

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

R.S.A.No.256 of 2011 (O&M)

Date of Decision: November 3rd, 2015

Beg Raj & others

...Appellants

Versus

Rajinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Anurag Jain, Advocate,
for the appellant.**

**Mr.Vivek Aggarwal, Advocate,
for respondent No.1.**

**Mr.Mani Ram Verma, Advocate,
for respondent No.2.**

AMIT RAWAL, J.

The short question involved in the present Regular Second Appeal is to the interpretation of provisions of unrepealed Section 15 of the Punjab Pre-emption Act, 1913 (for short “the Act”), which provides that the right of pre-emption in respect of agricultural land and village immovable property vis-a-vis tenant is available, which defines as under:-

“15. Persons in whom right of pre-emption vests in respect of sale of agricultural land and village immovable property.

(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest-

(a) *where the sale is by a sole owner,-*

xxx

xxx

xxx

Fourthly, in the tenant who holds “under tenancy” of the vendor the land or property sold or “a part” thereof”

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of fact, whereby the suit for pre-emption vis-a-vis land measuring 16 kanals 7 marlas under their tenancy, has been dismissed on the ground that the sale deed dated 30.8.2004, executed by the owner, was in respect of land measuring 16 kanals 15 marlas. In essence, the plaintiffs were required to claim the pre-emption qua the entire land sold and not part thereof under their tenancy.

Mr.Anurag Jain, learned counsel appearing on behalf of the appellant-plaintiffs submits that in view of statutory provisions of law, the tenant can claim pre-emptory right only in three situations and since the plaintiffs were under tenancy in an area measuring 16 kanals 7 marlas, the pre-emption for that very land instead of 16 kanals 15 marlas, allegedly sold vide sale deed, aforementioned, was sought, thus, both the Courts below have committed illegality and perversity in dismissing the suit. In support of his contention, he has relied upon the judgment rendered by this Court in **Shingara Singh Versus Raghbir Singh and others, 1979 P.L.J. 104 (para 4)** and the judgment of the Hon'ble Supreme Court rendered in **Ram Chand Versus Randhir Singh and others, 1994 PLJ 543** and, therefore, the following substantial question of law arises for determination by this Court:-

“Whether the tenant would be entitled to seek pre-emption of the property under the tenancy of the vendor or of the entire

land?

Mr.Mani Ram Verma, learned counsel appearing on behalf of respondent No.2 submits that as per the judgment rendered by the Division Bench of this Court in **Ganga Singh Versus Narinjan Singh, 1971 P.L.J. 458** and as well as the one relied upon by the appellant-plaintiffs, i.e., **Ram Chand (supra)**, the right of pre-emption can be claimed qua the entire land sold and not with regard to the part of the same. He has also cited the judgment rendered in **Paramjit Singh Versus Jora Singh, 1997(2) Civil Court Cases 696 (P&H)** and, thus, prays that there is no illegality and perversity in the judgments and decrees, much less, no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties and appraised the paper book.

On plain and simple reading of definition of Section 15(1) of the Act, it is clear that the right of pre-emption can be claimed by a tenant in respect of property under his tenancy or the property sold or part thereof, therefore, the findings rendered by both the Courts below that the appellant-plaintiffs were required to seek pre-emption of entire land, i.e., 16 kanals 15 marlas, sold vide sale deed dated 30.8.2004, and not in respect of land measuring 16 kanals 7 marlas, which was under their tenancy.

It is a matter of record that the appellant-plaintiffs had deposited the requisite amount on 7.2.2005, i.e., the pre-emption money. In paragraph 16 of the plaint, it has been specifically mentioned that in case there is some error in calculation of the area, then the pre-emption be granted in respect of the land, which has not been specifically sought for.

In my view, the findings rendered by the Hon'ble Supreme Court in **Ram Chand's case (supra)**, would apply in the present case. For the sake of brevity, question (ii) posed and the answer given thereto read thus:-

“(ii) whether an agricultural tenant holding under tenancy of the vendor a part of the sold land is entitled to pre-empt the entire sale?”

13. The word “like” was obviously used to cover up the case of someone other than the co-sharer. And besides the co-sharer, only the tenant now has the right of pre-emption. So the word “like” seemingly was conceived to include the case of a tenant. The second question therefore is answered accordingly to hold that an agricultural tenant holding under tenancy of the vendor a part of the sold land is entitled to pre-empt the entire sale.”

The aforementioned findings of the Hon'ble Supreme Court are in consonance with the provisions of the Act. Similar is the view taken by the learned Single Judge of this Court in **Shingara Singh's case (supra)**. The Division Bench, while rendering the findings, has not taken into consideration the definition of the provisions of Section 15(1) (clause fourthly) of the Act, which is applicable to the tenant and, therefore, in my view, the judgment in **Ram Chand's case (supra)** is judgment in personam and not in rem. The appellant-plaintiffs could not claim the pre-emption of the entire land as they were admittedly tenants of land measuring 16 kanals 7 marlas and not of 16 kanals 15 marlas. Even this Court in **Paramjit Singh's case (supra)**, did not have an occasion to refer to the provisions of Section 15(1) of the Act.

In view of what has been observed above, the judgments and decrees of both the Courts below are not sustainable in the eyes of law and are hereby set-aside and the suit of the appellant-plaintiff is hereby decreed. Decree-sheet be prepared accordingly.

The appeal is allowed.

November 3rd, 2015
ramesh

(AMIT RAWAL)
JUDGE