants.

Mr. Varun Gupta, Advocate
for the respondents.

AMIT RAWAL, J (ORAL)

CM No.6040-C of 2015

Prayer in the application is for granting permission to Parshotam Dass plaintiff/respondent son of Sohan Lal to defend and prosecute the appeal in his individual capacity as he has become major.

Permission is granted to Parshotam Dass plaintiff/respondent son of Sohan Lal to prosecute the appeal in his individual capacity as he has become major.

RSA No.2470 of 1994

Appellant-defendant is in regular second appeal against the concurrent findings of fact whereby the suit for possession by way of pre-emption at the instance of co-sharers-plaintiffs has been decreed by both

the Courts below.

Mr. Arvind Singh, learned counsel appearing on behalf of the appellants submits that the sale in question had taken place for a consideration of Rs.60,000/-, actually the amount of Rs.15,000/- was paid by the defendants to the vendor on 30.06.1990 and the remaining amount of Rs.45,000/- was to be paid before Sub Registrar at the time of registration of sale deed. The plaintiffs were very much in the knowledge of the sale deed and thus had no superior right to pre-empt the suit land. As per the sale deed from which he had derived the title from the previous vendors were found to be an exclusive owner in possession of the land consisting of khasra No.38/21(8-0). So, defendants cannot be said to have purchased any specific share, therefore, no cause of action accrued in favour of the respondent-plaintiff to seek the pre-emption as plaintiff also, became the co-sharer, thus suit was not maintainable. The afore mentioned facts have not be noticed by both the Courts below, thus, prays that there is illegality and perversity in the impugned orders, much less substantial question of law arise for determination by this Court.

Mr. Varun Gupta, learned counsel appearing on behalf of respondent-plaintiff submits that the revenue record showed the property to be in joint ownership of the previous vendor and as well as the present co-sharers. The other co-sharers did not offer the property before selling it to the respondent-plaintiffs and sold the same vide sale deed dated 05.06.1991 and therefore, the Courts below have rightly decreed the suit,

by rendering finding on the basis of the appreciation of oral and documentary document.

I have heard learned counsel for the parties and appraised the paper book and records. Both the Courts below concurrently found that the revenue record ex facie proved the jointness of the property. Even if there is recital of purchasing the property by way of khasra No.38/21(8-0) it does not tantamounts to partition amongst co-sharers and would only be relating to a share. The revenue record carries the presumption of truth than what has been stated by the parties, to the sale deed. It is their own volition which prescribes the nature and the character of the property. Revenue record irresistibly reveals that both the parties were co-sharers and therefore the respondent-plaintiff had a pre-emption right as the preemption Act in vogue to purchase the property than the third party.

Keeping in view afore mentioned facts, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate Court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

December 09, 2015
rajneesh

(AMIT RAWAL)
JUDGE