IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

RSA-219 of 2013 (O&M)
Date of Decision : 06.10.2017

Jai Parkash and Anr. **....Appellants**

versus

Ramji Lal & Ors. **....Respondents**

RSA-1071 of 2013 (O&M)

Jai Parkash and Anr. **....Appellants**

versus

Ramji Lal & Ors. **....Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Jatin Hans, Advocate
for the appellants.

Mr. Suman Sangwan, Advocate
for respondent No.1.

<u>RAJBIR SEHRAWAT, JUDGE (ORAL)</u>

These are two appeals filed by the defendants against the concurrent judgements and decrees passed by the Courts below, whereby the rights of pre-emption in favour of respondent No.1/plaintiff was upheld and he was held entitled to purchase the suit land.

The facts involved in the case are that originally one Keshvanand was the owner of the suit land measuring 48 kanals comprising in khasra numbers mentioned in the civil suit. Out of that, he sold the land measuring 22 kanals 8 marlas in favour of Saroj Kumari and 01 kanal 3 marlas in favour of Sohan Lal, who was the husband of the said Saroj Kumari. These sales were made on 11.03.1992. Subsequently, Sohan Lal and Saroj Kumari sold the said land to Sadhu Ram-respondent No.2/defendant No.1 vide sale deed dated 01.02.2001 and dated 30.04.2001.

Respondent No.1 herein/ plaintiff filed two separate suits for possession, by way of pre-emption, of the abovesaid sold land total measuring 23 kanals 11 marlas. He claimed that he was the tenant over the suit land comprised in both the chunks to the extent of half shares. However, while effecting the sale, the above said Saroj Kumari and Sohan Lal had not given any notice to him. The sale was effected behind his back. Therefore, he has a right to pre-empt the sale in question. The respondent No.1 herein/plaintiff in his plaint also claimed that the sale consideration shown in the sale deeds is exaggerated and not fixed in good faith. Therefore, the sale consideration also deserves to be reduced to an appropriate market value.

Defendant No.1-Sadhu Ram filed written statement saying that the plaintiff was not paying the rent and therefore he had lost the status of tenant. It was pleaded that the plaintiff had full knowledge of the sale before the deed was executed and, therefore, he shall be deemed to have waived of his right. However, thereafter Sadhu Ram got proceeded against ex parte. He neither contested suit nor filed any appeal in the matter.

Since during the pendency of the suit itself, the present appellants/defendants had purchased the suit property by further sale by Sadhu Ram to them, therefore, they were also impleaded as parties to the suit. The present appellants (added defendants) also filed their written statement claiming the same thing that the plaintiff was not paying the rent. It was further claimed that, at the best, he was a tenant over half portion of the suit land and does not have the status of the tenant over the remaining half of the suit land. It was further pleaded by them that the sale consideration in the case has rightly been fixed as agreed between the parties. The same amount of the sale consideration was actually paid by them to their vendor Sadhu Ram.

The parties led their respective evidence.

After considering the pleadings and evidence of the parties, learned trial Court decreed both the suits in favour of respondent No.1/plaintiff. It was held by the trial Court that, although plaintiff is tenant in possession of only half of the share but he has a right to pre-empt the sale of the entire suit land. The sale consideration, as was reflected in the sale deeds, was accepted by the trial Court. The contention of the plaintiff that the consideration has been shown as exaggerated in the sale deeds was not accepted by the trial Court.

Aggrieved of the judgments and decrees passed by the trial Court, the present appellants filed an appeals questioning its judgments and decrees. The present respondent No.1/plaintiff also filed cross-objections in these appeals and claimed that the findings, regarding the sale consideration being rightly recorded in the sale deeds, is perverse and this finding regarding the sale consideration has to be reversed.

The lower Appellate Court dismissed the appeals filed by the present appellants/defendants. However, by accepting the cross-objections filed by respondent No.1/plaintiff; the decrees were modified to the extent that the sale consideration has not been correctly reflected in the sale deeds. Therefore, the lower Appellate Court determined the market value @ Rs.60,000/- per acre instead of @ Rs. 1,80,000/- per acre, as reflected in the sale deeds.

Aggrieved of the judgements and decrees passed by the lower

Appellate Court, the defendants have filed the present regular second appeals. However, no separate appeals have been filed against allowing the cross-objections of respondent No.1/plaintiff. But the necessary ground to challenge the relief granted to respondent No.1 has been taken in the appeal filed by the appellants.

The trial Court has recorded the findings that no notice was given while effecting the sale by Saroj Kumari and Sohan Lal in favour of Sadhu Ram. Therefore, plaintiff (respondent No.1 herein) has got a right to pre-empt the sale. The trial Court further recorded a finding that since plaintiff has been proved to be a tenant, atleast over half of the share of the land, therefore he has right to pre-empt the entire sold land in view of the judgement rendered by Hon'ble Supreme Court. Taking the matter further, the lower Appellate Court held that the price of the land was not fixed in good faith. On the contrary, the sale deeds are proved on record by respondent No.1/plaintiff as Ex.P-4 to P-7, which are regarding sale of the land adjoining the land in question, and for the relevant time. So the price was much lower as compared to the price which was reflected in the sale deed. Therefore, the market price of the land in question was determined by the lower Appellate Court, as mentioned above.

While arguing the case, learned counsel for the appellants has submitted that prior to the sale in favour of Sadhu Ram there was a sale in favour of Saroj Kumari and Sohan Lal also, way back in the year 1992. At that point of time, plaintiff (respondent No.1 herein) did not resort to avail his pre-emption rights. Therefore, he shall be deemed to have waived his rights qua the subsequent sale made by Saroj Kumari and Sohan Lal. It is his further argument that, if counted from the sale in favour of Sohan Lal and Saroj Kumari, the present suit has become time barred being beyond limitation. The next argument of the learned counsel for the appellants is that respondent No.1/plaintiff was in possession of only half share of suit land. Therefore, he cannot pre-empt more than half share of the suit land, since the shares of the parties are already determined and reflected in the revenue record as such. The next contention of the learned counsel for the appellants is that the sale consideration was rightly determined and was actually paid by Sadhu Ram to Saroj Kumari and Sohan Lal, the predecessor-in-interest of the present appellants, as per the then prevailing price and as agreed between the parties. It is his contention that even in the previous sale deeds in favour of Saroj Kumari and Sohan Lal, sale consideration was about Rs.60,000/- per acre way back in the year 1992, therefore, it is natural that in normal course the price of the land would increase. Therefore, there was nothing wrong with the payment of sale consideration as reflected in the present sale deeds. It is his argument that in view of Section 25 of the Pre-emption Act the Court was not having any power to re-assess the market value unless it records a finding that the sale consideration as mentioned in the sale deed, was actually not paid. It is his submission that since no such finding has been recorded, therefore, the lower Appellate Court should not have resorted to be determination of the fair market value. It is his further submission that since the consideration has been paid through Bank Draft therefore it shall be presumed that the sale consideration mentioned in the sale deed has actually paid. Still further argument of the learned counsel for the appellants is that since they have purchased the land during the pendency of the suits against their vendor Sadhu Ram, therefore, the respondents/plaintiff was required to specifically pray for the relief of pre-emption against them also. Since no such relief has been claimed against them specifically, therefore, the decree for pre-emption cannot be passed affecting their rights.

To controvert these arguments of the learned counsel for the appellants, the learned counsel for respondent No.1/plaintiff has argued that there is no waiver of his right to pre-emption qua present sale simply because has he not chosen to pre-empt the previous sale in favour of predecessor of Sadhu Ram. It is his argument that admittedly he was a tenant over the suit land. Therefore, when Sadhu Ram purchased the suit land he purchased the suit land along with the respondent No.1/plaintiff being tenant over it. It is his submission that the Punjab Tenancy Act defines the tenant and it prescribes that the "tenant and landlord", in this context means the predecessors and successors-in-interest of a tenant and landlord respectively. Therefore, he has every right to pre-empt the sale at the point of subsequent sale. His right cannot be said to have been extinguished simply because of the reasons that at an earlier point of time, he had not filed the suit pre-empting the earlier sale. Replying the second contention of the appellant the learned counsel for the respondents submitted that this Court, in the judgement rendered in ***2010 (3) RCR (Civil) 140 titled as Smt. Maya Devi and Ors. Vs. Rattan Singh and Anr***. has categorically held that even if a tenant is in possession of only part of the property, which is the subject matter of the sale, still he shall have a right to pre-empt the entire property which has been sold by the landlord.

He has pointed out that this judgment of this Court is further relying upon the judgement of the Hon'ble Supreme Court in ***Ram Chand Vs. Randhir Singh 1995 (1) RRR, 75***. So far as the next contention regarding the amount of sale consideration is concerned, it is the submission of the learned counsel for respondent No.1/plaintiff that the bare language of the Section 25 of the Pre-emption Act makes it clear that if the Court comes to the conclusion that the sale consideration has not been fixed in good faith then, whether it is actually paid or not by the vendee, the Court has power to determine the fair market value, which the pre-emptor would be required to pay to the vendee. Learned counsel has further pointed that the lower Appellate Court has come to a firm conclusion, on the basis of evidence led by them that, in fact, the sale consideration as reflected in the sale deeds is much higher then the market value of the suit land. Therefore, the Court has rightly assessed the market value as per the evidence.

It is his further argument that since the appellants herein have not filed any appeal against the allowing of the cross-objections filed by respondent No.1/plaintiff regarding fixation of fair market value, therefore, the appellants cannot raised this plea in the appeal filed by them.

Having heard, learned counsel for the parties and perusing the record with the able assistance of the counsel for the parties, this Court is of the considered opinion that the submissions made by the Counsel for respondent No.1/plaintiff deserves to be accepted. The argument of the learned counsel for the appellants that respondent No.1/plaintiff would loose his right to pre-empt all future sales, if he had not pre-empt the first sale, cannot be accepted. There may be number of reasons for the tenant not to pre-empt the sale at a particular point of time and he may not be hindered by any reasons at another point of time. Otherwise, it is settled law that whenever a person purchases the land upon which the tenant is setting, then purchase is subject to the tenancy of the tenants and the land shall be deemed to have been purchased with the tenancy thereon. This fact is made clear by the provisions of Section 2, Sub-Clause 5 and 7 of the Tenancy Act which define the tenant and also clarifies that the term tenant and the landlord as to mean their predecessor and successors-in-interest respectively. Therefore, if a subsequent landlord sell the land amenable to pre-emption the tenant shall have right to pre-empt the subsequent sale as well. Hence, this argument of the learned counsel for the appellants deserves to be rejected.

The next contention of the learned counsel for the appellants that since the shares have been determined and admittedly respondent No.1 is the tenant-in-possession of only half share of the property purchased by them, therefore, respondent No.1 at the best can seek pre-emption qua the land on which he is a tenant; also do not merit acceptance. The proposition has already been dealt with by this Court in the judgment reported in ***2010 (3) RCR (Civil) 140 titled as Smt. Maya Devi and Ors. Vs. Rattan Singh and Ors.*** In this judgement this court has held that the tenant is entitled to pre-empt whole of the sale in case he is proved to be tenant even on the part of the property sold. To the same effect is the judgment rendered by the Hon'ble Supreme Court in ***Ram Chand Vs. Randhir Singh 1995 (1) RRR, 75*** wherein the Hon'ble Supreme Court has held that when a tenanted part of the land is involved in the sale, then the tenant thereof has a right of pre-emption qua the entire sold land and the vandees cannot resist the same.

So far as, the determination of the market rate of the land in question is concerned, on this point also the argument of the learned counsel for respondent No.1/plaintiff deserves to succeed and the argument of the counsel for the appellants is liable to be rejected. Although, the counsel for the appellants has argued that even in the sale in favour of Saroj Kumari, the vendor of Sadhu Ram, the consideration was much lessor and therefore with the passage of time it should be presumed to have increased, sounds logical, however, the fact remains that the evidence led on the file shows that the market price of the land adjacent to the suit land and at the relevant time was much lessor as has been reflected in the sale deed. Therefore, there is no illegality or perversity in this finding recorded by the lower Appellate Court.

The argument of the learned counsel for the appellants that the price reflected in the sale deed was actually paid by them because the same is stated to have been paid through the Bank Draft, is also not tenable. The payment shown to have been made through Bank Drafts itself is no guarantee that the drafts were intended to pay the amounts mentioned in it or that price in fact was paid as a consideration. Secondly the person who is stated to have paid this amount through draft is not even contesting the present proceedings. He could not master courage to face security on this point. Therefore, there is nothing on record to prove the fact that the consideration mentioned in the sale deed, in fact, passed hands in this transaction. So far as, the argument being raised by the present appellants is concerned they were not in picture at the time when the transaction sought to be pre-empt was entered into between the parties. They are subsequent purchasers during the pendency of the suit. So payment by them would not affect the issue in the present case.

The next argument of the learned counsel for the appellants that since they had purchased the suit land during the pendency of the present pre-emption suit and there is no relief claimed against them, therefore, the decree could not have been passed against them, is also not sustainable in law. The reliance of the learned counsel for the appellants on the judgment of the Hon'ble Supreme Court rendered in ***2011 (4) PLR Page 127 titled as Dr. Shehla Burney Vs. Syed Ali Mossa Raza (Dead) by LRs.*** also does not help the case of the present appellants. In the judgement referred by the learned counsel for the appellants the premptor had amended the suit and had claimed relief against a particular defendant. In view of that the Hon'ble Supreme Court held that since the prayer was only against a particular defendants, therefore, it was not proper to pass a decree against a person against whom the relief has not even been claimed by the plaintiff/premptor. In the present case, the appellants were very much party to the suit as defendants, and there was a specific prayer in the plaint that the decree be passed against the defendants. Therefore, by any stretch of the reading of the pleadings, it cannot be said that there was no prayer for relief against the present appellants. Otherwise, also since the appellants were subsequent purchaser during the pendency of the suit, therefore, they were fully aware of the fact that the property in dispute is subject matter of a pre-emption suit. Since the title of their vendor itself was under question in the suit, therefore, the vendor of the present appellants shall be deemed to have passed, whatever the title he had, subject to the decision of the present suit. In view of this, the present appellants are bound to follow the result of the suit which comes in the suit titled against their vendor. They cannot even question the eligibly of the pre-emptor in this regard. The pre-emptor/respondent has not filed suit against the present appellants separately because they did not have in their favour a pre-emptable sale, the previous sale itself being the subject matter of the pre-emption suit.

No other point was argued.

In view of the above, this Court does not find any illegality, irregularity or perversity in the judgements and decrees passed by the Courts below.

In view of the above, the present appeals fail and the same are dismissed being devoid of merits.

6th October, 2017 **(RAJBIR SEHRAWAT)**
Manju **JUDGE**

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