

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-4374-2016 (O&M)
Date of Decision: 20.09.2018

Rajinder Kumar & others

--Appellants

Versus

Smt. Fata

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

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

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiffs-appellants filed a suit for pre-emption against defendant/respondent Smt. Fata seeking a decree for possession in respect of the suit land by way of preemption on payment of an amount of Rs.1 lakh per acre or on the amount which the Trial Court was to deem just and proper.

Suit was filed on the averments that the plaintiffs are in actual cultivating possession of the suit land measuring 12 kanals 16 marlas. Ashok Kumar etc. was recorded in the revenue record as owners of the suit land. The same is stated to have been sold in favour of defendant/respondent Smt. Fata vide registered sale deed dated 26.2.2013 for a sale consideration of Rs.4,60,000/-. It was claimed that the suit land is under tenancy of the plaintiffs/appellants since the time of their predecessors. It was alleged that the sale consideration between Ashok Kumar etc. and the defendant/respondent was never fixed and was not actually paid and the same has been got mentioned in the sale deed only to obtain more money from the plaintiffs/appellants. It was asserted that the plaintiffs/appellants had a superior right to preempt the sale in respect of the suit land.

Suit was contested by the defendant/respondent by submitting that the suit land had been purchased from Ashok Kumar vide registered sale deed bearing Document No.1772 dated 26.2.2013 for a consideration of Rs.4,60,000/- and as such, the plaintiffs have no right to institute the suit.

Suit of the plaintiffs was dismissed by the Trial Court on 19.10.2015 and a civil appeal preferred has met the same fate vide judgement dated 24.2.2016 passed by learned District Judge, Mewat.

Resultantly, plaintiffs/appellants are in second appeal before this Court.

Counsel representing the appellants has vehemently argued that in case of tenancy, unless the same is lawfully determined or terminated, the presumption is with regard to continuation of the same and even if there be any change in the revenue entries which are detrimental to the rights of the tenant, the same ought to have been ignored. It is urged that the benefit of such preemption has been wrongfully denied to the plaintiffs/appellants in the facts of the present case.

Counsel for the appellants has been heard at length and the pleadings on record have been perused.

It is a case where the plaintiffs-appellants in support of their claim had placed reliance upon *Jamabandis* Ex.P-2 to Ex.P-7 which were for the years 2010-11, 2005-06, 2000-01, 1980-81, 1975-76 and 1970-71. Courts below have noticed that in so far as *Jamabandis* Ex.P-3 to P-7 are concerned, the name of father of plaintiffs-appellants no.1 to 3 is mentioned in column no.5 and in column no.9 it is mentioned that rent was being paid. However, in Ex.P-2 i.e. *Jamabandi* for the year 2010-11 column no.9 was reflected as blank.

As per Section 15 (4) of the Pre-emption Act, three conditions are required to be satisfied i.e. (i) the pre-emptor should be a tenant at the time of the sale, (ii) should be a tenant at the time of filing of a suit for preemption and (iii) should have continued as a tenant till the final decision of the suit.

Concededly, in the present case the sale deed between Ashok Kumar etc. and Smt. Fata is dated 26.2.2013. Plaintiffs/appellants, as such, were to prove that they were tenants at will over the suit land and were paying rent since 26.2.2013 till the decision of the case. However, no evidence was adduced to satisfy the requirement of Section 15 of the Pre-emption Act. To the contrary *Jamabandis* for the year 2010-11 did not reflect the plaintiffs/appellants to be paying any rent.

The courts below have rightfully observed that tenancy could have been proved only by reflecting payment of rent. No rent receipt had been adduced on record. Even no application had been moved by the plaintiffs-appellants for correction of the revenue record even if it was to be presumed that the relevant column in *Jamabandi* Ex.P-2 had been left blank by oversight. That apart, for certain strange reasons plaintiffs/appellants did not even implead Ashok Kumar and others and from whom the defendant/respondent had purchased the land as parties to the suit.

Under such circumstances, the relief sought for by the plaintiffs/appellants has been rightfully declined by the courts below.

No basis for interference in the concurrent view taken by the courts below is made out.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

20.09.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No