

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.444 of 1989 (O&M)

Date of decision: 21.03.2018

Sat Pal and others

..... Appellants

Versus

Raj Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Pritam Singh Saini, Advocate and
Ms. Monika Arora, Advocate
for the appellants.

Mr. Adarsh Jain, Advocate with
Ms. Kamaldeep Kaur, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court.

Plaintiffs-respondents filed a suit for possession by way of pre-emption with respect to land measuring 16 kanals and 9 marlas sold by defendant No.6 in favour of defendants No.1 to 5 by registration sale deed dated 10.02.1984 claiming superior right of pre-emption being co-sharers. The suit was filed on 07.02.1985. Learned trial Court relied upon copy of Jamabandi for the year 1984-86 which was corrected on the basis of order of partition which has been declared illegal in a separate judgment passed today while deciding RSA No.3981 of 1998, dismissed the suit. However, learned First Appellate Court reversed the aforesaid judgment and found that the Assistant Collector, Gr.II had no jurisdiction to entertain and decide

the partition proceedings.

This Court while deciding RSA No.3981 of 1998 has already held that partition proceedings and the order of partition is illegal and not following the principles of natural justice and hence, null and void.

Superior right of pre-emption is to be established by the plaintiffs 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, there is no dispute that the plaintiffs-respondents were co-sharers on the date of filing of the suit, on the date of institution of the case. However, only the dispute is whether on the date, the trial Court passed the decree whether the plaintiffs were co-sharers or not. The learned trial Court recorded a finding against the plaintiffs on the basis of order partitioning the land as after partition, the plaintiffs lost their status as co-sharers. The partition order has already been held to be illegal.

In view thereof, the plaintiffs are held to be co-sharers even on the date the learned trial Court decided the suit.

Learned counsel for the parties agreed that the Assistant Collector, Gr.II has the jurisdiction to decide the partition proceedings in the State of Haryana.

In view of the stand taken by the counsel for the parties, although the reason assigned by the learned First Appellate Court is found to be erroneous, however for entirely different reasons as noticed above, the appeal filed by the defendants-appellants is dismissed.

21.03.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No