

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

- 1. CM-7825-C-2015, CM-7806-C-2015 &
RA-RS-44-C-2015 in RSA-3179-1987
Date of decision : 08.12.2017**

Mangat Ram and othersApplicants-appellant

Versus

Ram Parkash and othersRespondents

- 2. CM-7802-C-2015, CM-7826-C-2015 &
RA-RS-45-C-2015 in RSA-3180-1987**

Mangat Ram and othersApplicants-appellant

Versus

Ram Parkash and othersRespondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present:- Mr. Arun Jain, Sr. Advocate
with Mr. Pritam Saini, Advocate
for the applicant-appellant.

Mr. B.S. Bedi, Advocate
for respondents.

Regular Second Appeals (RSA-3179 and RSA-3180 of 1987)

filed by Mangat Ram (since deceased through his LRs) were dismissed on 21.08.2013. Para 20 of the common judgment passed in both the appeals reads as follows:-

“20. In view of the principle of law with regard to the applicability of the provisions of Section 15(2) of the Act, the second substantial question of law is also decided against the appellants. There are no merits in both these appeals and the same are ordered to be dismissed. The plaintiff-respondents were allowed to withdraw the entire amount deposited by them vide order dated 20.5.1988. They have used the above

amount for their benefit for the last 25 years. They are directed to deposit the above amount within a period of two months from the date of this judgment along with interest @ 9% per annum from 20.5.1988 till the date of payment. On deposit of the amount, they will be entitled to execute the decree of the trial Court in Civil Suit No. 164 of 1982 and first Appellate Court in Civil Suit No. 535 of 1982 on the same terms & conditions as mentioned in the decree-sheet.”

Vide order dated 19.08.2015, time for deposit of pre-emption amount was extended till 13.07.2015, when the amount was actually deposited as per order dated 29.07.2015.

Defendant-appellants filed petition for Special Leave to Appeal against final judgment and decree dated 21.08.2013 passed in above RSA, which was declined by Hon'ble Apex Court vide order dated 15.05.2015. However, liberty was allowed to applicant-appellants to move this Court, if so advised. Appellant have preferred separate review petitions in both appeals, on identical grounds alongwith applications seeking condonation of delay of 637 days in filing the review petitions.

Applicant-appellants have sought review of judgment dated 21.08.2013 on two grounds. Firstly, that the respondents had filed a suit for pre-emption of land of sale deed executed by Chalti Devi, who was initially impleaded as defendant no. 1 but was given up during pendency of the suit, as such, the suit is liable to be dismissed for non-joinder of necessary party; and secondly, that during pendency of regular second appeal, respondents were allowed to withdraw the entire amount deposited by them without prejudice to their right, if any, and they withdrew the entire pre-emption amount deposited by them and the suit as per provisions of Section 22 (5)

(a) of the Punjab Pre-emption Act, 1913 is liable to be dismissed.

I have heard learned counsel for review applicants and learned counsel for respondents.

The plea raised by learned counsel for review-applicants that suit was not maintainable due to non-joinder of necessary party has no merit as the right of pre-emption is enforceable against vendee and not against the vendor.

Second plea raised by review-applicants also has no merit. The plaintiff-respondents have withdrawn the pre-emption amount under the orders of this Court dated 20.05.1988, which reads as follows:-

“Admitted. Stay to continue. However, the plaintiff-pre-emptor is allowed to withdraw the entire amount deposited by him without prejudice to his right, if any. He will be allowed to deposit the amount after the appeal is decided.”

It is apparent from the above order that pre-emptor/plaintiffs were allowed to withdraw the entire amount with permission to deposit the same after the appeal is decided. The order dated 20.05.1988 was never challenged by the review-applicants or assailed during course of arguments at the time of final disposal of RSA. While disposing of the appeal permission was allowed to pre-emptor/plaintiffs to deposit the entire pre-emption amount with interest @ 9% per annum. Section 22 (5) (a) of the Pre-emption Act reads as follows:-

“22. Plaintiff may be called on to make deposit or to file security.-

(1) In every suit for pre-emption the Court shall at, or at any time before, the settlement of issues, require the plaintiff to deposit in Court such sum as does not, in the opinion of the Court, exceed

one-fifth of the probable value of the land or property, or require the plaintiff to give security to the satisfaction of the Court for the payment, if required of a sum not exceeding such probable value within such time as the Court may fix in such order.

- (2) In any, appeal the appellate Court may at any time exercise the powers conferred on a Court under sub-section (1).*
- (3) Every sum deposited or secured under sub-section (1) or (2) shall be available for the discharge of costs.*
- (4) If the plaintiff fails within the time fixed by the Court or within such further time as the Court may allow to make the deposit or furnish the security mentioned in subsection (1) or (2), his plaint shall be rejected or his appeal dismissed as the case may be.*
- (5) (a) If any sum so deposited is withdrawn by the plaintiff, the suit or appeal shall be dismissed.*
(b) If any security so furnished for any cause becomes void or insufficient, the Court shall order the plaintiff to furnish security or to increase the security, as the case may be, within a time to be fixed by the Court, and if the plaintiff, fails to comply with such order, the suit or appeal shall be dismissed.
- (6) The estimate of the probable value made for the purpose of sub-section (1) shall not affect any decision subsequently come to as to what is the market value of the land or property.”*

In this case Ram Parkash and others filed two separate suits claiming possession by way of pre-emption of the land sold by Chalti Devi

vide two sale deeds. Vide one sale deed, she sold 17 *kanals* 19 *marlas* of joint land alongwith 1/4th share in the tube-well *kotha*, electric connection with right of irrigation, passage etc. while vide second sale deed she sold 16 *kanals* of joint land. Civil Suit No. 175 of 1984 was decreed by the trial Court and the operative part of the judgment and decree reads as follows:-

“As per discussion made above and findings arrived at the issues, the suit of the plaintiffs for possession by way of pre-emption with regard to the suit land is decreed with costs subject to payment of ₹53,376.50 ps. minus 1/5th pre-emption money ₹9400/- already deposited by the plaintiff on 27.07.1987 on or before 10.09.1984, failing which the suit of the plaintiffs shall be deemed to have been dismissed with costs.”

The other suit filed by Ram Parkash and others was dismissed. However, the same was decreed by Ist Appellate Court and the operative part of judgment and decree passed by Ist Appellate Court reads as follows:-

“13. As an upshot of the foregoing discussion the appeal succeeds and a decree for possession of the suit land by pre-emption on payment of ₹47,751.50 ps. including an amount of ₹42,000/- as sale consideration, ₹5250/- as costs of stamp, ₹500/- as registration charges and ₹1.50 less 1/5th money already deposited, if any as costs of the copy on or before 27.09.1987 for payment to the vendees-defendant no. 2 to 6 failing which their suit shall stand dismissed with costs. On the appellants-plaintiffs depositing the amount by the appointed date, the defendants shall deliver possession of the property to

them whose title there to shall be deemed to have accrued from the date of such payment, but that, if the purchase money and costs, if any, are not so paid the suit shall be dismissed with costs.”

Appeal against judgment and decree passed by the Civil Court in Civil Suit No. 164 of 1982 was dismissed by Ist Appellate Court. Regular Second Appeal against both the decrees were dismissed.

Perusal of the decree shows that deposit of pre-emption amount was simultaneous with delivery of possession. However, on appeal filed by defendants/JD, this Court vide order dated 02.11.1987 passed in both the regular second appeals stayed dispossession of the appellants till further orders. Thereafter, vide order dated 20.05.1988 appeal was admitted for final hearing and the plaintiff/pre-emptor was allowed to withdraw the entire amount deposited by him without prejudice to his right, if any, with liberty that he will be allowed to deposit the amount after the appeal is decided. The appeal was listed for final decision on 21.08.2013. While dismissing the appeal respondents/decreed holders were allowed to deposit the pre-emption amount so withdrawn by him with interest @9% from 20.05.1988 till the date of payment. It is apparent that payments were withdrawn by the decree-holders/pre-emptors under the order of this Court and not of their own. Section 22(5)(a) of the Pre-emption Act speaks of withdrawal, if same is made by plaintiff of his own. Even if, it be presumed that order passed in this case was not as per spirit of Section 22 of the Pre-emption Act, the same was never challenged by the appellant for a period of about 25 years and now they cannot agitate the plea that this Court has wrongly allowed the plaintiff to withdraw the amount. In case of **Dattatraya vs. Shaikh**

Mahaboob Shaikh Ali and another 1970 AIR (C) 750 facts were somewhat similar. In that case the suit of pre-emptor was decreed with direction to pay consideration of ₹5000/- within six months from the date of decree on which he was to be put in possession. As per terms of the decree suit was to be deemed as dismissed in default of deposit of aforesaid amount. Amount of ₹5000/- was deposited in Court by pre-emptor but it was subsequently withdrawn by him under the order of the Court. While dismissing the appeal against decree of the lower Court, Ist Appellate Court allowed the appellant to deposit a sum of ₹5000/- before a specific date and directed the respondent on such deposit to deliver possession of property. There was term in the decree that in case of default of deposit of the amount, the suit shall stand dismissed. Against the decree of Ist Appellate Court, second appeal was filed where the order staying execution of the decree of lower Court was allowed. The appellant, who was directed to deposit the pre-emption amount by 30.04.1955, deposited this amount on 02.05.1955. After dismissal of appeal by High Court on 06.10.1966, plaintiff sought possession of land in question. Warrants of possession were issued and part possession of portion of suit property was given to decree-holder.

Respondent/JD filed application before the executing Court for restitution of possession of the properties on ground that pre-emptor had failed to deposit purchase money before 30.04.1955 as required by the lower Appellate Court. Executing Court rejected the claim of respondent/JD and the appeal against order of executing Court was dismissed by the District Court. However, in second appeal, Hon'ble Bombay High Court took a different view that there was default on the part of appellant in depositing the amount and therefore, appellant's suit stood dismissed automatically and

the appellant was not therefore entitled to possession in enforcement of the pre-emption decree. Keeping in view above facts, Hon'ble Apex Court in appeal filed by pre-emptor observed in para 3 as follows:-

“3. *The first question arising in this appeal is whether the High Court was right in taking the view that the effect of the stay order dated March 23, 1955 was merely to stay the delivery of possession by the judgment-debtors and not a stay with regard to the deposit of purchase price by the decree-holder. In our opinion, the High Court was in error in taking this view. The decree framed under Order XX, Rule 14, Civil Procedure Code requires reciprocal rights and obligations between the parties. The rule says that on payment in Court of the purchase money the defendant shall deliver possession of the property to the plaintiff. The decree holder therefore deposits the purchase money with the expectation that in return the possession of the property would be delivered to him. It is, therefore, clear that a decree in terms of Order XX, Rule 14, Civil Procedure Code imposes obligations on both sides and they are so conditioned that performance by one is conditional on performance by the other. To put it differently, the obligations are reciprocal and are inter-linked, so that they cannot be separated. If the defendants by obtaining the stay order from the High Court relieve themselves of the obligation to deliver possession of the properties the plaintiff-*

decree-holder must also be deemed thereby to be relieved of the necessity of depositing the money so long as the stay order continues. We are accordingly of the opinion that the order of stay dated March 23, 1955 must be construed as an order staying the whole procedure of sale including delivery of possession as well as payment of price. The effect of the stay order therefore in the present case is to enlarge the time for payment till the decision of the appeal.”

It appears that at the time of admission of appeal for final hearing, pre-emption amount was ordered to be withdrawn by plaintiff/pre-emptor keeping in view the period involved in disposal of the appeal, which finally came up for final hearing after about 24-25 years of its filing. The Court considered it appropriate not to keep the money of pre-emptor blocked for such a long time and permitted him to withdraw the same with liberty to redeposit, if the eventuality so arise, keeping in view the fact that delivery of possession as per decree of pre-emption had also been stayed.

In case of **Anant Ram (Ant Ram) vs. Sant Singh and another, 1979 PLJ 520**, a Bench of this Court, while relying on observations of Hon'ble Apex Court in case of **Dattatraya (supra)**, has observed as follows:-

“5. A reading of the Supreme Court judgment in Dattatraya's case (supra) shows that the moment the stay order is granted by the Appellate Court, the entire decree is put in abeyance, meaning thereby that neither the appellant is to be dispossessed nor the reciprocal obligation of depositing the pre-emption amount is to be

carried out by the respondent before the first Appellate Court, i.e. Plaintiff-pre-emptor. On this short ground alone the plaintiff-pre-emptor who is respondent before me was entitled to fresh time for deposit of pre-emption amount money by the first Appellate court on dismissal of defendant's appeal on January 8, 1979. If for some reason the first Appellate Court failed to fix time for deposit, the plaintiff-pre-emptor cannot be held responsible for the mistake of the Court. Accordingly in my view the first Appellate Court was within its jurisdiction in allowing the application for fixing the time for deposit and as such no error can be found in the impugned order.””

While deciding the appeal, permission allowed to decree-holder to deposit the pre-emption amount with interest, is to be read in continuation of order dated 20.05.1988. Now after more than 25 years of passing of order dated 20.05.1988 by this Court, this plea is not available to applicant that the same was passed in violation of provisions of Section 22 (5) (a) of Pre-emption Act and the appellant, if has withdrawn the pre-emption money under that order, has violated the above provisions. Section 22 (5) (a) of the Pre-emption Act nowhere state that if pre-emption amount is allowed to be withdrawn under the order of the Court, the suit or appeal shall be dismissed.

As per Section 22 (5) (a) of the Pre-emption Act, suit of plaintiffs was liable to be dismissed if they withdraw the amount deposited by them as per provisions of Section 22 (1) to (4). In this case plaintiffs have

not withdrawn the amount of their own but were permitted by this Court to withdraw the same and were again permitted to re-deposit this amount. Consequently, I find no violation of the provisions of Section 22 of the Pre-emption Act. Even otherwise, the scope of review application is limited to the rectification of error apparent on the face of record. The plea raised by applicants-appellants in the review application does not point out any error apparent on the face of record or are based on discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the applicant.

Learned counsel for review-applicant has referred to observation of co-ordinate Bench of this Court in case of **Kashmir Singh and others vs. Bakshish Singh (since deceased) through his legal heirs (CR No. 3429 of 2016) decided on 14.03.2017**, wherein it was observed that object of Section 22 of the Pre-emption Act is to make sure that pre-emptor is *bona fide* in prosecuting his pre-emption suit. In that case suit of the pre-emptor was decreed and pre-emptor was directed to deposit remaining pre-emption amount. First appeal against judgment and decree of the trial Court filed by vendee was dismissed. It appears that regular second appeal was allowed with the observation that pre-emptor may withdraw the amount of pre-emption money, if any, deposited with the trial Court. He filed SLP before the Hon'ble Apex Court, which was allowed. Co-ordinate Bench observed that pre-emptor was not given any permission to withdraw the pre-emption amount, as such, his suit is liable to fail under Section 22 (5) (a) of the Pre-emption Act. Facts of that case are distinguishable from the facts of present case as in this case specific permission to withdraw the entire pre-emption amount was allowed vide order dated 22.05.1988 and after decision

of appeal, pre-emptor was allowed to deposit the amount with interest @ 9%.

As a sequel of my above discussion, I find no merit in the instant review applications. As I have examined the review applications on merit, request of review-applicants seeking condonation of delay of 637 days is only of academic discussion. On perusal of applications, I find that applicants have explained the delay in filing review applications by submitting that they were pursuing the special leave petition before the Hon'ble Apex Court. While dismissing special leave petitions of review-applicant on 15.05.2015, Hon'ble Apex Court has observed that "However, the petitioners, if so advised, may move the High Court". Application seeking review of judgment passed in these appeals was filed on 10.07.2015, i.e. without much delay after dismissal of SLP, as such, delay in filing these applications is condoned.

However, in view of my discussion above, the review applications have no merit and are dismissed.

December 08, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No