

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

RSA No.3452 of 1999 (O&M)

Date of Order: 25.10.2017

Pyare and others

..Appellants

Versus

Mange Ram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulvir Narwal, Advocate,
for the appellants.

Mr. Sanjay Mittal, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in regular second appeal against concurrent findings of fact arrived at by the Courts below.

In the considered opinion of this Court, following substantial questions of law arise for consideration in the present case.

(i) Whether the judgments and decrees passed by the Courts below are result of misreading and non-reading of evidence?

(ii) Whether the owner can transfer better title than what he himself has?

Undisputed facts available on the record are that one Prabhu, defendant no.4, son of Jyot Ram and his sister Suraj Kaur were owner of land measuring 133 kanals 11 marlas. Prabhu was owner to the extent of 3/4th share, whereas Suraj Kuar was owner to the extent of 1/4th share. It is further not in dispute that out of the joint land 5 kanals 13 marlas was acquired by the State (5 kanals 12 marlas as asserted by counsel for the

respondent). Thus, Prabhu and Suraj Kaur were left with 127 kanals 18 marlas of land.

Suraj Kaur sold her entire property to one Shri Partap on 05.06.1967. Prabhu gifted land measuring 28 kanals 12 marlas to Sunil Kumar, defendant no.1. On the same day, Prabhu also sold land measuring 14 kanals 16 marlas in favour of defendant no.2 and predecessor-in-interest of defendant no.3, 3 (a), (b), (c), (d) and (e), i.e, legal heirs of Bhakhtawar. Prabhu subsequently pre-empted the sale deed in favour of Partap, vide decree dated 21.06.1969. Thereafter, Prabhu sold the land measuring 40 kanals in favour of the plaintiff Pahlad. Prabhu subsequently sold land measuring 55 kanals 19 marlas in favour of one Bale Ram vide sale deed dated 28.06.1973. Plaintiff Pahlad filed a suit for pre-emption. Sunil Kumar, defendant no.1 also filed a suit for pre-emption. The suit filed by Pahlad was decreed vide decree dated 02.08.1974, whereas suit filed by Sunil Kumar, defendant no.1 was dismissed vide judgment Ex.P28 on the file.

Pahlad-plaintiff has filed a suit for declaration claiming that he is owner in possession of land measuring 95 kanals 19 marlas.

Both the Courts have decreed the suit filed by the plaintiff on the ground that Pahlad purchased 40 kanals of land vide sale deed dated 31.10.1969 and got land measuring 55 kanals 19 marlas through pre-emption decree dated 02.08.1974.

The Courts have taken a view that since the decree and the sale deed in favour of plaintiff have not been challenged, therefore, the share of Pyare, Bhakhtawar and Sunil Kumar would accordingly stand reduced.

Now the stage is set for answering the questions of law framed

earlier.

QUESTIONS NO.(i) and (ii)

- (i) Whether the judgments and decrees passed by the Courts below are result of misreading and non-reading of evidence?**
- (ii) Whether the owner can transfer better title than what he himself has?**

It is not in dispute that Prabhu before becoming owner of the share of Suraj Kaur through pre-emption decree sold the land measuring 14 kanals 16 marlas to Pyare and Bhakhtawar, predecessor-in-interest of defendant no.3, 3(a), (b), (c), (d) and (e) and transferred land measuring 28 kanals 12 marlas in favour of Sunil Kumar by way of a gift, defendant no.1 on the same date. The rights conferred by gift deed and sale deed dated 01.06.1968, which is prior in point of time have to be honoured. If Prabhu was not left with land measuring 55 kanals 19 marlas, sold to Bale Ram then it is the last purchaser who has to suffer.

Merely because the plaintiff pre-empted the aforesaid sale deed from Bale Ram that would not increase what could be transferred in favour of Bale Ram. Prabhu could transfer only that part in favour of Bale Ram, which was left with him. If one makes calculation upto 31.10.1969, Prabhu had transferred land measuring 83 kanals 8 marlas (sale 14 kanals 16 marlas + gift 28 kanals 12 marlas + sale in favour of Pahlad, plaintiff 40 kanals). Thus, Prabhu was left with only 44 kanals 10 marlas because after acquisition the total land left with Prabhu was 127 kanals 18 marlas only.

However, Prabhu sold 55 kanals 19 marlas to Bale Ram. Obviously, Prabhu could not sell the land measuring 55 kanals 19 marlas as he was only owner of 44 kanals 10 marlas. Therefore, the sale in favour of

Bale Ram is valid to the extent of 44 kanals 10 marlas.

Therefore, consequently, the pre-emption decree in favour of plaintiff Pahlad is valid only with respect to land measuring 44 kanals 10 marlas.

It is well settled that prior purchaser takes precedence over the subsequent purchaser. This principle is evolved under Section 48 of the Transfer of Property Act, 1882. Prior transferees Pyare, Bhakhtawar and Sunil Kumar would not be adversely affected by the subsequent sale deed executed by Prabhu in 1973. Sale by Prabhu in favour of Bale Ram, which has been subsequently pre-empted by the plaintiff cannot disturb the right, title or interest of defendants no.1, 2 and 3.

Learned counsel for the respondent has vehemently argued that since the decree dated 02.08.1974 in favour of Pahlad-plaintiff has not been challenged, therefore, the plaintiff has become owner of land measuring 95 kanals 19 marlas.

I am afraid, such argument cannot be accepted particularly in view of the fact that sale by Prabhu in favour of Bale Ram was beyond what he was left with. The owner cannot transfer better title than what he himself has. It is also admitted position on the record that Pyare, Bhakhtawar and Sunil Kumar, were not party to the pre-emption decree, dated 02.08.1974.

Learned counsel for the respondent-plaintiff has further submitted that Sunil Kumar had filed a suit for pre-emption, seeking decree for possession of sale in favour of Bale Ram dated 28.06.1997. He has submitted that one Sunil Kumar was party and had sought pre-emption of the sale deed, therefore, at least Sunil Kumar cannot go beyond the decree dated 02.08.1974.

I have considered the argument. Ex.P28 is the judgment passed by the Court in the suit filed by Sunil Kumar. This suit was separately decided and suit filed by Sunil Kumar for possession by way of pre-emption was dismissed vide judgment and decree dated 23.02.1978. The suit filed by Sunil Kumar was not decided along with the suit filed by the plaintiff Pahlad.

In these circumstances, the decree passed on 02.08.1974 in favour of the plaintiff would even not bind Sunil Kumar.

Both the Courts have committed the material error in overlooking these facts. The Courts have further erred in recording a finding that the decree dated 02.08.1974 to which defendant nos.1, 2 and 3 were not party would be binding on them. Decree dated 02.08.1974 is only for pre-empting the sale deed. Once it has been found that the sale with respect to 55 kanals 19 marlas was in excess of share of Prabhu, therefore, consequently, the decree would also be only with respect to remaining land i.e., 44 kanals 10 marlas.

For the reasons recorded hereinabove, both the questions of law framed above are answered in favour of the appellants. The suit filed by the plaintiff would be decreed only to the extent of 44 kanals 10 marlas, whereas Pyare and legal heirs of Bhakhtawar are declared owner of 14 kanals 16 marlas and Sunil Kumar is declared owner of 28 kanals 10 marlas, respectively.

The regular second appeal is allowed.

October 25, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No