

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2388 of 2015 (O&M)

Date of Decision: 30.07.2015

Suresh Whig

.... Appellant

Versus

Fredy Wedi and others

.... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kunal Mulwani, Advocate,
and Mr. Aditya Sanghi, Advocate,
for the appellant.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. The plaintiff filed a suit for pre-emption claiming to be a tenant protected by the Haryana Amendment Act 10, 1995 to the Punjab Pre-emption Act, 1913 which has failed in both the courts below. The suit was filed in the year 2007 to pre-empt the sale deed dated June 11, 1996 with respect to the tenanted land when the defendants-vendees purchased the suit land. The plaintiff based his claim on a *pattanama* or lease deed. This document has been disbelieved by the courts below as one not above suspicion. The courts have noticed the correct position that a suit to pre-empt a sale deed suffers limitation of one year from the date of execution of sale deeds. Section 30 of the Act provides limitation to bring suits for pre-emption and reads:

“30. Limitation.-In any case not provided for by article 10 of the Second Schedule of the Indian Limitation Act, 1908, the

period of limitation in a suit to enforce a right of pre-emption under the provisions of this Act shall, notwithstanding anything in Article 120 of the said schedule, be one year -
(1) in the case of a sale of agricultural land or of village immovable property, from the date of the attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutations maintained under the Punjab Land Revenue Act, 1887, or from the date of which the vendee takes under the sale physical possession of any part of such land or property; whichever date shall be the earlier;”

In the present case the first registered sale deeds Exs.DW-2/1 and DW-2/2 were both executed on June 11, 1996 by defendants 5 and 6 in favour of defendant 1. Defendant 1 further sold the suit land to defendant 2 in the year 2006 by a registered sale deed and his vendee further sold it to defendants 3 and 4 in the same year. Therefore, the property has changed hands many times over but the plaintiff pleads ignorance and want of knowledge of these transactions occurring since the year 1996 while at the same time he claims to be in cultivating possession of the suit land admeasuring 15 Kanals 2 Marlas of agricultural property as a tenant.

2. The plaintiff has been non-suited by both the courts of fact not just by disbelieving the validity of the *pattanama* but also on account of the suit being barred by limitation prescribed for instituting pre-emption suits. Even assuming that the plaintiff is continuously tilling the property in dispute, as his counsel makes one believe, he still does not appear to possess any actionable right to seek a nullification of the sale deeds through the statutory right to pre-emption afforded by the 1995 Haryana Amendment to the Punjab Pre-emption Act, 1913 favourable to tenants alone while abrogating the rights of co-sharers in village agricultural land. Section 15

emption in respect of sale of agricultural land and village immovable property shall vest in the tenant who holds under tenancy of the vendor/vendors the land or property sold or a part thereof." The plaintiff was unable to show that the purchasers of the disputed land had in the year 1996 bought encumbered land or that defendants had notice of the appellant as tenant in lawful possession recorded in the revenue entries on or prior to the date of the sale.

3. However, learned counsel for the appellant contends that the appellant is still holding possession of the suit property. Even if that were true it would still appear not to confer any right on the appellant unless he is able to establish lawful entry over the suit land qualifying as a tenant under the Act over the property in dispute. The court has disbelieved the assertion that he came into lawful possession because the *pattanama* since the *pattanama* itself has been disbelieved as a valid document which finding of fact if correct removes the very basis of the claim built as tenant in possession with right to pre-empt the first sale. Merely because the document is registered would it mean that it has evidentiary value as probative evidence of lease and tenancy. This is only determinative that registration took place but not that the transaction is dependable as evidence of lease. Counsel submits that the *pattanama* or lease deed has been proved by the witnesses for the plaintiff, namely, the scribe PW-1 Arvind Kumar and the attesting witness PW-3 Om Pal and this is sufficient in law. There is another rival argument to contend with put forth by the opposite party which requires to be noticed and which is that in reply to the plaintiff defendant 1 took the defence that option had been offered to the plaintiff to

buy the suit corpus in recognition of his right of pre-emption. But this emphatic assertion was not controverted by filing replication and, therefore, goes unrebutted because this fact was not pleaded in the plaint that despite making an offer defendant had backed out. There is also no evidence to the contrary of an acceptance of the offer and willingness to accept either before the litigation started or thereafter by deposit of sale consideration or furnishing of security in the event of a decree, even given that right to pre-emption exists till the date of the decree and is not dependent on the date of the sale.

4. Then the learned counsel relies on a decision of the Supreme Court in **Mansu vs. Shadi Ram**, (1996) 3 SCC 97 to contend that section 4 (5) of the Punjab Tenancy Act, 1887 provides a presumption attaching to tenancy. Once it is proved that person is a tenant over the land in dispute he shall be presumed to have continued till he is lawfully evicted or tenancy was abandoned. The judgment proceeds on the assumption that person was tenant but in the present case the *pattanama*/lease deed has been disbelieved concurrently by the courts below as not a document worthy of reliance or one which inspires faith. The case is therefore dissimilar and distinguishable on facts and would not be binding on the issues involved in the present case where valid tenancy under former landowner is not established on the evidence on record.

5. Learned counsel again relies on a judgment of the Single Judge of this court in **Salim vs. Munir Khan**, 2015(1) RCR (Civil) 135 which dealt with the Punjab Security of Land Tenures Act, 1953 and the Punjab Pre-emption Act, 1913 (as applicable to and amended by State of Haryana in

1995). In this case, there was an interesting twist which is not there in this case. The tenant there had been ejected by a court order and subsequently the eviction order was set aside by the Financial Commissioner and tenant was put back to the status quo ante. It was held in these circumstances that there was continuity of possession by legal fiction and the disruption did not amount to a break in possession. I fail to see how this ruling helps the appellant to take his case forward to secure a decree for pre-emption.

6. At this stage, learned counsel fairly concedes in a volte face that the mutation of tenancy in the revenue record in favour of the plaintiff was set aside by the Assistant Collector, Grade-I, Sohna in the year 2006 and the fate of the further proceedings thereagainst is not known at least not on the appeal paper book while counsel did not enlighten the court at the hearing. All of which he now asserts is that at least till the year 2006 the appellant should be treated tenant prior to the cancellation of mutation. Though a presumption of truth attaches to revenue entries past and present but when they are successfully squelched by rebuttal evidence and when the mutation no longer holds water then the basis of the earlier mutation is removed from the very inception and, therefore, all that can be said is that the appellant's name was wrongly mutated in his name without any legal measures after notice to the owner failing which it cannot be said that he was in lawful possession of the suit land till the year 2006 or that he still has any abiding or subsisting right, title or interest in the suit property. Tenant to claim a right of pre-emption of land must possess agricultural land as an admitted tenant and not an arguable one which itself requires prolonged civil litigation through adjudication. If this were permitted it would leave rights

of vendee inchoate and act as a clog on freedom of transfer of property and postpone rights to an unknown and contingent event. When mutation was changed the plaintiff became an unauthorized tenant over the land brought under dispute. If that is so then the claim based on an erroneous jurisdictional fact based in turn on a *pattanama* stands effaced by adjudication in the present suit and for proper reasons given by the courts *a quo*. Tenant claiming pre-emptory rights must enjoy irrefutable status as tenant under vendor. If possession was lost before the suit was filed then to my mind everything was lost to the winds.

7. Indisputably, plaintiff lost possession of the suit land before he filed the suit in the year 2007 after great and culpable delay in seeking to pre-empt the sale deed registered in the year 1996. Thereafter, the suit land suffered two further sales and has changed hands. Therefore, no question of law, much less a substantial one arises amidst the facts of the case nor do the judgments and decrees of the courts below call for any interference and the same are liable to be maintained.

8. For the foregoing reasons, I find no reason to interfere with the concurrent findings of fact recorded by both the courts *a quo* and the view taken by them on the law applicable and the facts stated in the suit for pre-emption filed in the year 2007 to pre-empt the sale deed executed in the year 1996 and also the subsequent sale deeds was a suit without any merit, besides being patently barred by limitation. If an option was given by the buying party to buy the property in dispute which offer was not accepted there is then little one can do in favour of the plaintiff-appellant. Many people's rights have settled in the suit land meanwhile and it would appear

to be not only unfair but a travesty of justice to set about unscrambling a scrambled egg at this distance of time, even if the appellant had a glint of a case, whereas he has demonstrated none whatsoever in his suit is worthy of a decree. Hence, I would commend the dismissal of the appeal as no question of law much less a substantial one is involved for consideration. Neither is there an error or perversity in the impugned findings recorded by the court of first and second instance.

9. It is ordered accordingly. Appeal to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

30.07.2015
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