

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.280 of 1987 (O&M)

Date of Decision: 03.08.2018

Manmohan Singh etc.

..... Appellants

Versus

Balkar Singh etc.

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate
for the appellants.

Mr. Kanwardeep Singh, Advocate and
Mr. Mohinderjeet Singh, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for possession by way of pre-emption of sale deed dated 22.08.1979.

Plaintiffs claimed superior right of pre-emption being co-sharers. The defendants contested the suit and pleaded that they were already in possession of the property being tenants. They were already a co-sharer in the khata. Both the Courts as noticed above on appreciation of evidence available on the file decreed the suit filed by the plaintiffs. Before the learned First Appellate Court, the plaintiffs also filed an application under Order 41 Rule 27, CPC for additional evidence so as to produce on record Jamabandi for the year 1979-80, 1984-85, order dated 02.03.1984

and reply of Balkar Singh in the partition proceedings. The aforesaid application was dismissed by the learned First Appellate Court.

Learned counsel for the appellants has submitted that the defendants-appellants had become co-sharers by way of decree dated 08.03.1984 Ex.D-4 on the record and therefore, the suit was not maintainable. He further submitted that the joint Khata had been partitioned vide order dated 28.08.1984 and hence, there was severance of status of co-sharership before the passing of decree by the learned trial Court. He further submitted that the defendants-appellants were already tenants on the land in question and therefore, the suit filed by the plaintiffs could not be decreed.

During the pendency of the present appeal, another application was filed for leading additional evidence i.e. CM No.6599-C-2011. Through this application, the appellants wishes to produce the judgment dated 08.03.1984, copy of Jamabandi for the year 1974-75, copy of plaint filed by defendant No.1/appellant No.1, copy of the judgment dated 24.02.2000, copy of the judgment dated 25.08.2001 and copy of Jamabandi for the year 2004-05.

On the other hand, learned counsel for the respondents has submitted that in view of Section 21-A of the Punjab Pre-emption Act, any improvement in the status after filing of the suit for pre-emption except inheritance or succession would not affect the rights of the pre-emptor. He submitted that the suit for pre-emption was filed on 22.08.1980. Hence, any improvement in the status would not cloath the appellants with any ground to defeat the superior right of pre-emption. He further submitted that the alleged order of partition is admittedly at the back of the

respondents-plaintiffs as intentionally the plaintiff was not impleaded as party. He rather while drawing the attention of the Court submitted that the defendants-appellants had played fraud with the Court. He submitted that initially the application for partition was filed on 22.11.1982 in which the plaintiffs were impleaded as a party. However, the same was dismissed for non-prosecution on 15.04.1983. Thereafter, the defendants-appellants filed fresh application for partition on 24.02.1984, however, the plaintiffs-respondents were not impleaded as party. Hence, he submitted that there cannot be any partition at the back of the plaintiffs-respondents who were co-sharers. He further submitted that the defendants-appellants has failed to produce that they were sitting as tenants in the property in dispute. On behalf of defendants-appellants, Mann Singh who appeared as DW-7 has admitted that Parkash Chand, the vendor of the defendants-appellants, was in possession at the time when the property in dispute was purchased. Even khasra Girdawaries (revenue record) does not support the plea of tenancy.

This Court has considered the submissions of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

As per Section 21-A of the Punjab Pre-emption Act, 1913, any improvement in the status of a vendee defendant after institution of a suit for pre-emption shall not affect the rights of the pre-emptor in such suit otherwise than through inheritance or succession. Section 21-A of the Act is extracted as under:-

“21-A. Any improvement, otherwise than through inheritance or succession, made in the status of a vendee defendant after the institution of a suit for pre-emption shall not affect the rights of the pre-emptor-plaintiff in such suit.”

In view of the aforesaid, any decree passed by the Court after the institution of a suit would not come to rescue the defendants-appellants. Still further, the judgment and decree dated 08.03.1984 has been passed in a suit which was filed by the defendants-appellants in order to pre-empt a sale deed through which the plaintiffs-respondents had purchased some property from Parkash Chand, the vendor. The suit filed by the defendants-appellants was decreed on the ground that the parties are co-sharers and therefore, the defendants-appellants has a superior right of pre-emption. In such circumstances, the judgment which has been sought to be placed on record by way of additional evidence or the decree dated 08.03.1984 does not help the defendants-appellants.

Next argument of learned counsel is with regard to the land having been partitioned. It will be noted that the aforesaid proceedings for partition have been decided without impleading the plaintiff-respondents as party. Any order passed at the back of the plaintiffs, would not be binding on them and would not affect their rights as rightly submitted by learned counsel for the respondents. In fact, the partition proceedings initiated and finalized are result of fraud. Initially, the defendants-appellants filed an application seeking partition of the property on 22.11.1982 while impleading the plaintiffs-respondents as parties which was got dismissed for non-prosecution and in the fresh application, filed on 24.02.1984, only Darbari Lal and Parkash Chand were impleaded. Parkash Chand had already sold the property and he was no more co-owner. However, for the reasons best known, the defendants-appellants did not implead the plaintiffs-respondents as party.

Last argument of learned counsel is with regard to tenancy. It

will be noticed that this issue has already been examined by both the Courts below. Both the Courts after appreciation of evidence have found that the defendants-appellants are not proved to be tenants on the land. The admission of the witness appearing for the defendants Mann Singh clearly proves that Prakash Chand, the vendor was in possession on the date it was sold to the defendants-appellants. Still further, it has come in evidence that the land was banjar. If the land was banjar, not cultivable then, there is no question of any one having taken the land for cultivation. Even khasra Girdawaries do not prove that the defendants-appellants were in possession.

Other documents filed by the defendants-appellants in support of this appeal by way of additional evidence also does not help the appellants. The defendant No.1/appellant No.1 had filed a suit claiming declaration that he is owner pursuant to the decree for pre-emption. The aforesaid suit was decreed by the learned Court vide judgment dated 24.02.2000 affirmed in first appeal dated 25.08.2001. However, such judgment and decree nowhere result in denying the superior rights of pre-emption. Similarly, copy of Jamabandi for the year 2004-05 also does not help the appellants.

The superior right of pre-emption is to be proved and maintained on three dates i.e. date of sale, date of filing of the suit and date of decree passed by the trial Court. In the present case, the plaintiffs have successfully proved their superior right of pre-emption being co-sharers on all the three dates. No doubt, the superior right of pre-emption on the ground of co-sharer has now been omitted by amendment in the Act carried out by the Haryana Legislature in the year 1995. However, Consitution Bench of the Hon'ble Supreme Court in the case of Shyam Sunder and

another Vs. Ram Kumar and another, 2001(8) SCC 24 have held that such amendment would not operate with retrospective effect and any decree passed by the learned trial Court, before amendment was brought in, would continue to operate and appeals, if any pending shall be decided without taking into consideration the amendment made. In the present case, the decree was passed by the learned trial Court on 08.09.1986.

In view of what has been discussed above, even after taking into consideration the additional evidence filed, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

03.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No