

RSA No. 1879 of 1990 (O&M)

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

RSA No. 1879 of 1990 (O&M)

Date of Decision: 19.4.2017

Sagra Singh

.....Appellant

Vs.

Ziley Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Alka Sarin, Advocate
for the appellant.

None for the respondent.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff is in regular second appeal, in his suit for possession by way of pre-emption, against the impugned judgment and decree dated 10.5.1990 passed by the learned District Judge, dismissing first appeal of the plaintiff and upholding the impugned judgment and decree dated 6.10.1989 of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 1 of its impugned judgment, are that by means of registered sale deed dated 3.9.1987 (Ex.P1), Dharambir son and Omi @ Omwati daughter of Sharbati d/o Ram Parshad resident of village Bohra Kalan sold

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their shares in the joint land more particularly described in para 1 of the plaint situated in the revenue estate of V. Bohra Kalan Teh. and Distt. Gurgaon to Zile Singh defendant for an ostensible sale consideration of ₹2,24,676/-. It was suggested that the amount of ₹30,000/- out of the sale consideration as a more padding which had been introduced by the vendee fictitiously only with the object to scare away the intending pre-emptor. Claiming that the plaintiff held the suit land as co-sharer jointly with the vendors, he had filed suit for possession by pre-emption subject to payment of ₹1,94, 676/- actually paid or fixed in good faith as the sale price of the land sold or any other sum to be determined by this court.

Upon notice, defendant put appearance and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues.

- 1. Whether the plaintiff has superior right to pre-empt the sale of the suit land?OPP*
- 2. Whether the sale price of Rs. 2,24,676/- was fixed in good faith and actually paid to the vendors.OPD*
- 3. If issue No.2 is not proved what was the market value of the suit land at the time of sale?OPP*
- 4. Whether the defendant is entitled to the expenses of stamp and registration?*
- 5. Whether the plaintiff is estopped from filing the present suit by his acts and conducts?OPD*
- 6. Whether the suit is bad for partial pre-emption?OPD*
- 7. Relief.*

With a view to prove their pleaded case, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record,

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learned trial court came to the conclusion that since plaintiff was not having any subsisting right of pre-emption, suit land having been partitioned during pendency of civil suit and plaintiff was no more a co-sharer in the suit land, suit for possession by way of pre-emption filed by the plaintiff was dismissed vide impugned judgment and decree dated 6.10.1989. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned District Judge, vide impugned judgment and decree dated 10.5.1990. Hence this regular second appeal at the hands of plaintiff.

Appeal was admitted for regular hearing vide order dated 8.2.1991. That is how, this court is seized of the matter.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that entire case of the plaintiff-appellant was based on his right of pre-emption as a co-sharer in the suit land. It is also not in dispute that during the pendency of civil suit, suit land came to be partitioned and plaintiff-appellant was no more a co-sharer. Thus, it becomes crystal clear that plaintiff-appellant was having no right of pre-emption at the time of passing the impugned judgment and decree by the learned trial court. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

When confronted with the abovesaid factual as well as legal aspect of the matter and asked to explain as to how the plaintiff would be having any claim for possession by way of pre-emption, as the suit land was partitioned before passing the decree by the learned trial court, learned counsel for the appellant had no answer and rightly so, it being a matter of

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record. In this view of the matter, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

Didar Singh Etc Vs. Ishar Singh (dead) by LR's Etc.

2001 (8) SCC 52 (SC)

Shyam Sunder and another Vs. Ram Kumar and another,

2001 AIR (SC) 2472 (SC)

Har Devi Vs. Ram Jas and others, 1974 PLJ 345 (P&H)

Suraj Bhan Vs. Niadri Devi and others, 1995 (1) RRR
603 (P&H)

Ramesh Kumar Vs. Surat Singh and another, 2010 (3)

RCR (civi) 647 (P&H)

Further, deed of partition was duly proved by the defendant as Ex.D2. Although learned counsel for the appellant tried her level best to substantiate her arguments, contending that instrument of partition was challenged by the appellant before higher revenue authorities by filing an appeal, yet she was unable to show any order passed by any competent authority, setting aside the abovesaid instrument of partition (Ex.D2). Learned counsel for the appellant fairly stated that despite making her best efforts, appellant did not pass on any appropriate instructions to her in this regard, because of which she was unable to assist this court any further on this aspect of the matter, as to whether the instrument of partition dated 27.4.1989 (Ex.D2), as a matter of fact, was set aside by any higher revenue authority or not.

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It does not appeal to reason that any appeal, even if filed by the appellant against the instrument of partition dated 27.4.1989, would be pending till now after expiry of more than 28 years. Had the instrument of partition dated 27.4.1989 (Ex.D2) been set aside by the appellate authority, appellant would have certainly supplied a copy thereof to the learned counsel for the appellant.

Be that as it may, as a matter of fact, appellant was not having any subsisting right of pre-emption qua the suit land as a co-sharer, on the date when the learned trial court passed the impugned decree. In view of the settled proposition of law by Hon'ble the Supreme Court as well as this Court, in the cases referred to hereinabove, once the plaintiff-appellant had already lost his right of pre-emption before passing of the decree by the learned trial court, no fault can be found with the impugned judgments passed by the learned courts below and the same deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. She also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

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Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

19.4.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No