

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

RSA No.4001 of 2013 (O&M)

Date of Order: 24.10.2017

Shanti and others

..Appellants

Versus

Seema Sabharwal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Binat Sharma, Advocate, for
Mr. Pavit Singh Mattewal, Advocate
for the appellants.

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

ANIL KSHETARPAL, J (Oral)

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

Plaintiffs had filed a suit for possession by way of pre-emption on the ground that they have superior right of pre-emption under Section 15 of the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the Act').

The Courts after examining the evidence have found that the plaintiffs have failed to prove the fact that they were cultivating the land or paying any lease money to the landlord. The revenue entries in the present case were continuing in favour of one Sardara Singh, who had died 25 years before the filing of the suit.

As per the provisions of Act of 1913, a landlord is required to first make an offer to its tenants before selling the property under tenancy 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 person has 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 suit. In the absence of landlord, it would not be possible for the Court to adjudicate upon whether the landlord did 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 plaintiffs is bad for non-joinder of necessary parties.

Learned counsel for the appellants, 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, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is dismissed.

October 24, 2017

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Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)

JUDGE

: Yes/No

: Yes/No