

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

RSA No.3098 of 2011 (O&M)

Date of Order: 24.10.2017

Gulam

..Appellant

Versus

Seema Sabharwal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Singh, Advocate, for
Mr. Sanjeev Kumar Panwar, Advocate
for the appellant.

Mr. Sarwan Singh, Sr. Advocate, with
Mr. N.S.Rapri, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

Plaintiff-appellant is in regular second appeal against the judgment passed by the learned Additional District Judge, Panchkula.

Plaintiff had filed a suit for possession by way of pre-emption under the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the Act') on the ground that he has superior right of pre-emption being tenant.

Although, learned first appellate Court has given various reasons for accepting the appeal. However, one of the ground on which the appeal has been accepted is that the plaintiff did not implead his landlord as party defendant in the suit. In these circumstances, the Court has held that the suit is bad for non-joinder of necessary parties.

As per the provisions of the Act, a landlord is required to first offer the property to its tenants before selling the same to an outsider. As per Section 19 of the Act, whenever any person proposes to sell any agricultural land or village immovable property or urban immovable property, in respect of which any persons have a right of pre-emption, he may give notice to all such

persons of the price at which he is willing to sell such land or the property or of the amount due in respect of the mortgage, as the case may be.

To prove such fact, it is necessary that the landlord is to be impleaded as party. In the absence of landlord, it would not be possible for the Court to adjudicate upon whether the landlord gave any notice to the tenant before sale or not. Once the landlord/vendor of the defendant had not been impleaded as party defendant in the suit, the first appellate Court has correctly held that the suit filed by the plaintiff is bad for non-joinder of necessary parties.

Learned counsel for the appellant, at this stage, came up with a prayer that the case may be remanded as he would implead the landlord/vendor as party defendant.

I am afraid, such request cannot be accepted at this stage. The right of pre-emption is a statutory right and is governed by the Limitation Act. The suit for pre-emption can only be filed within one year from the date of sale of the land. If the suit was not properly instituted, the plaintiff cannot, at this stage, be permitted to rectify the illegality committed by it.

Still further, right of pre-emption has been held to be weak and inequitable right and if such right has been defeated by the Court on the ground that necessary party has not been impleaded, plaintiff cannot be given any benefit at the stage of second appeal.

For the reasons recorded above, the judgment passed by the learned first appellate Court is upheld. The regular second appeal is dismissed.

October 24, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No