

RSA-709-1987 (O&M)

335

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

RSA-709-1987 (O&M)

Date of decision : 28.03.2019

Vinod Kumar and another

... Appellants

Versus

Lakhi Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Rathore, Advocate for
Mr. Manvender Rathi, Advocate
for the appellants.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The present regular second appeal, at the instance of the appellants-defendants, is directed against the judgments and decrees of the Courts below, whereby the suit of the respondent-plaintiff has been decreed in toto.

The plaintiff sought the preemption of the suit property, which was sold away by Shanti widow of Ishwar Singh, son and Ratna, Murti, Krishna and Guddi, daughters of Mithi Ram to the defendants in the ostensible sale consideration of ₹30,000/-, on 12.02.1982. It was alleged that the plaintiff had pre-emption right as he was co-sharer in the suit land.

The defendants opposed the suit and denied the allegations of the plaintiff. It was stated that the land was purchased for a sum of ₹30,000/-.

RSA-709-1987 (O&M)

Since the parties were at variance, the following issues were framed by the trial Court:-

- 1. Whether the plaintiff has got a superior right of pre-emption? OPP*
- 2. Whether the entire sale consideration of ₹ 30,000/- was paid to the vendor or the same was fixed in good faith? OPD*
- 3. If issue No.2 is not proved, what was the market value of the suit land on the date of sale? OPD*
- 4. Whether the defendants incurred the expenses of the execution and registration of the sale deed and if so to what amount? OPD*
- 5. Whether the plaintiffs have no locus standi to file the suit? OPD*
- 6. Whether the suit is not maintainable? OPD*
- 7. Whether the suit is time barred? OPD*
- 8. Relief.*

In support of the pleadings the plaintiff examined two witnesses and brought on record Ex.P1 to Ex.P5. On the other hand, the defendants examined four witnesses and brought on record Ex.D1, sale deed.

The trial on the basis of the evidence brought on record decreed the suit with regard to the possession to the extent of 1/6th of the suit land, subject to payment of ₹ 5692.75 paise and the amount already deposited, ordered to be adjusted in the decretal amount but the trial Court did not grant the pre-emption qua the share of female.

The aforementioned finding qua the co-sharer was not challenged by the defendants. The appeal, regarding non-decretal of the entire suit, was only preferred by Lakhi Ram. The lower Appellate Court by relying upon the judgment of Hon'ble Supreme Court rendered in Atam

RSA-709-1987 (O&M)

Parkash V/s State of Haryana and others” AIR 1986 Supreme Court, page 859, whereby the provisions of the Punjab Pre-emption Act, 1913 (in short 'the 1913 Act') have been struck down as *ultra vires*, decreed the suit in toto.

Mr. R.K. Rathore, learned counsel appearing on behalf of the appellants-defendants submitted that the claim of the respondent was based under Section 15(1) of the 1913 Act, therefore, the suit was liable to be dismissed as per the findings rendered in para No.9 of the trial Court. The expression 'Co-sharer' in Section 15(1) of the 1913 Act, refers to only those co-sharers, who do not fall under Clause, Firstly, Secondly or Thirdly. The judgment of Hon'ble the Supreme Court in *Atam Parkash's case* (supra), have not correctly been interpreted.

There is no representation on behalf of the respondent, despite service. The appeal is of the year 1987, therefore, I proceed to decide the appeal on merits.

I have heard learned counsel for the appellants-defendants, appraised the paper book as well as the records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Rathore, for, the amended caused in the 1913 Act, putting an embargo qua preemption of the female rights, was set aside and held to be retrospective, in essence, the decree of the trial Court confining the pre-emption to the extent of 1/6th share of female member, was rightly set aside by the lower Appellate Court in decreeing the suit in toto i.e. regarding the entire suit land. Revenue record (Ex.P2) reflected the co-sharer. The aforesaid findings had not been challenged by the appellants-defendants. In my view, the findings of the fact and law rendered by the lower Appellate Court

RSA-709-1987 (O&M)

cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination. No ground is made out interference. Accordingly, the present second appeal is dismissed.

28.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**