

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-1192-1986 (O&M)
Date of Decision : 17.9.2018

Raghu Ram

....Appellant

vs.

Umerdin (died) through his LRs and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. N.D.Achint, Advocate for the appellant.

Mr. Gaurav Chopra, Advocate for the respondents.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for pre-emption filed by predecessor-in-interest of the respondents.

Brief facts of the case are that Amarjit Singh and Hari Singh were co-owners in respect of land comprising in rectangle Nos.32 and 25. Amarjit Singh sold the land measuring 25 Kanals and 12 Marlas by two sale deeds to the predecessor-in-interest of the respondents from rectangle No. 32. Thereafter, Hari Singh sold 20 Kanals to the appellant and some of the land which he had sold was from rectangle No. 32 and some from rectangle no. 25. Thereafter, the predecessor-in-interest of the respondents filed a suit for pre-emption of the sale of the suit land which having been decreed by both the Courts below, the present appeal has been filed.

Counsel for the appellant has argued that since the predecessor-in-interest of the respondents had purchased the land only out of rectangle no.32 he did not become a share holder in rectangle No. 25 and therefore, at

the most he would be entitled to pre-empt the sale out of rectangle No. 32 but could not pre-empt the sale from rectangle No. 25. He has relied upon the judgment of this Court passed in the matter of “***Mahesh Pal and others vs. Desh Raj and others***” reported as ***1983(I) All India Land Laws Reporter 67*** in this context. The question before this Court is to be decided on a basis of perusal of two Full Bench Judgments of this Court passed in the matters of “***Lachhman Singh vs. Pritam Singh***” reported as ***1970, P.L.R. 341*** and “***Bhartu vs. Ram Sarup***” reported as ***1981 Land L.R. 356***. It is the contention of the learned counsel for the appellant that in the identical case of Mahesh Pal (supra), the learned Single Judge had applied the dictum of law in Lachhman Singh's case (supra) and held that in such a case the first purchaser would become a co-sharer only in that rectangle where he had purchased the land and would not become co-sharer in the other land where the vendor was a co-sharer. However, counsel for the respondents had referred to the question of law which was before the Full Bench in Bhartu's case (supra) which was to the following effect :-

“Whether the sale of a specific portion of land described by particular Khasra numbers by a co-owner out of the joint Khewat would be a sale of share out of the joint land and pre-emptible under section 15(1)(b) of the Punjab Pre-emption Act?”

This subsequent Full Bench after considering the Lachhman's case (supra) held as follows:-

“The question involved in Lachhman Singh's case (supra) (Full Bench) was as to whether the purchaser of a specific portion of some killa number in two rectangles would become a co-sharer in the Khewat consisting of several other rectangles and would be entitled to pre-empt the sale of land out of the rectangles other than in which he became owner by the

said purchase. On these facts it was held that such a purchaser does not become a co-sharer in the Khewat and, therefore, had no right to pre-empt the sale. The proposition laid down by the Full Bench has no direct bearing on the question whether the sale of specified Khasra numbers out of a Khewat would be a sale of share out of the joint land or not and the answer to this question, in our view, depends on the inter se rights of the co-sharers in the joint Khewat and the nature in law of the sale of a specified portion of the joint holding.”

Further, answered the question in paragraph 8 in the following terms:-

“..... Consequently, howsoever weak the right of pre-emption may be, it cannot be accepted that it is so illusory that it can be defeated simply by describing the land purchased in terms of specific Khasra numbers instead of fractional share. We, therefore, answer the question in the affirmative and hold that the sale of a specific portion of land described by particular Khasra numbers by a co-owner out of the joint Khewat would be a sale of share out of the joint land and pre-emptible under section 15(1) (b) of the Punjab Pre-emption Act. As the learned counsel for the appellant intends to argue the appeal on other points, this case would now go back to the learned Single Judge for final disposal.”

In view of this position of law, the appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

17.9.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No