

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

127

RSA No.2317 of 1991 (O&M)

Date of decision: 13.09.2018

Sukhbir Singh

..... Appellant

Versus

Hans Raj and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate and
Mr. C.B. Goel, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court resulting in decree for possession by way of pre-emption under Punjab Pre-Emption Act, 1913. Two plaintiffs filed a suit claiming superior right of pre-emption (as co-owners) under Section 15 of the Pre-Emption Act, 1913. As per the revenue record i.e. Jamabandi for the year 1995-96, 97 kanals and 11 marlas of land comprised in one khata. It is undisputed that Sh. Gopal was owner of half share whereas Rajinder and Bikram Singh were owners of remaining half share in the land measuring 21 kanals and 1 marla. Sh. Gopal initially exchanged one kanal and 11 marlas of land with plaintiff No.1 i.e. Hans Raj vide exchange deed dated 30.11.1987 which was duly entered in the revenue record vide Rapat No.293 dated 23.03.1988.

Although, that exchange was with respect to specific khasra number,

however, an undivided share in the property even if transferred by way of sale, gift or exchange would be deemed to be undivided share in the joint khata as held by five Judge Bench of this Court in the case of Ram Chander Vs. Bhim Singh and others, 2008(3) PLR 747.

It is also not disputed that Sh. Gopal died and his two sons sold the land measuring 6 marlas vide sale deed dated 30.11.1988. It was also a sale out of undivided share in the joint khata. The purchaser of the sale deed dated 30.11.1998 was plaintiff No.2 whereas Hans Raj was plaintiff No.1.

Rajender and Bikram Singh who are joint owners of half share are alleged to have executed a registered lease deed for a period of 99 years in favour of Sukhbir (appellant herein) and Satbir Singh. Thereafter, Rajinder and Bikram Singh, however, sold 9 kanals and 16 marlas vide sale deed dated 29.12.1988. Learned trial Court dismissed the suit, however, learned First Appellate Court reversed the finding and held that every one was co-sharer as the joint land was never partitioned.

Learned counsel for the appellant has submitted that the appellant is a lessee of the land vide lease deed dated 28.11.1988. He submitted that this lease deed was executed and registered before sale deed in favour of the plaintiff No.2 i.e. 30.11.1988. Hence, he submitted that plaintiff No.2 had no superior right of pre-emption. He further submitted that the inference of partition can be drawn from the fact that when Sh. Gopal exchanged the land, it was exchanged with specific reference to the land comprised in khasra numbers. He further submitted that the sale deed in favour of plaintiff No.2 is also with respect to the land comprised in specific khasra number. He further submitted that there was a mutation of

partition recorded on 08.03.1989 which refers to agreement of partition dated 30.11.1988.

On the other hand, learned counsel for the respondent while relying upon Ram Chander's (supra) has contended that even if any co-sharer sells the land comprised in a particular khasra number, such sale would be a sale of share from the undivided khata. He further submitted that any transaction done by a co-sharer even while referring to specific khasra number would only be a sale out of undivided share and transferee would become co-sharer and stepped into shoes of his/her vendor. He further submitted that sale of six marlas of land in favour of his client i.e. plaintiff No.2 is also referring to share out of joint khata. He further submitted that the mutation dated 08.03.1989 refers to an agreement dated 30.11.1988 which has never been produced. Still further, the mutation of partition does not include and involve all the co-sharers and therefore, there cannot be any partition without involvement of all the co-sharers. He further submitted that the lease deed dated 28.11.1988 was executed only to defeat the right of pre-emption and it was never acted upon. The sale in favour of the lessee is after a period of one month only.

This Court has considered the submissions and with the able assistance of learned counsel for the parties gone through the judgment passed by the learned First Appellate Court and the records.

It is undisputed and well settled in the case of Ram Chander (supra) that a co-owner selling the land from joint khewat by reference to a specific rectangle or khasra number would be a sale of the share and such transferee would only become co-sharer in the undivided khata. Hence, the exchange or the sale of land with reference to the specific khasra number

would not come to rescue the appellant. As regards the partition, it is suffice to mention that neither the agreement which has been referred to in the mutation has been produced nor it is proved on file that all the co-sharers were party to the proceedings of mutation recording partition. Such mutation cannot result in severance of status unless all the parties jointly request for division of the land. Neither plaintiff No.1 or plaintiff No.2 who were co-sharers were present when the aforesaid mutation was entered. As regards the lease deed, it is apparent and correctly found by the learned trial Court that the lease deed was only with a view to defeat the superior right of pre-emption and not a genuine lease deed. It is not believable that a person who has taken on lease the land for 99 years, one month before would also purchase the property by getting the sale deed registered within one month. It is undisputed that before the learned First Appellate Court, no argument was raised on the basis of the aforesaid lease deed.

In view thereof, there is no ground to interfere with the order passed by the learned First Appellate Court.

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

Appeal is dismissed.

13.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No