

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

**Regular Second Appeal No.5675 of 2015 (O&M)
Date of Decision: March 30, 2016.**

Ram Kala

.....APPELLANT(s).

VERSUS

Sama Kaur and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rao Ajender Singh, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal by Ram Kala daughter of Balbir Singh, challenging the judgment and decree passed by learned Additional Civil Judge (Senior Division), Kosli, which was affirmed in appeal by learned District Judge, Rewari.

2. Facts of the case, in brief, is that Balbir Singh father of defendants No.1 to 4 was owner of the suit land measuring 6 kanals 19 marlas i.e. 1/4th share of land measuring 27 kanals 19 marlas as fully described in the head note of the plaint as per the sale deed dated 10.03.1976 executed in his favour. Dharampal, husband of plaintiff No.1 Sama Kaur, father of plaintiffs No.2 and 3, predecessor-in-interest of plaintiffs No.4 to 9 filed pre-emption suit titled “*Dharampal Vs. Balbir Singh etc.*” on 11.03.1977, challenging the sale deed in favour of Balbir Singh. That suit

was decided by learned Sub Judge, Jhajjar on the statement of Balbir Singh recorded on 01.06.1977 that 'he had no objection if the suit is decreed, subject to deposit of ₹5,562/- by plaintiff Dharampal'. The suit was decreed and plaintiff was directed to deposit ₹5,562/- after deducting a sum of ₹1,000/- already deposited. Dharampal deposited amount of ₹4,562/- vide treasury challan bearing RD No.365 dated 25.07.1977. Balbir Singh withdrew that total amount of ₹5,562/- and possession of the suit property was delivered to Dharampal, who expired on 24.12.1998. During the life time of Dharampal, land bearing rectangle No.61 Killa No.15 and 16, total measuring 4 kanals 1 marlas was acquired by the government for construction of a drain, thereby leaving Dharampal as owner of 1/4th share in the suit land. However, the name of Dharampal and after his death, of plaintiffs were not recorded in the revenue record. They requested the defendants to get their names recorded in revenue record as owner of suit land, but in vain. Hence, this suit.

3. Defendants No.1 to 3 i.e. Mange, Desraj and Surender sons of Balbir contested the claim of plaintiffs with the plea that plaintiffs are not in possession of the suit property, as such, their suit is not maintainable. They have not got executed the decree dated 01.06.1977 and the present suit filed by plaintiffs is barred by limitation.

4. I have heard learned counsel for the appellants and perused the paper book with his assistance.

5. The passing of decree dated 01.06.1977 is not disputed. The said suit filed by Dharampal was decreed as follows:-

“In view of the settlement of the parties, the

suit of plaintiff for possession with property and by way of pre-emption on payment of ₹5,562/-, in all, is passed in his favour and against the vendee-defendant conditional on his depositing the said amount less 1/5th money on or before 26.7.77, failing which, the suit shall stand dismissed. No orders as to cost.” (Reproduced from para 14 of the judgment of Additional Civil Judge (Senior Division), Kosli).

6. Regarding the payment of the amount of ₹5,562/-, learned Additional Civil Judge (Senior Division), Kosli has observed in para 15 of the judgment as follows:-

“In view of the aforesaid fact, it is clear that the plaintiff namely Dharampal was directed to deposit an amount of ₹5,562/-. The Form No.32-A dated 28.3.1977 has been placed on record. Perusal of the same reveals that Dharampal deposited an amount of ₹1,000/- in the court vide the said challan. The report of treasury officer, Jhajjar dated 8.10.2009 has also been placed on record. Perusal of the same also reveals that on dated 25.7.1977, an amount of ₹4,562/- has been deposited by Dharampal, vide RD No.365. Therefore, as per the direction given in the judgment and decree dated 1.6.1977, the plaintiff, Dharampal deposited the aforesaid amount and the suit was decreed. Therefore, the plaintiff, Dharampal became owner of the suit property.”

7. The judgment and decree dated 01.06.1977 was not challenged and has attained finality, but was not incorporated in the revenue record. This in no manner affects the right of plaintiffs-respondents over the suit land. Dharampal attained the title of the suit property the moment, he complied with the judgment and decree dated 01.06.1977. Learned First

Appellate Court has rightly observed that when Balbir Singh has consented to the passing of the decree against him and withdrew the pre-emption amount, there is no reason to disbelieve the plea of plaintiffs that he had surrendered possession in favour of Dharampal. For delivery of possession, it is not required that actual possession at the spot be handed over even the symbolic possession may be delivered.

8. Learned counsel for the appellant has raised two points; firstly, that suit is not maintainable as the plaintiffs have not sought possession of the suit land and secondly, the decree dated 01.06.1977 is bad on account of the fact that Dharampal had deposited an amount of ₹1,000/- on 28.03.1977 i.e. before passing of the decree, which could not be adjusted towards the amount of ₹5,562/- which he had to pay as per statement of Balbir Singh.

9. The submissions made by learned counsel for the appellants have no merits; firstly because Dharampal had attained the title and symbolic possession as per statement of Balbir Singh recorded by the Court in the pre-emption suit; secondly, in the judgment dated 01.06.1977, amount already deposited by Dharampal on 28.03.1977 was ordered to be adjusted in the amount of ₹5,562/-. As per the provisions of Section 22 of Punjab Pre-emption Act, 1913, the Court shall at, or at any time before, the settlement of issues, require the plaintiff to deposit in Court such sum as does not, in the option of the Court, exceed one-fifth of the probable value of the land or property. The appellants have never come up with the plea that Dharampal had not complied with the order and not deposited the amount under Section 22 of the Act. Thirdly, the incorporation of name of Dharampal and after his death, his legal heirs in the revenue record, was only for fiscal purposes and

in no manner effected the title of the parties.

10. Being co-owners, the plaintiffs are in joint possession of the suit land, as such, submission of learned counsel for the appellants that the suit is not maintainable, has no force.

11. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

12. No substantial question of law requiring determination arises in this appeal, which has no merits.

13. Dismissed.

March 30, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE