

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

RSA No. 444 of 1995 (O & M)

Date of Decision:-21.2.2018

Suraj Bhan and others

...Appellants

Versus

Gorakh Ram

...Respondent

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ramesh Hooda, Advocate
for the appellants.

Ms. Alka Sarin, Advocate
for the respondent.

AMIT RAWAL J.(Oral)

CM No.7262-C of 2013

Prayer in this application filed under Order 41 Rule 27 CPC is
for placing on record the additional evidence.

Keeping in view the facts mentioned in the application,
supported by an affidavit, same is allowed and the documents i.e.
Annexures A-1 to A-3 are taken on record.

RSA No.444 of 1995

Appellants-defendants are in appeal against the judgments and
decrees of both the Courts below whereby the suit filed by the respondent-

plaintiff challenging the sale deed dated 18.5.1989 by pre-empting the same on deposit of sale consideration on the ground of being a co-sharer has been decreed by both the Courts below.

The respondent-plaintiff instituted a suit claiming the pre-emption on the ground that he was co-owner of the land on the basis of a decree dated 28.3.1984 and therefore, the other co-sharers could not sell the land to the third party without offering to the respondent-plaintiff. The sale consideration was Rs.54,000/-. The suit was vehemently contested by the appellants-defendants. It was inter alia contended that there was no locus standi and suit was barred by efflux of time. The co-sharer having acquired the right by virtue of decree would not be actually co-sharer, therefore, he would not having a right to pre-empt the land.

The trial Court on the basis of the preponderance of the evidence, decreed the suit. The appeal laid before the lower Appellate Court was also dismissed. It is in this background the present appeal has been filed.

Mr. Ramesh Hooda, Advocate learned counsel appearing for the appellants submitted that during the pendency of the aforementioned regular second appeal subsequent additional evidence has been placed on record by way of miscellaneous application No.7262-C of 2013 by invoking the provisions of Order 41 Rule 27 CPC. By virtue of the judgment dated 30.4.2005 the decree dated 28.3.1984 has been set aside and the respondent-plaintiff has lost the status of the co-sharer. The judgments and decrees of the Courts below are not sustainable and are liable to be set

aside. The counsel has further submitted that the decree had accorded the status to the plaintiff as a co-sharer and the land remained unpartitioned, therefore, every co-sharer would be in the absence of partition, owner of each and every inch of land. Even otherwise the Haryana Pre-emption Act had been amended w.e.f. 7.5.1995 by repealing the right of a co-sharer but only protected the right of the tenant, therefore, the suit is liable to be dismissed.

Per contra, Ms. Alka Sarin, Advocate learned counsel appearing on behalf of respondent-plaintiff submitted that the right of the co-sharer has to be crystalised by way of passing of the decree whereby a divergence of view by various Courts including the judgment of the Supreme Court, the matter was referred to the Constitution Bench in **Shyam Sunder vs. Ram Kumar and another 2001(8) SCC 24** wherein it has been held that the status of the co-sharer has to be seen only at the time of passing of first decree. She further submitted that the suit was decreed by the trial Court wherein the status of the co-sharer was in existence and therefore such plea did not applicable.

I have heard learned counsel for the parties and appraised the paper book.

The aforementioned facts are not controverted, muchless the judgment dated 30.4.2005 placed on record by way of additional evidence. The short point involved in the present appeal is whether the status of the co-sharer in case it ceased to exist at a later stage i.e. after the passing of the first decree would the right of pre-emption also exhausted, the answer is

'No'. The aforementioned proposition has already been laid down in a judgment of Constitution Bench in Shyam Sunder's case (supra). For the sake of brevity, paragraphs 46 and 47 are reproduced herein below :-

“46. For the aforestated reasons, we approve the view of law taken in Didar Singh etc. vs. Ishar Singh (dead) by LRs etc. (supra) and further hold that the decision in the case of Ramjilal vs. Ghisa Ram (supra) does not lay down the correct view of law.

47. The result of the aforesaid discussion is that the amending Act being prospective in operation does not affect the rights of the parties to the litigation on the date of adjudication of the pre-emption suit and the appellate Court is not required to take into account or give effect to the substituted Section 15 introduced by the amending Act.”

The rights of the co-sharer has been crystalized at the time of passing of the decree by the trial Court on 13.8.1993 at that time admittedly the status of the respondent-plaintiff was a co-sharer, therefore, he had every right to maintain or challenge the sale deed dated 18.5.1989.

There is also no force in the contentions of Mr. Ramesh Hooda, learned counsel for the appellants that as the decree dated 28.3.1984 was only with regard to a killa number but the fact of the matter is that status of the co-sharer in the joint khata or whether the suit land was partitioned or not, had not been proved on record, therefore, in view of the ratio decidendi culled by Full Bench of this Court in Bhartu vs. Ram Sarup 1981 PLJ 204 I am of the view that every co-owner has a right in each and every inch of the land. The aforementioned argument is, thus, hereby rejected.

I do not find any illegality and perversity in the judgments of the Courts below, no ground for interference is made out, therefore, findings no merit in the present appeal the same stands dismissed.

February 21, 2018

Vijay Asija

(AMIT RAWAL)

JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No