

RSA No.2171 of 1990 (O&M)

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

RSA No.2171 of 1990 (O&M)

Date of decision:21.05.2019

Patasi Devi (deceased) through LRs

... Appellant

Vs.

Ram Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Kamalpreet, Advocate
for the appellant.

Mr. P.S.Jammu, Advocate
for respondent No.2.

Mr. Manoj Pundir, Advocate
for respondent No.3.

AMIT RAWAL J.

C.M.No.1788-C of 2019

Prayer in the application is for impleadment of legal heirs of deceased Chet Ram- respondent No.2, who is stated to have died on 25.06.2013 and left behind three legal heirs: Nathi Devi-widow, Surjit Singh and Maan Singh, sons.

The aforementioned application has been opposed by the non-applicant/appellant by filing reply and stated that in the memo of parties, Chet Ram was said to be son of Sheo Lal son of Ganga Ram whereas he was son of Sheo Lal.

I have heard the learned counsel for the parties, appraised the application and of the view that in fact, Sheo Lal's father is Ganga Ram and Ganga Ram is the grandfather of Chet Ram. There is no dispute to the fact

that on demise, Chet Ram had left behind three legal heirs aforementioned. Therefore, the application is allowed and the legal representatives, ibid are ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA No.2171 of 1990

The appellant-plaintiff/Patasi Devi is in regular second appeal against the judgment and decree of the Lower Appellate Court whereby suit for possession by way of pre-emption, decreed by the trial Court, has been dismissed.

Patasi Devi/plaintiff instituted suit on 07.05.1988 pre-empting sale deed dated 11.5.1987 allegedly executed by Lekh Ram being co-sharer in joint khewat in favour of respondent-defendants for a consideration of Rs.37,000/-.

The defendants opposed suit by pleading that they had been tenants of 1/3 batai since 1981 and sale consideration was Rs.37,000/- which was bonafidely fixed according sum of Rs.16,000/- was paid as earnest money. Prior to the sale deed, there was an agreement to sell dated 2.7.1986, Ex.D1.

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

- “1. Whether the plaintiff has got a superior right for pre-emption as alleged?OPP*
- 2. Whether the sale price was fixed in good faith and actually paid?OPD*

3. *If issue no.2 is not proved then what was the marked value of the suit land at the time of sale?OPP*
4. *Whether the defendants were tenants on the suit land as alleged in the written statement ? If so to what effect?OPD*
5. *Whether the defendants are entitled to stamp registration and other charges. If so to what amount?OPD*
6. *Whether the defendants have made improvements on the suit land after sale. If so to what amount and effect?OPD*
7. *Relief.”*

The plaintiff in support of pleadings examined PW1-Jug Lal, attorney and brought on record the documents Ex.P2 to Ex.P4, copies of jamabandis for the year 1980-81, 1985-86 and 1986-87 including girdawari, whereas, defendants examined four witnesses and brought on record documents Ex.D1 to Ex.D8, agreement to sell, sale deed, some rent receipts to establish status of tenants.

Trial Court noticing the aforementioned documents decreed the suit holding that co-sharers have preferential rights of pre-emption other than of tenants, though defendants miserably failed to prove the status of tenants.

The Lower Appellate Court in appeal taken by defendants set aside judgment and decree of the trial Court while noticing receipt Ex.D1 and Ex.D7, held that defendants had been in cultivating possession of the suit land and tenancy had come into existence. Nor any question in cross-examination was put to DW2 and DW3 with regard to tenancy.

Ms.Kamalpreet, learned counsel appearing on behalf of appellant submitted that judgment and decree of the Lower Appellate Court is not sustainable in eyes of law as revenue record established status of the parties of co-sharers. Co-sharers have preferential rights to succeed other than the tenants. The provisions of Section 15 of Punjab Pre-emption Act, 1913 i.e. Punjab Act No.1 of 1913 as it was in vogue, protected interest of co-sharers, thus, there was gross misreading of statutory provisions and revenue record. The agreement to sell propounded by defendants did not reflect the status that of tenants. A copy of the civil suit bearing No.1428 of 1990 titled as Ram Kumar Vs. Shiv Dutt was intended to be placed on record by way of additional evidence as there was categoric admission that Lekh Ram, vendor was in exclusive possession of the suit land. Rent receipts were nothing but forged and produced on record at later stage as noticed by the trial Court.

Per contra, Mr. P.S.Jammu and Mr. Manoj Pundir, learned counsel appearing on behalf of respondents No.2 and 3 to 6 respectively supported the findings of Lower Appellate Court and stated that there is no illegality and perversity as being the last Court of facts and law correctly appreciated the oral and documentary evidence. Receipts Ex.D1 and Ex.D7 clinched the case of respondent-defendants as tenants. There was no cross examination of witness-DW2 with regard to status of tenant, therefore, evidence in examination-in-chief deemed to have been admitted. Ex.D3 to Ex.D8 also proved status of tenants, thus, urged this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised judgments and decrees as well as record of Courts below and of view that there is force and merit in the submissions of Ms. Kamalpreet.

In view of the latest judgment rendered by the Hon'ble Supreme Court in **Civil Appeal No.4988 of 2019 titled as Kirodi (since deceased) through his LRs vs. Ram Parkash and others decided on 10.05.2019**, Substantial Question of Law in respect of regular second appeal in this Court is not required to be framed as provisions of Section 41 of the Punjab Courts Act, 1918 would be applicable.

It would be apt to reproduce the provisions of Section 15 of 1913 Act:-

15. Persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property.— (1)
The right of pre-emption in respect of agricultural land and village immovable property shall vest—

(a) where the sale is by a sole owner, —

FIRST, in the son or daughter or son's son or daughter's son of the vendor ;

SECONDLY, in the brother or brother's son of the vendor ;

THIRDLY, in the father's brother or father's brother's son of the vendor ;

FOURTHLY, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof ;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly, —

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors ;

SECONDLY, in the brothers or brother's sons of the vendor or vendors ;

THIRDLY, in the father's brothers or father's brother's sons of the vendor or vendors ;

FOURTHLY, in the other co-sharers ;

FIFTHLY, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof ;

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly : —

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendors ;

SECONDLY, in the brothers or brother's sons of the vendors;

THIRDLY, in the father's brothers or father's brother's sons of the vendors ;

FOURTHLY, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(2) Notwithstanding anything contained in sub-section (1),—

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest

(i) if the sale is by such female, in her brother or brother's son;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors ;

(b) where the sale is by a female of land or property to which she has succeeded through her husband, or through her son in case the son has inherited, the land or property sold from his father, the right of pre-emption shall vest,—
FIRST, in the son or daughter of such ^husband of the] female ;
SECONDLY, in the husband’s brother or husband’s brother’s son of such female."

On perusal of sub-section (b) of sub-section (1) of Section 15 that preferential right is of co-sharer vis-a-vis tenancy as co-sharer had 4th right viz-a-viz tenancy 5th.

Assuming for an argument sake that respondent-defendants are admitted to be tenants, they would not have had any preferential rights to pre-empt the land by virtue of the sale deed, than that of the claim of co-sharer i.e. appellant-plaintiff.

The entire emphasis and focus of the Lower Appellate Court had been only on the receipts but failed to notice the aforementioned provisions. The judgment and decree of the Lower Appellate Court in such circumstances is not sustainable and the same is hereby set aside and that of trial Court is restored.

The regular second appeal is allowed.

(AMIT RAWAL)
JUDGE

May 21, 2019
savita

Whether Speaking/ReasonedYes/No

Whether ReportableYes/No