

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

**RSA No.1595 of 1992 (O&M)
Date of Decision.06.02.2019**

Rama Nand

...Appellant

Vs

Smt. Geeta Devi and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mani Ram, Advocate and
Mr. Nipun Verma, Advocate
for the appellant.

Mr. Atul Gaur, Advocate
for respondent No.1.

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AMIT RAWAL J. (ORAL)

The present appeal is directed at the instance of the appellant-defendant No.1 against the concurrent finding of fact whereby the suit of the respondent-plaintiff for possession by way of pre-emption has been decreed by the trial Court and affirmed in appeal by the lower Appellate Court.

The respondent-plaintiff namely Geeta Devi had pre-empted the sale deed dated 11.05.1988 executed by Duli Chand, the vendor-cosharer in favour of Rama Nand, appellant defendant No.1. It was alleged that plaintiff was a co-sharer and had right to purchase in the first instance.

The suit was contested by the defendants on the ground that the plaintiff was not co-sharer but the defendant No.1 was co-sharer in the disputed land as he had purchased the land on 4.5.1988 and 7.5.1988 vide sale deeds.

The trial Court on the basis of aforementioned pleadings

after receipt of the replication framed following issues:-

- “1. Whether the plaintiff has superior right to pre-empt the sale in question? OPP*
- 2. In case, the suit of the plaintiff is decreed, whether the defendant is entitled to the stamps, registration and scribe charges? OPD*
- 3. Whether the defendant is entitled to special costs u/s 35-A CPC? OPD*
- 4. Relief.”*

Plaintiff examined one Shri Krishan as PW1 and tendered documents Ex.P1 jamabandi to show that Murlidhar was co-sharer of the disputed land and Geeta Devi had become co-sharer on the basis of mutation No.84 and the sale deed dated 15.7.1987 and Ex.P4 cancellation of power of attorney dated 11.11.1985 in favour of Duli Chand whereas defendants examined four witnesses and brought on record Ex.D1 and D2 sale deeds.

The trial Court decreed the suit and appeal before the lower Appellate Court was also dismissed.

Mr. Mani Ram, learned counsel appearing on behalf of the appellant-defendant No.1 submitted that the lower Appellate Court being the last court of fact and law has committed illegality and perversity in discarding the plea and documents of appellant i.e. Ex.D1 and D2 on the premise that they were fictitious sale deeds. The parcel of the land was 5 kanals and 2 marlas and the sale deed was of 2 marlas for consideration of less than Rs.100/-, therefore, did not require registration. Even recital of the sale deed Ex.D1, which

was pre-empted reflected that Rama Nand had purchased the property from Duli Chand. Sale deed Ex.D2 was also executed by power of attorney Duli Chand, therefore, sale deed sought to be pre-empted was amongst co-sharers and other co-sharer did not have right, as the share was not sold to third party, thus, urges this Court for setting aside the findings under challenge.

Mr. Atul Gaur, learned counsel appearing on behalf of the respondent-plaintiff submitted that the concurrent finding of fact and law is based upon appreciation of fact and law and cannot be faulted with unless and until there is gross illegality and perversity. The sale deed Ex.D2 was an attempt to thwart right of the plaintiff for redemption and there was an apparent collusion between the vendor and appellant-defendant No.1 vendee in executing the sale deed in question, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that following substantial questions of law arise for determination by this Court:-

- (i) Whether both the Courts below, particularly, the lower Appellate Court has misread contents of sale deed Ex.D2, resulting into perversity?
- (ii) Whether vendee of the sale deed dated 11.05.1988 was a co-sharer or an outsider?

During the course of hearing, contents of the sale deed Ex.D2 and impugned sale deed dated 11.05.1988 i.e. pre-empted sale deed were referred to but in the sale deed date 11.05.1988 there is recital that Rama Nand had purchased the property from Duli Chand.

Duli Chand was the vendor of the appellant defendant No.1 in sale deed dated 4.5.1988 Ex.D2 in respect of land measuring 2 marlas. The sale deed has been proved through the testimony of attesting witness and the deed writer. The finding of the Courts below that the sale deed was fictitious document is neither here nor there but a figment of imagination, much less, based on conjectures and surmises. Once prior to the sale deed in question, appellant-defendant No.1 had become co-sharer and had also purchased property of 5 kanals, there was no cause of action accrued in favour of Geeta Devi alleging herself to be co-sharer in pre-empting the sale deed.

The concurrent finding of fact and law, thus, in my view, suffer from illegality and perversity. The substantial questions of law are decided in favour of the appellant-defendant No.1 and against the respondent-plaintiff. The judgments and decrees of the Courts below are set aside and the regular second appeal is allowed. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

February 06, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No