

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

102 (2 cases)

Date of decision:26.11.2018

1. RSA No.2450 of 1996 (O&M)

Jeet Singh and another

... Appellants

vs

Jagan Singh and others

... Respondents

2. RSA No.2452 of 1996

Jeet Singh and another

... Appellants

vs

Jagan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.P.S.Dhaliwal, Advocate,
for the appellants
Mr.A.K.Verma, Advocate,
for respondents no.1 and 2
Ms.Kamalpreet Kaur, Advocate,
for respondent no.3.

...

AMOL RATTAN SINGH, J. (Oral)

1. These two appeals (second appeals) arise out of two suits, one filed by the appellants in these two appeals and the other by respondent no.3 herein, i.e. Kartar Singh, with the plaintiffs in both suits seeking possession of the suit property on the basis of preemptory rights contended to be vested in each of them, on the ground that each of the plaintiffs was also a co-sharer in the suit property and therefore, the two sale deeds executed on 1.6.1990 by one Sher Singh in favour of respondents no.1 and 2 in each of these two appeals, i.e. Jagan Singh and Maghar Singh, deserved to be

cancelled upon the plaintiffs paying an amount of Rs.80,000/- in respect of one sale and Rs.1,20,000/- in respect of other sale, (though not Rs.1,65,000/- as was shown to be the consideration amount in those deeds, the said amount contended to be 'inflated').

2. The plaintiff in each of the two suits, i.e. Civil Suit no.259 of 1991 and Civil Suit 656 of 1991, was impleaded as defendant no.3 in the suit filed by the 'other plaintiff', showing the third defendant (plaintiff in the other suit), as a rival preemptor.

3. Both the suits having been decreed in favour of the plaintiff in each, with the trial Court holding that being co-sharers, they had a prior right of purchase in terms of Section 15(1)(c) of the Punjab Preemption Act, 1913, the said judgment and decrees were challenged by respondents no.1 and 2 in these 2 appeals, i.e. by Jagan Singh and Maghar Singh, by way of 3 separate appeals, with the first appellate Court having held that one of the appeals (Civil Appeal no.20 of 1995 before it), had been rendered infructuous, whereas the other two appeals were allowed on the ground that Section 15(1)(c) of the aforesaid Act stood amended w.e.f. 17.5.1995, with the preemptory right of a co-sharer to purchase land on that ground, having been 'divested'.

It was further held by the learned first appellate Court, after citing from two judgments in Karan Singh vs. Bhagwan Singh (dead) by LRs and others, 1996 HRR 91 and Virsa Singh Kamboj vs. Darshan Singh Datta and others, 1995 HRR 313, that though the amendment in the Act was effected after the date of the decree in favour of the plaintiffs (i.e. 15.3.1994), however, the amendment would apply even to pending

proceedings.

[It is seen that as a matter of fact the judgment and decree in Civil Suit no.656 of 1991 was delivered on 15.3.1994, though the judgment and decree passed in Civil Suit no.259 of 1991 actually was issued on 29.9.1995, in terms of the earlier decree, both the suits otherwise having been clubbed together at an earlier stage.]

4. Learned counsel for the parties are *ad idem* that subsequently, vide a 5 Judge Bench judgment of the Supreme Court in Shyam Sunder and another vs. Ram Kumar and another, 2001(3) RCR (Civil) 754, it has been held that the amending Act would operate prospectively and would not affect the rights of parties to a litigation on the date of adjudication of the preemption suit and an appellate Court was not required to take into account or give effect to the amended Section 15 of the Act.

5. However, Mr.Verma, learned counsel for respondents no.1 and 2 herein, i.e. the vendees in favour of whom the sale had been executed (as had challenged by the plaintiffs-preemptors), submits that the appeal would need to be remitted to the appellate Court because a specific stand had been taken by the respondents-defendants that a preemptory suit would not lie against them, they being tenants on the land and therefore also having a preemptory right in terms of sub-clause 'Fourthly' of clause (a) of sub section (1) of Section 15 of the Act.

6. Learned counsel for the appellants on the other hand submits that the respondents herein not having filed any appeal in this Court against the judgment of the first appellate Court, even though that Court had not decided the matter on merits and had simply held that there was no

preemptory right available with the plaintiffs in view of the amendment made w.e.f. 17.5.1995, the matter cannot be remitted to that Court.

7. Having considered the aforesaid arguments, it first needs to be noticed that learned counsel for the parties are not at variance on the factual aspect that the respondents-defendants had, as a matter of fact, taken a defence in their written statement that they also had a preemptory right of purchase, and a suit by a co-sharer seeking the same right would not lie, with that part not having been dealt with even by the trial Court, leading to the respondents herein (defendants in the suit) filing appeals before the first appellate Court, with that Court however not even having touched upon that issue on merits.

Hence I agree with Mr.Verma, that in the face of the 'changed law' on the effect of the amendment of 1995, the matter needs to be remitted to the first appellate Court for a decision on merits as regards the defence taken by the respondents-defendants, i.e. the vendees in whose favour the sale deed executed had been challenged by the appellants plaintiffs.

8. In this context, Issue no.1 framed by the trial Court needs to be looked at, which is as follows:-

“1. Whether the plaintiff has superior right to preempt the suit land to that of the vendee/defendants? OPP”

Mr.Verma points to paragraph 8 of the written statement (as is available, in vernacular, on the records of the trial Court), in that context. Thus, if the words “*Mujarakasht*” occurring in that paragraph are taken to be meaning “tenants” then it would seem that respondents-defendants no.1 and 2 had actually taken the plea of being tenants on the land and therefore,

whether they also had preferential preemptory rights of purchase, which has not been dealt with at all by the trial Court, would be an issue to be considered by the first appellate Court.

9. It is also seen from the grounds of appeal filed before the first appellate Court that the said plea had been reiterated, but with that Court also not having gone into that issue, in view of the fact that the plaintiffs (appellants before this Court) were non-suited simply on the basis of the fact that the right of co-sharers in any case had been abrogated by virtue of the notification dated 17.5.1995, which would also apply to pending cases.

Hence, on account of the suit of the plaintiffs being dismissed on that ground, the defence taken by the defendants (respondents no.1 and 2 herein), was not touched upon by the first appellate Court either.

10. Mr.Verma submits that in fact this was not the only ground taken by the respondents defendants in their written statement and therefore all such grounds that would be available to them in terms of the written statement filed by them, naturally have to be dealt with by the first appellate Court, it not having done so in the appeals as are under challenge, they simply having been allowed in view of the amendment which is not applicable to the case in hand.

11. In view of the above, these appeals are allowed to the extent that what has been held by the first appellate Court in terms of the judgments in Karan Singhs' case (supra) and Virsa Singh Kambojs' case (supra) is held to be no longer good law, in view of the ratio of the Supreme Courts' judgment in Shyam Sunders' case (supra), and consequently these appeals are remitted to that Court for it to take a fresh decision on merits,

after considering the judgment of the trial Court in the light of all pleas raised by all sides, and the evidence led by them.

Considering that the suits filed are of the year 1991, with these appeals also having remained pending in this Court for the past 22 years, the first appellate Court is requested to decide the appeals within 9 months.

12. The records of the Courts below be returned to the learned first appellate Court.

A photocopy of this order be also placed on the file of the other connected matter.

26.11.2018
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No