

RSA Nos.196-198 of 1988 (O&M)

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

Date of decision : 01.02.2019

1.

RSA No.196 of 1988 (O&M)

Mubin and others

... Appellants

Versus

Kalo

... Respondent

2.

RSA No.197 of 1988 (O&M)

Kallu and others

... Appellants

Versus

Kalo

... Respondent

3.

RSA No.198 of 1988 (O&M)

Isab

... Appellant

Versus

Kalo

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Kabir Sareen, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of three regular second appeals

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aforementioned, at the instance of the appellants-defendants, who have not been successful in defending the suit before the Courts below, claiming pre-emption of land, by challenging the registered sale deeds dated 02.06.1984.

The suit, aforementioned, was instituted on the premise that the land subject matter of the sale deed was belonging to the co-sharers and the transferees were strangers. It was asserted that the plaintiff being co-sharer had a right to purchase/pre-empt the property, than that of the third party.

The suit was opposed by the appellants-defendants on various pleas including one that 1/5th pre-emption amount was not deposited. On merits, it was stated that the property was not in joint ownership.

On the basis of the pleadings, the trial Court framed the following issues:-

1. *Whether the plaintiff has superior right of pre-emptions? OPP*
2. *Whether the sale consideration as fixed in good faith and actually paid? OPP*
3. *If issue No.2 is not proved, what was the market value of the time of sale? OPParties*
4. *Whether the 1/5th pre-emption amount has not been deposited in time? OPD*
5. *Whether the suit is not within limitation? OPD*
6. *whether the suit is collusive and benami, as alleged in preliminary objection No.3? OPD*
7. *Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD*
8. *Whether the defendants/vendees are entitled to stamp and registration charges, if so to what amount? OPD*
9. *Relief.*

In support of the case, the plaintiff examined Dharam Parkash Jain, Record Keeper as PW, Fateh Ram as PW2 and Faiz Ullah,her husband

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and General Attorney as PW3 and also relied upon a number of documents. On the other hand, the defendants examined Ishab as DW4 and Dina as DW2 and tendered the documents in evidence.

On the basis of the preponderance of oral and documentary evidence, the trial Court decreed the suit and the appeal laid before the lower Appellate Court was also dismissed.

Learned counsel appearing on behalf of the appellants-defendants submitted that the land comprised in Khewat No.726, subject matter of the sale deed, was purchased by the defendants before purchase of the suit land by the vendees and therefore, the defendants were entitled to pre-empt the suit land. The defendants had become the co-sharer, by virtue of the sale, which had not been rebutted. The case law, as referred to, is not applicable to the controversy, in dispute. The provisions of Section 15 (1)(b) of the Punjab Pre-emption Act, 1913, was amended and the issue, in the present suit, was whether the pre-emptor, who was purchaser of specific khasra and rectangle number, was entitled to pre-empt the sale of another specific khasra and rectangle number in the same khewat. There was no evidence to form opinion that suit land was *benami*. The defendant and his sons entered into an agreement dated 22.02.1984 to purchase the land in dispute and some other land and allowed the plaintiff to purchase killa out of the said remaining land on the condition that she would not file any suit against them. Had she not given that undertaking, the appellants would not have allowed her to purchase the land. The sale deed dated 02.06.1984, on the same date and time in the presence of the parties, was registered and executed, thus, plaintiff waived off her right.

It was next contended that since the defendants to the suit were

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minor, in the absence of permission for appointment of a guardian, under Rule 3-A of Order 32 of the Code of Civil Procedure, the suit was not maintainable. In this regard, drew the attention of this Court to the memo of parties of the civil suit as well as of the present appeal. In support of his contentions, reliance has been laid down to the ratio decidendi culled out by this Court in **“Virat Pal & others V/s Mam Raj and others” 2011 (2) PLR 250.**

Learned counsel for the respondents-plaintiffs supported the judgment and decree on the premise that since the plaintiff, by virtue of sale deed, had become co-sharer in the entire khewat number No.726 and purchase of land of a different rectangle, would not preclude the plaintiff from pre-emption of the suit land, thus, urges this Court for dismissal of the regular second appeals as there is no illegality and perversity.

I have heard learned counsel for the parties, 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. Goel. Concededly the property, subject matter of the sale deed dated 02.06.1984, at the relevant point of time, was owned by the co-sharers including the plaintiffs. The law of pre-emption, at the relevant point of time, which was in vogue, prohibited the co-sharer to sell the property to the other party without offering to the other co-sharer. Though the aforementioned provisions were repealed later on, but the present suit pertains to the period, when the aforementioned law was in force. The defendants have not been able to place on record any material to belie the un-controverted evidence of the plaintiffs as well as the findings of fact and law that the status was not of co-sharer, in fact the plaintiffs by virtue of sale deed had become the co-sharer in the entire

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khewat No.726. No such objection was taken by the defendants with regard to the provisions Order 32 Rule 3-A of CPC before the Court below, therefore, cannot be permitted to take first time in the appeal, though, there is no dispute to the *ratio decidendi* culled out in the judgment relied upon by Mr. Goel.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees, which are based upon the appreciation of oral and documentary evidence. No ground is made out for interference.

Accordingly, the present regular second appeals are dismissed.

01.02.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**