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

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Date of decision : 29.03.2019

Nar Singh and others

... Appellants

Versus

Santosh Kumari and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellants.

Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate
for respondents No.9 to 12.

None for respondents No.2, 4 and 5.

AMIT RAWAL, J. (ORAL)

The plain and simple Substantial Question of Law arises in the present regular second appeal for determination is "Whether in a suit filed by the appellants-plaintiffs being a transferee from a decree-holder of a sale deed dated 18.07.1969, from the decree-holder/pre-emptor of a sale deed dated 01.09.1966, decreed by the trial Court, vide judgment and decree dated 25.03.1969, can be directed to file the execution or separate suit".

For answering the aforementioned Substantial Question of Law, in brief, the facts are that the plaintiffs acquired the right in the suit property, by virtue of the sale deed dated 18.07.1969, executed by Ghanu, who was the plaintiff in a suit for preemption, seeking preemption of the sale deed dated 01.09.1966, executed by Bhagwanti, in respect of a land measuring 26 kanals 16 marlas, sold to defendant No.8.

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After the aforementioned decree attained finality, question arose whether in the execution petition, filed by the Ghanu, would have a subsisting right or it would be of the transferees i.e. the appellants-plaintiffs.

Execution application was dismissed as withdrawn, leaving the plaintiffs in lurch and for redressal of the grievance, filed the suit, aforementioned.

The trial Court on the basis of the aforementioned pleadings and evidence, decreed the suit, but the the lower Appellate Court by noticing the provisions of Section 47 of the Code of Civil Procedure prohibited the transferee to file the separate suit, in other words, it was observed that the remedy for the plaintiffs was to seek the execution of the decree dated 25.03.1969.

Learned counsel appearing on behalf of the appellants-plaintiffs relies upon the ratio decidendi culled out by the Full Bench of this Court in **“Hazari and others V/s Zila Singh and others” 1970 AIR (Punjab) 215, 170 (1) ILR (Punjab) 326**, wherein while noticing the aforesaid controversy in para 97, it was held that the decree of a different nature may be transferable, but not of a preemption, in other words, it was held that where transferee acquires the title from a preemptor, cannot be permitted to take recourse to the provisions of Section 47 of CPC and for vindication of the grievance, the Civil Suit was held to be maintainable.

Learned counsel for the respondents-defendants could not dispute ratio *ibid* or cite any other law, contrary to the judgment of the Full Bench of this Court to form a different opinion, but supported the judgment and decree of the lower Appellate Court as there is no illegality and perversity.

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I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is force and merit in the submissions of Mr. Goel.

It would be in the fitness of things to reproduce para Nos.93, 94 and 97 of the judgment cited supra, which reads as under-

"93. To hold that a transferee of a preemption decree gets a right to execute a decree and obtain possession of the property, no matter he is an utter stranger and not possessed of the qualifications as required by the aforesaid two sections, will be contrary to the scheme and object of the law of pre-emption. The language of Order XXI, Rule 16 does not, of course, lay down any fetters on the right to transfer a decree and if the language of this provision alone were to be kept in view, there should be no bar to the transfer of a decree for the restitution of conjugal rights. To my mind, it makes no difference whether the pre-emptor in a pre-emption suit deposits the purchase money as enjoined in the decree passed under Order XX, Rule 14, Code of Civil Procedure, and acquires title to the land before he transfers the decree. A right to the title of the land and a right to transfer a pre-emption decree so as to entitle the transferee to execute it are two distinct matters and one cannot be confused with the other. The question before us is a very short one, namely whether the transferee should be permitted to execute the pre-emption decree on the basis of the transfer made in his favour. I am in most respectful agreement with the view of law taken in Mehr Khan and Shah Din V. Ghulam Rasul and others (supra) and the observations made by Mahmood J. in Ram Sahai V. Gaya and others (supra), on which reliance has been placed by my brother P. C. Pandit J. There was no such question about the transfer of a decree before their Lordships of the Supreme Court in Hazari and others v. Neki (supra), wherein it has been held that when

involuntary transfer takes place by inheritance, the successor to the land takes the whole bundle of the rights which go with the land including the right of pre-emption. What is intended to be laid down is only this much that when a plaintiff pre-emptor in a pre-emption suit, who has deposited the necessary purchase money in terms of Order XX, Rule 14, and acquired a title to the land, has heirs and legal representatives on whom the property devolves by inheritance, the latter are entitled to continue the appeal in which the decree had been passed, if the pre-emptor dies during the pendency of that appeal. In my opinion, because of this decision of their Lordships of the Supreme Court, it cannot be held that a pre-emption decree has ceased to be a personal decree in all respects and becomes transferable as any other decree so as to clothe the transferee with a right to execute the same.

*94. If a pre-emption decree is held not to be transferable and the transferee cannot execute the same under Order XXI. Rule 16, a question then arises whether the same result can be achieved by the plaintiff decree-holder who could have transferred the decree, but chooses only to transfer the land. I cannot visualise that Section 146 of the Code of Civil Procedure permits any such course. The Supreme Court has held in *Jugalkishore Saraft v. M/s Raw Cotton Co. Ltd.* (supra), that [Section 146](#) must be given a wider meaning and that a person who is transferee of the debt for the recovery of which a suit has been instituted, becomes the real owner of the decree when it is passed, and is in law deemed to be the person claiming under the decree-holder, so as to have a right to execute the decree in which he alone has the real interest, It is an extension of the equitable doctrine that a man who contracts to transfer any interest or property which has not yet come into existence must in equity be treated to be intending to transfer that interest or property when it really comes. Such an equitable doctrine as enunciated by their Lordships cannot*

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apply to transfer of every subject-matter of a suit, irrespective of the nature of the right involved therein, thereby giving a right to the transferee to execute a decree that may eventually be passed or has already been passed. Each case will depend upon its own facts and circumstances. For instance, can it ever be said with any reasonableness that in a suit for maintenance by a wife, the right to further maintenance can be transferred or in a suit for conjugal rights the parties can transfer their respective rights. There are certain rights which are inherently not transferable because of their nature and the case before their Lordships of the Supreme Court was only that of a right to recover a debt. [Section 146](#), Code of Civil Procedure, itself lays down limitations on a transferee in the matter of executing a decree. The transfer must be such which does not come in conflict with any other provision in the Code of Civil Procedure and is not prohibited by any law for the time being in force. In other words, the general enabling provision as contained in [Section 146](#) must give way to special provisions relating to the same subject-matter or to any other provision which prohibits the transfer. [Section 146](#) cannot also come into operation when a decree has been passed and could be transferred, but has not, in fact, been transferred. After the passing of the decree, the only relevant provision directly relating to the question of transfer is the special one as given in Order XXI, Rule 16 and a transfer must be under that provision of law only if a decree is sought to be executed by one other than the decree-holder. [Section 146](#) cannot be pressed into service at such a stage. I am in full agreement with the reasoning in the Single Bench judgment of Madras High Court reported as K.N. Sampath Mudlar v. Sakunthala Animal (supra). Since I am of the view that a transferee of a pre-emption decree cannot execute the decree, the transfer of the subject-matter of the pre-emption suit cannot be held to give a better right to the transferee so as to enable him to

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execute the decree.

97. After giving my careful thought to the matter, I am in full agreement with the reasoning and conclusions of my learned brother Pandit J. and hold that it is not open to the second vendees to get possession of the land in dispute by executing the decrees. They can, of course, file a separate suit which is not barred under [Section 47](#), Code of Civil Procedure. The appeals must, therefore, be allowed and the judgments of the Courts below set aside. I also agree with Pandit J. that, in the peculiar circumstances of the case, the parties must be left to bear their own costs throughout."

On perusal of the aforementioned findings, it is crystal clear that a person like plaintiff, who acquires the title from a preemptor by virtue of a registered document being transferee, is not prevented from filing a suit for vindication of the grievance, instead of invoking the provisions of Section 47 of CPC, as observed by the lower Appellate Court.

The findings of the lower Appellate Court, in such circumstances, are wholly preposterous, fallacious and perverse and the same are set aside and that of the trial Court is restored. The Substantial Question of Law, as framed above, is answered in favour of the appellant-plaintiff and against the respondents-defendants.

Resultantly, the present regular second appeal is allowed.

29.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**