

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1968 of 1996

Date of Decision: 14.9.2017

Bakhtawar and others

...Appellants

Versus

Sanwat and another

... Respondents

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

Present: Mr.R.A.Sheoran, Advocate for the appellants.
None for respondent No 1.

Respondent no.2 ex parte vide order dated 12.12.2016.

RAJIV NARAIN RAINA, J. (Oral)

1. This appeal arises out of a suit for pre-emption. The decree was passed on 6.4.1995 by the Sub Judge 1st Class, Loharu. The five judge Bench of the Supreme Court in Shyam Sundar and others vs. Ram Kumar and another, AIR 2001 Supreme Court 2472 answered two questions, firstly whether the appeal being in continuation of suit, the amendment in Section 15 of the Punjab Pre-emption Act, 1913 as inserted by Haryana Amendment Act, 1995 whereby the right of co-sharers to pre-empt a sale has been taken away during the pendency of the appeal and would this affect the maintainability of the suit and the rights of a co-sharer and; secondly, whether the Amending Act has retrospective operation so as to affect the rights of parties in litigation. The Supreme Court analyzed the previous decisions and the preemption law and came to the conclusion that the Haryana Amendment Act was prospective in operation and does not affect the rights of the parties to the litigation on the date of adjudication of the pre-emption suit and the appellate court is not required to take into account or

give effect in the substituted Section 15 introduced by the Amending Act, meaning thereby, that a co-sharer can pre-empt the sale.

2. The present three appellants brought a suit for possession by way of pre-emption of sale deed dated 23rd October, 1992 executed by Lok Ram and Ramesh in favour of defendant nos.1 and 2. The case in the suit was that the alienation was without notice of sale to a co-sharer and the sale consideration of Rs.60,000/- was inflated to Rs.90,000/- to ward off prospective pre-emption. The suit was decreed and the purchase money was required to be deposited within 30 days, failing which the suit shall be deemed to be dismissed with costs. Learned counsel for the appellant submits that the amount was deposited within time.

3. The appeal against the decree was instituted on 5th May, 1995. The learned District Judge, Bhiwani by a short judgment allowed the appeal and dismissed the suit relying on the authority, namely, Suresh Kumar vs. Chanchel Singh and Anr., 1995 PLJ 323 which held that the Haryana Amendment takes away the right of pre-emption from the pre-emptor co-sharer.

4. Mr. Sheoran, appearing for the appellants submits that the judgment has to be set aside, in view of declaration of law in Shyam Sunder, (supra), since the amendment dated 17th May, 1995 has been declared to be prospective, it would not affect the decree passed earlier on 6th April, 1995, even though it was in appeal and accordingly, the judgment and decree in appeal cannot be legally sustained.

5. However, since respondent no.2 was proceeded ex-parte by order of this Court passed on 12th December, 2016 and respondent no.1 having died, every effort of Mr.Sheoran to locate his clients has remained

therefore, not in a position to implead the L.Rs of respondent no.1, Sanwat son of Sheoram son of Tokh Ram, resident of Village Pharatia Bhima, Tehsil Loharu, District Bhiwani. Since the law has been stated authoritatively by the Supreme Court it will serve no useful purpose to keep the file pending to await impleadment of LR's.

2. In the circumstances, the appeal is allowed and the judgments and decrees of both the courts below are set aside, but with a rider to the L.Rs of respondent no.1-Sanwat to be at liberty to make an application in the disposed of appeal in case they wish to be heard or have something to say. Towards this end, a direction is issued to the revenue authorities in Tehsil Loharu, District Bhiwani to depute the village Chowkidar to inform the members of the family of late Sanwat that the present RSA No.1968 of 1996 (Bakhtawar and others vs. Sanwat and another) has been allowed and they have been given liberty to apply to this Court for exercising the right of hearing, in case advised. Copy of this order be sent to District Revenue Officer, Bhiwani for carrying out the direction.

14.9.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No