

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1628 of 1992 (O&M)
Date of decision:20.07.2018

Mam Chand

... Appellant

Vs.

Ajmer Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pritam Saini, Advocate
for the appellant.

Mr. Piyush Aggarwal, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Appellant-defendant No.1 is in Regular Second Appeal against the judgments and decrees of both the Courts below, whereby, suit of the respondent-plaintiffs for pre-emption of the suit land while challenging the sale deed dated 17.02.1988 executed by defendant no.2 in favour of defendant no.1, had been decreed.

The facts which emanate from the pleadings of the parties are that respondent-plaintiffs instituted the suit claiming ownership in the suit land subject matter of the sale deed dated, *ibid* on the premise that they were co-owners in the land situated outside the Municipal Limits of Thanesar.

The defendants contested the suit on the premise that land was within the Municipal Limits and therefore, rigours of Pre-emption Act, 1841

(for short “1841 Act”) was not applicable.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs have got superior right to pre-empt the sale in question on the basis of co-sharership?OPP*
- 2. Whether the sale price was not actually paid or fixed in good faith? If so, to what amount?OPP*
- 3. Whether the suit is not maintainable?OPD*
- 4. Whether the suit is barred by limitation?OPD*
- 5. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD*
- 6. Whether the suit is bad for partial pre-emption?OPD*
- 7. Whether the suit is collusive and bename?OPD*
- 7-A Whether village Ratgal has fallen with the limits of Thanesar municipality?OPD*
- 8. Whether the answering defendant is entitled for improvement charges in case of the decree?If so, to what amount?OPD*
- 9. Whether the answering defendant is also entitled for stamp and registration charges besides the sale consideration in case of the suit is decreed, if so to what effect?OPD*
- 10. Relief.”*

During the course of hearing, it was apprised that vide notification dated 01.10.1984, land subject matter of the sale deed was

brought within the purview of Municipal Limits of Thanesar but the aforementioned notification was challenged in this Court, vide CWP No.5551 of 1985 and there was interim stay with regard to the applicability/implementation of the aforementioned notification.

The trial Court on the basis of the aforementioned interim stay, decreed the suit. The appeal preferred before the Lower Appellate Court also met with the same fate.

Mr. Pritam Saini, learned counsel appearing on behalf of the appellant-defendant No.1 submitted that notification, *ibid* was challenged by filing the said writ petition and interim stay was granted but had been finally dismissed on 04.08.2004. The suit was filed on 03.02.1989. In the absence of any interim stay, notification would automatically be applicable, therefore, sale deed could not be pre-empted at the behest of the respondent-plaintiffs being co-sharers as the law of pre-emption was only applicable to the agricultural land and therefore, there is gross illegality and perversity.

Mr. Piyush Aggarwal, learned counsel appearing on behalf of the respondent-plaintiffs submitted that both the Courts below, particularly the Lower Appellate Court had given the findings by taking into consideration the contents of the sale deed, wherein, it was specifically recited that land subject matter of the sale deed was outside the purview of the Municipal Limits, thus, the suit was rightly decreed. The act of the Court prejudices none, for, during the pendency of the suit and till its adjudication notification bringing the land in dispute within the Municipal Limits was not implemented and thus, for all intents and purposes, it was treated to be as

agricultural land and urged this Court for upholding the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is force and merit in the submissions of Mr. Saini.

The facts as explained above had not been controverted by either of the counsel representing the parties to the lis. The only point to be considered by this Court is whether notification dated 1.10.1984 vide which area subject matter of the suit land had been brought within the Municipal Limits of Thanesar, would be termed as urban or agricultural land.

The provisions of the 1841 Act, could be pressed into service by any of the co-owners as it was in vogue, by the co-sharers at the relevant point of time in respect of the land.

The adjudication of the suit by the trial Court had been only on the point that implementation of the notification was stayed but subsequent events as noticed above cannot be ignored, in essence, notification on dismissal of writ petition would be made applicable w.e.f. 01.10.1984, whereas, sale deed is of 17.02.1988, thus, for all intents and purposes, subject matter of the suit land cannot be considered as an agricultural land, but, urban and the suit for pre-emption in respect of the urban land was not maintainable.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme

Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously,

therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

In view of what has been observed above, the appeal is allowed.

July 20, 2018

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No