

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.1245 of 1992 (O&M)
Date of Decision.27.09.2018

Balwant Singh and another

.....Appellants

Vs

Moman

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Jain, Senior Advocate with
Mr. J.L. Malhotra, Advocate
for the appellants.

Mr. Ajay Jain, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The appellants-defendants are in appeal against the concurrent finding of fact whereby suit of the respondent-plaintiff for pre-emption of the sale deed dated 21.12.1988 executed by one of the co-sharers namely Phul Singh son of Lekhu for a consideration of ₹50,000/- in favour of Balwan Singh and Dharampal, defendant Nos.1 and 2, has been decreed.

The respondent-plaintiff instituted the suit on the premise that the plaintiff-Moman vide sale deed dated 21.06.1988, Ex.D-13 purchased the share of Ram Chander, co-sharer and in lieu thereof, mutation dated 12.7.1988 was entered into. In view of the law of pre-emption in vogue, the sale deed could not have been executed by co-sharer to a third party.

The suit aforementioned was contested by the defendants whereby they denied status of the plaintiff to be of co-sharer. It was averred that the suit property was already partitioned and therefore,

did not have any subsisting right as co-sharer.

On receipt of the replication, the trial Court framed the following issues:-

“1. Whether the plaintiff has a superior right of pre-emption? OPP

2. Whether the sale consideration of Rs.50,000/- was made in good faith and was actually paid? OPD

3. If issue No.2 is not proved then what was the market value of the property at the time of sale? OPP

4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

5. Whether the defendant has spent ₹25,000/- for making the land in dispute cultivable? OPD

6. Whether the defendant has borne the expenses of ₹10,000/- as stamp duty and registration fees etc.? OPD

7. Whether the suit is barred by limitation? OPD

8. Whether the defendant is entitled to special costs under Section 35-A CPC? OPD

9. Relief.”

The plaintiff examined himself as PW1 and brought on record Ex.P1 to P5 i.e. sale deed dated 21.12.1988 executed by Phul Singh in favour of defendants, Ex.P2 Mutation No.98 sanctioned in favour of defendants on the basis of document Ex.P1, Ex.P3 mutation No.96 sanctioned in favour of plaintiff, Ex.P4 and P5 jamabandies for the year 1982-83 and 1987-88 to show that after mutation, Moman had become co-sharer instead of Ram Chander with Shanker, Sita

Ram and Phul Singh.

On the other hand, defendants examined Balwan as DW1, Jagdish Chander as DW2, Ram Sarup as DW3, Kanshi Ram as DW4 and Phul Singh as DW5 and brought on record documents Ex.D1 copy of judgment in case titled "Sita Ram Vs. Phul Singh", Ex.D2 to D9 copies of nehri girdawaries, Ex.D10 copy of khasra girdawari kharif 1989, Ex.D11 copy of khasra girdawari for the year 1989-90, Ex.D12 is original sale deed executed in favour of defendants, Ex.D13 copy of sale deed executed in favour of Ram Chander and Ex.D14 copy of order/judgment dated 7.12.89.

On preponderance of evidence, the trial Court while negating the plea of defendants *vis-a-vis* property having been partitioned, decreed the suit. The appeal laid before the lower Appellate Court was also dismissed.

Mr. V.K.Jain, learned Senior Advocate assisted by Mr. J.L. Malhotra appearing for the appellants-defendants in support of the memorandum of appeal raised the following submissions:-

(i) Both the Courts below erred in holding that status of the plaintiff was of a co-sharer.

(ii) It had been conclusively proved on record that there was a partition amongst co-sharers prior to the execution of sale deed in question i.e. dated 21.12.1988. Even if no entry with regard to partition was made in the revenue record, presumption qua partition was required to be noticed and could not have been discarded.

(iii) The plaintiff had already withdrawn the amount of pre-emption, therefore, had no subsisting right. Pre-

emption is bound by the recital of the sale deed, thus, urges this Court for setting aside the concurrent finding of fact and law as there is illegality and perversity.

Per contra, Mr. Ajay Jain, learned counsel appearing on behalf of the respondent-plaintiff supported the judgments and decrees of the Courts below to contend that recital in the sale deed sought to be pre-empted would not clothe the property to have partitioned unless and until it is reflected in the revenue record. Nothing prevented the defendants to place on record the document or carry out necessary correction in the revenue record. On the contrary, vide Ex.P4 and P5, jamabandies for the year 1982-83 and 1987-88, the plaintiff proved that property was in joint possession of Ram Chander, Shanker, Sita Ram and Phul Singh, therefore, after purchase of property from Ram Chander way back in the year 1988, he had acquired the status of a co-owner. In the absence of partition, law of pre-emption did not permit the co-sharer to sell the land with third party without making an offer to co-sharer, thus, urges this Court for dismissal of the appeal as there is no illegality and perversity.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jain. Concededly, the plaintiff had become owner of the suit property by virtue of sale deed dated 21.6.1988, Ex.D13. The mutation No.96, Ex.P3 was recorded reflecting that he had purchased share of other co-sharer Ram Chander. Ex.P4 and Ex.P5 jamabandies for the year 1982-83 and 1987-88 reflected the status of the plaintiff as a co-sharer, thus, argument of Mr. Jain that

parties had already arrived at partition, which is reflected in the sale deed dated 21.12.1988 was meaningless as no entry to that effect existed in the revenue record. Revenue record carried presumption of truth, which had not been rebutted. In such circumstances, both the Courts below, in my view, have earnestly and in correct perspective decreed the suit.

During the pendency of this appeal, vide order dated 4.1.1994, *ad interim* order dated 09.06.1992 whereby there was an interim stay with regard to implementation of the judgments and decrees under challenge was made absolute. The plaintiff submitted an application for withdrawal of the pre-emption amount with undertaking that in case he succeeded in appeal, he would be given fresh time to deposit the decretal amount. This Court ordered for withdrawal without prejudice to his right in appeal. It would be in the fitness of things to extract orders dated 19.08.1992 and 04.01.1994, which is as under:-

“19.8.1992

After hearing the learned counsel for the parties, the stay granted by Motion Bench on 9.6.1992 is made absolute. It shall, however, be open to the respondent to withdraw 1/5th of the pre-emption amount. At the time of final hearing, if the appeal fails, the pre-empter shall be given fresh time to deposit the decretal amount.

04.01.1994

Ad-interim order dated June 9, 1992 is made absolute. Applicant-respondent shall be permitted to

withdraw the pre-emption amount which was deposited in pursuance of the judgment and decree of the trial Court. The withdrawal shall be without prejudice to his right in appeal.

C.M. stands disposed of accordingly.

As an upshot of my finding, I do not find any illegality and perversity in the judgment of the Courts below, thus, the same are upheld. The second appeal is dismissed.

Since the plaintiff has withdrawn the amount, a period of three months is given to deposit the amount of pre-emption before the Executing Court, failing which the decree of the Courts below will become inexecutable. Even otherwise, he shall be at liberty to seek execution of the judgments and decrees in accordance with law.

(AMIT RAWAL)
JUDGE

September 27, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No