

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

RSA No.1967 of 1983 (O&M)

Date of decision : 23.01.2018

Dalvinder Singh (since deceased) through his LRs

...Appellants

Versus

Baljit Singh (since deceased) through his LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B. Goel, Advocate for the appellants.

Mr. Adarsh Jain, Advocate with
Ms. Nisha Puri, Advocate for the respondents.

Mr. H.S. Hooda, Sr. Advocate with
Mr. D.D. Gupta, Advocate

ANIL KSHETARPAL, J.

The legal heirs of defendant-appellant are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff-respondent had filed a suit for possession by way of pre-emption seeking to pre-empt the sale deed executed in favour of the defendant dated 16.05.1980. The plaintiff had claimed the superior right of pre-emption on the ground that he is co-sharer in the land.

The defendant contested the suit on the ground that the plaintiff has no locus standi to file the suit and the Vendee-defendant was a tenant over the suit land under the Vendor at the time of the sale deed.

On appreciation of the evidence, the Court decreed the suit as it was found that the plaintiff is a co-sharer and has superior right of pre-emption. The Court further recorded a finding that the Vendee-defendant has failed to prove that he was a tenant on the land in dispute before the date of purchase.

The defendant-Vendee filed the first appeal. During the pendency of the appeal, the defendant-Vendee filed an application for amendment of the written statement and additional plea was taken by the defendant that the Vendee-defendant was already a co-sharer in the Khewat vide sale deeds dated 16.06.1976, 07.02.1979 and 04.06.1974. The Vendee-defendant claimed that since he was already co-owner, hence, the status of the plaintiff and the defendant was equal and, therefore, the plaintiff does not have superior right of pre-emption.

The First Appellate Court after appreciating the evidence available on the file recorded a finding that the Vendee-defendant has failed to prove that his Vendors were ever co-owner in the Khewat No.86. Hence, the Court dismissed the appeal.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellant while referring to the sale deeds has submitted that all the sale deeds are out of land comprised in Khewat No.86 and, therefore, the findings of the First Appellate Court are incorrect. This Court had repeatedly called upon the counsel for the appellant to prove that the Vendors of these sale deeds were co-owners in

the joint khewat. However, counsel was unable to point out any evidence, in this regard.

In view of what has been discussed above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of in terms of the aforesaid judgment.

23.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No