

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2006 of 1989

Date of Decision: 30.04.2019

Jagdish Kumar and another

...Appellants

versus

Lachhman and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. P.K. Ganga, Advocate,
for the appellants.

Mr. P. S. Jammu, Advocate,
for the respondents.

Amol Rattan Singh, J.

This is an appeal filed by the defendants in a suit instituted by both the respondents herein on 21.07.1986, seeking possession of the suit property, on the ground that they had a pre-emptory right to do so.

2. The case of the plaintiffs was that the suit land, measuring 218 kanals 13 marlas, situate in the revenue estate of village Jamal, Tehsil and District Sirsa, was sold by Radha Kishan, Atma Ram and Jagdish to the appellants herein (the first appellant also 'carrying' the name of Jagdish Kumar), vide a registered sale deed dated 25.07.1985; and though the actual sale consideration was Rs.23,000/-, however, only to defeat the right of pre-emption available to the plaintiffs, a fictitious amount of Rs.45,000/- was shown to be such consideration in the sale deed.

The said land was stated to be a part of a larger holding consisting of 218 kanals 13 marlas, with the plaintiffs being co-sharers in that

total land holding.

It was further contended that the plaintiffs were given no notice regarding the sale and though they approached the defendants several times to give the suit land back to them after taking the sale price paid to the vendees, they had refused to accept the request.

On the aforesaid averments, the suit was instituted.

3. Notice having been issued to the appellants herein, i.e. the defendants in the suit, they filed a written statement to the effect that the suit land had actually been purchased for a sum of Rs.45,000/- and that in fact the plaintiffs had sufficient notice of the sale.

Further, it was contended that actually the land had already been partitioned before the sale and therefore the plaintiffs were no longer co-sharers therein, with possession of specific *kill*a numbers given to them (defendant-vendees) at the time that the agreement of sale was entered into with them on 04.07.1985, and consequently, the suit had not been instituted even within limitation.

It was next contended that the suit was bad on account of partial pre-emption. Lastly, it was contended that they (appellant-vendees) had incurred stamp charges, registration fees and other charges at the time of sale and therefore the suit was liable to be dismissed.

4. The plaintiffs having filed a replication reiterating their stand, controverting the contents of the written statement, the following issues were framed by the learned trial court:-

- “1. Whether the plaintiffs have got a superior right to pre-empt the sale of the suit land? OPP
2. Whether the suit land was sold for a consideration of Rs.45,000? OPD

3. If issue no.2 is not proved then what was the market value of the suit land at the time of the sale of the suit land? OP Parties.
4. Whether the plaintiffs had notice of the sale of the suit land in dispute, if so, to what effect? OPD
5. Whether the suit of the plaintiffs is bad for partial pre-emption? OPD
6. Whether the suit of the plaintiffs is time barred? OPD
7. Whether the vendees are entitled to stamp charges, registration fees and other charges, if so, to what amount? OPD
8. Relief.”

5. A perusal of the judgment of the trial court shows that the plaintiffs relied upon a *jamabandi* (record of rights) for the year 1982-83 as Ex.P1, to show that they were co-sharers in the total land holding including the suit land, with Ex.P2 being a copy of the mutation entry by virtue of which they were shown to have become co-sharers at the time of purchase of the land by them from the previous co-sharer, Harchand.

A sale deed dated 25.07.1985 was also relied upon, with the 2nd plaintiff having testified as PW1 in terms of the averments made.

6. As regards the stand of the appellant-defendants, the learned trial court noticed an argument on their behalf that a private partition had already taken place between the co-sharers, before the sale of the suit land, and therefore they had no right to pre-emption on the ground of being co-sharers, the appellant-defendants having purchased the share of their vendor only.

7. The argument in rebuttal on behalf of the plaintiffs was also duly noticed by the trial court, to the effect that PW1 Bhiwan Ram had admitted during his cross-examination that though the total land was jointly owned and that an arrangement had been made to cultivate different portions of the land,

no partition had, however, taken place in the revenue record.

8. Having considered the aforesaid arguments and evidence, the learned trial court (Sub Judge 2nd Class, Sirsa), recorded a finding that it seemed that all co-sharers had partitioned the land amongst themselves for the purpose of convenient cultivation, which however was only an arrangement, with no partition recorded anywhere in the documents, and therefore it could not be held that a partition had actually taken place.

Consequently, the first issue, on the right of pre-emption of the plaintiffs as co-sharers in the suit land, was decided in their favour.

9. As regards the value of the suit land on the date of sale, i.e. issue no.2, it was found on the basis of the agreement of sale, Ex.D1, as also the sale deed Ex.D2, that there was nothing to prove that the suit land was sold for only Rs.23,000/- and not Rs.45,000/- as was being contended by the plaintiffs, and consequently that issue was decided in favour of the defendants, with the ancillary 3rd issue also accordingly decided.

Issues no.4 and 5, on lack of notice of sale of the suit land to the plaintiffs and whether the suit was bad as it sought partial pre-emption, were observed by the trial court to be not pressed at the time of arguments and were held to be decided in favour of the plaintiffs.

10. On the question of limitation, i.e. issue no.6, the contention on behalf of the defendants was that as physical possession of the suit land was handed over on 04.07.1985 at the time when the agreement of sale had been entered into, with the suit having been filed on 19.07.1986 (formally instituted on 21.07.1986), it was therefore filed beyond the period of limitation, as a suit claiming a pre-emptory right of purchase was to be filed within one year.

The argument on behalf of the plaintiffs to the effect that the sale

deed having been executed on 25.07.1985, registered on the same day, with the suit having been filed on 19.07.1986, it was within the period of limitation, was rejected by that court on the ground that the period of limitation started running from the date that the purchasers took possession of the property sold, with the agreement of sale dated 04.07.1985 duly showing that possession had been actually handed over to the vendees.

It was also found that the 2nd plaintiff himself had admitted during cross-examination as PW1, that such physical possession was actually taken on 04.07.1985.

Hence, that vital issue was decided against the plaintiffs, holding the suit to be time barred.

11. The 7th issue, on whether the vendees, i.e. the defendants, were entitled to stamp charges, registration fees and other charges incurred by them, was decided in their favour, holding that they were entitled to such charges if the suit was decreed.

However, though on merits the key issue was decided in favour of the plaintiffs, it having been held to be time barred, it was dismissed on December 17, 1998.

12. The plaintiffs (respondents herein) having challenged that judgment and decree before the first appellate court, the learned Additional District Judge, after noticing the pleadings of the parties and the issues framed by the trial court, first recorded a finding that the parties were in dispute only qua issue no.6 regarding limitation (no appeal having been filed by the defendants against the finding of the trial court against them on issue no.1), and on that issue it was held that the trial court had wholly erred in holding the suit to be time bared, because Article 97 of the Schedule to the Limitation

Act would apply to the case at hand, and limitation under that provision was to be reckoned from the date on which the vendees took physical possession of any part of the suit property as was under sale. Thus the inference taken was that it was only from the date of physical possession as was taken after the actual sale, that limitation would start running from.

Hence, citing a judgment of a Division Bench of this court in **Sardar Singh v. Dalip Kaur and others** 1981 PLR 611, it was held that even if possession was delivered under an agreement of sale, oral or written, with the sale deed executed subsequently, physical possession of the vendee would be considered from the date of execution of the sale deed and not from an earlier date.

Consequently, the sale deed having been executed on 25.07.1985 in the present *lis* and the suit having been filed on 19.07.1986, it was held to be within limitation. Another judgment of this court, in **Vinod Kumar v. Jagminder Dass and another** 1970 PLJ 362, was held to be not applicable, in view of the judgment of the Division Bench.

13. Even though the finding of the trial court in favour of the plaintiffs on issue no.1 was not under challenge by way of any appeal or cross objection filed, the lower appellate court recorded a finding that in view of the *jamabandi* for the year 1982-83 (Ex.P1), and the mutation entry, Ex.P2, seen with the evidence of PW1, it was proved that the plaintiffs had become co-sharers in the suit land when they purchased it from its previous owner, Harchand, and therefore they were entitled to a pre-emptory right of purchasing the land, in that capacity.

The finding of the trial court with regard to Rs.45,000/- being the sale price instead of Rs.23,000/- (that finding obviously being in favour of the

defendants), was also upheld, with the defendants-vendees held entitled to a sale price of Rs.45,000/- upon the suit being decreed in favour of the plaintiffs, with them also held entitled to the charges incurred by them by way of stamp duty and registration fee.

14. On the aforesaid findings, the appeal of the plaintiffs (respondents herein) was allowed, the suit being decreed in their favour and a right of pre-emption of purchase of the suit land, on payment of Rs.45,000/- plus Rs.6126/-, having been granted to them. Such payment was directed to be made before 25.08.1989, failing which their suit was to be held to have been dismissed.

15. At the time when notice of motion was issued in this appeal on August 21, 1989, dispossession of the appellant-defendants had been stayed by this court, with that order made absolute at the time when the appeal was admitted to regular hearing on November 10, 1989, though the respondent-plaintiffs were permitted to withdraw the 'pre-emption amount', including the *Zar-e-Panjim*, which was then to be deposited as and when directed by this court.

16. When this second appeal finally came up for hearing on December 03, 2018, both, Mr. P.K. Ganga, learned counsel for the appellants, and Mr. Jammu, learned counsel for the respondents, were *ad idem* that the substantial question of law required to be adjudicated upon by this court, was whether or not the suit filed by the respondent-plaintiffs was so filed within the period of limitation prescribed in Article 97 of the Schedule to the Limitation Act, 1963.

17. Mr. Ganga had argued for the appellants that possession admittedly having been handed over prior to registration of the sale deed, with

such possession also reflected in a recital in the sale deed to that effect, the suit filed on 19.07.1986 (formally instituted on 21.07.1986), was beyond limitation, one year from the date of possession having expired on 03.07.1986.

He had next pointed to the admission made by the respondent plaintiff no.2 Bhiwan Ram, in his testimony, to the effect that though the suit land had not been shown to be partitioned in the revenue record, it had actually been partitioned, with every co-sharer in possession of his respective share, with him specifically having admitted towards the end of the cross-examination that possession had been handed over on 04.07.1985.

18. In response thereto, Mr. Jammu, learned counsel for the respondent-plaintiffs, though factually could not deny possession having been handed over on 04.07.1985, however relied upon the same judgment as was referred to by the learned 1st appellate court, in *Sardar Singhs'* case (supra), wherein while overruling a judgment of a learned Single Judge of this court in **Bai Chander Mani v. Bhagirath** AIR 1961 Punjab 296, it was held that possession would be deemed to have been only taken on the date of registration of the sale deed and not prior thereto.

To the same effect, he had also relied upon judgments of other co-ordinate Benches of this court.

19. In rebuttal thereto, Mr. Ganga, learned counsel for the appellants, pointed to paragraph 6 of the judgment in *Sardar Singhs'* case, wherein after noticing the statutory provision (Article 97 of the Schedule to the Limitation Act), it was observed that whenever the subject matter of the sale admits of physical possession of any part of the property sold, then the starting point of limitation would start from the date that possession was taken, either for the

whole or part of the suit land; but whenever either the whole or part of the suit property sold did not admit of physical possession of the vendee, then limitation would start running from the date of registration of the instrument of sale.

To that effect, learned counsel for the appellant-defendants also relied upon the judgment of this court in *Vinod Kumars'* case (supra).

20. Having considered the matter, as a matter of fact as regards the question of law involved, it stands well settled by the Division Bench in *Sardar Singhs'* case (supra), wherein Article 97 of the Limitation Act, 1963 was reproduced and thereafter interpreted. The said provision reads as follows:-

Description of suits	Period of limitation	Time for which period begins to run.
97. To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.	One year.	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject-matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.

After considering the aforesaid, the Division Bench held that wherever the subject matter of sale admits of physical possession of whole or part of the property sold, then the starting point of limitation under the first part is from the date of taking of possession of whole or part thereof; and wherever either the whole or part of the property sold does not admit of

physical possession thereof, then limitation starts running from the date of registration of the instrument of sale.

The ratio of the principle laid down by their Lordships is contained in the concluding part of paragraph 10 (Law Finder Document), and is reproduced hereinbelow:-

“We are of the firm opinion that even if possession is delivered either under an oral agreement of sale or a written agreement of sale and the sale deed is executed later on, in law physical possession of the vendees would be considered under the sale from the date of execution of the sale deed and from no earlier date and that would provide the starting point of limitation except in cases where the pre-emptor is able to show to the satisfaction of the Court that possession was delivered thereafter and in that case the limitation would start from such proved date.”

20-A In that case also, possession had already been delivered by the vendor to the prospective purchasers, before the execution of the sale deed, i.e. December 01, 1975, and before the registration of the instrument on December 04, 1975.

Hence, it was held by their Lordships that once the delivery of possession was admitted to be December 01, 1975, limitation would start running from that date and not from the date of registration of the sale deed, because it would then be the first part of what is contained in the 3rd column of Article 97 that would apply, and not the 2nd part thereof.

21. In the light of the above, in the present case, even counsel for the respondent plaintiffs could not deny that plaintiff no.2, Bhiwan Ram (respondent no.2 herein), while testifying as PW1, had admitted that possession was taken by the appellant defendants on 04.07.1985, as is obvious from a perusal of the last part of his cross-examination conducted on

15.10.1988, (as has been pointed out from the record of evidence before the learned trial court by Mr. Ganga, learned counsel for the appellants). In any case, that is a concurrent finding of fact recorded by both the courts below and obviously could not be shown to be perverse by learned counsel for the respondent-plaintiffs.

22. Hence, that being so, it is equally obvious that the learned lower appellate court wholly erred in reversing the finding of the learned trial court on the issue of limitation, by mis-interpreting the ratio of the judgment of the Division Bench in *Sardar Singhs'* case, because it has been interpreted by that court in a manner to say that regardless of possession having been delivered on an agreement of sale executed, it would be deemed to have been given to the vendee only from the date of execution of the sale deed.

Obviously that is not what has been held by the Division Bench, as per what is reproduced hereinabove, and even as per what would be obvious from a plain reading of Article 97 of the Schedule to the Limitation Act, 1963.

Hence, the finding of the learned lower appellate court on the issue of limitation, i.e. issue no.6 framed by the trial court, is set aside and the finding of the lower appellate court is restored.

23. Though in fact this court need not go any further than that, because as recorded in the order on the date that the judgment was reserved in this appeal, counsel for the parties were *ad idem* that the substantial question of law involved is only qua limitation, yet, the appeal having remained pending for the past 30 years, it needs to be stated that the concurrent finding of the learned courts below, on the suit land not having actually been shown to be partitioned in the revenue record, would also be accepted by this court,

firstly, for the reason that the said finding of the trial court was never assailed even by way of a first appeal by the present appellant defendants; but by even taking that they possibly may be permitted to assail the concurrent finding of the appellate court on that issue in the present appeal, nothing has been shown to this court by learned counsel for the appellants to upset that finding of both the courts below, as the *jamabandi* relied upon by the respondent plaintiffs has not been shown to this court to be incorrectly deciphered by the lower courts. Therefore, simply because the appellant-defendants in their evidence contended that the co-sharers were in possession of their respective shares on an oral partition made, would not mean that there was an actual partition of the suit property duly reflected in the revenue record.

24. The finding on issue no.2, i.e. as to whether the suit land was sold for a sale consideration of Rs.45,000/- or not, is also upheld, that finding being in favour of the appellant defendants, with in any case that issue not even touched upon by learned counsel for the respondent plaintiffs and there being nothing to the contrary shown to this court to hold otherwise.

Similarly, as regards the findings of the learned courts below on the remaining issues, they not having been touched upon before this court by either learned counsel, those findings are left undisturbed, which otherwise also I see no reason to interfere with.

25. However, as regards the primary issue no.1 before the courts below, i.e. as to whether the respondent-plaintiffs had a pre-emptory right to purchase the suit land from the vendors thereof, even though that question has never been raised either before this court or before the learned courts below, it still needs to be noticed by this court that Section 21-A of the Punjab Pre-emption Act, 1913, as interpreted by a Full Bench of this court in **Garib**

Singh v. Harnam Singh 1971 PLJ 578, confers a right upon a subsequent purchaser of any particular land, to claim to have also become a co-sharer, thereby defeating the right of a pre-existing co-sharer to seek pre-emption of purchase, if the suit filed by the co-sharer (seeking such pre-emption), is instituted after the sale of the suit property in favour of the vendee over and above whom a right of pre-emption is sought by a plaintiff.

Though that issue has not been argued at all before this court, nor even was touched upon before the learned courts below, the fact remains that Section 21-A of the Act of 1913 reads as follows:-

“21-A. When improvement of status of a vendor after institution of suit not to affect right of pre-emptor.- Any improvement, otherwise than through inheritance or succession, made, in the status of a vendee defendant after the institution of a suit for pre-emption shall not affect the right of the pre-emptor-plaintiff in such suit”.

26. A plain reading of the aforesaid provision actually does not seem to confer any substantive right upon a subsequent purchaser to defeat the pre-emptory right of a pre-existing co-sharer in any property, but the effect of the provision has been interpreted by a co-ordinate Bench of this court, after relying upon the judgment of the Full Bench, to the effect that an improvement in status made prior to the filing of a suit by a person seeking pre-emptory rights, would defeat such pre-emptory rights; but if the vendee improves his own status (and also becomes a co-sharer in the land) after a pre-emptor has filed a suit, then the pre-emptors' rights would stand protected.

27. The judgment of the co-ordinate Bench of this court is in Krishan Lal and another v. Himta Ram 2006 (3) RCR (Civil) 117, wherein the judgment of the Full Bench of this court in *Garib Singhs'* case was referred to.

A perusal of the judgment of the Full Bench shows that though the exact question that was considered by the Full Bench was not exactly with regard to a pre-emptors' right *viz a viz* a vendees' right in his own capacity, but in the context of whether a vendee who has joined with him a stranger in purchasing agricultural land can resist a suit for pre-emption by acquiring the interest of the stranger (a co-vendee) in terms of the provisions of Section 21-A of the Act of 1913, yet, even while adjudicating upon that question, their Lordships referred to a large number of judgments on the issue and observed as follows:-

“19. As will be seen from the decisions referred to above, prior to the introduction of section 21-A there was an unhealthy race going on the part of the vendee to defeat the right of pre-emption of making improvement in his position by voluntary and volitional efforts upto the date of getting decree. By introducing this new provision the scope of the race to improve his status on the part of the vendee was circumscribed upto the date of institution of the suit and not thereafter, except where the improvement in the status of the vendee is not a result of his effort or volition but because of inheritance or succession. This section was added to counter-act the view taken in ILR 1942 Lahore 155 and ILR 1942 Lahore 190 and 473 that the vendee was entitled to defeat the pre-emptor's right by improving his status at any time up to the adjudication of the suit by the trial Court. This is quite apparent from the statement of objects and reasons of the amending Act 1 of 1944, wherein it is stated:-

Section 21-A is being added to the Punjab Pre-emption Act to restore the status quo in the case of pre-emption suits, wherein the vendee seeks to improve his position by means of a voluntary acquisition of right of property made, after the institution of the suit.”

Hence, that having been observed by the Full Bench in *Garib Singhs'* case, it was held by the co-ordinate Bench (Viney Mittal, J.) in

Krishan Lals' case, that a vendee acquiring land prior to institution of a 'pre-emptory suit' by a co-sharer, would be deemed to have improved his status equal to that of the co-sharer, thereby defeating the co-sharers' right of pre-emption, but if the vendee purchased the land after the institution of the suit by the co-sharer, then, (even in the clear terms of what is contained in Section 21-A), the pre-emptors' right could not be defeated.

28. Though no discussion on the aforesaid issue may have been called for in the context of the present case, as regards the right of the parties in terms of Section 21-A, that issue never having been raised at any stage in the *lis*, and more importantly, the suit of the respondent-plaintiffs having been held by this court to have been filed beyond limitation in terms of Article 97 of the Schedule to the Limitation Act, 1963, there consequently being no purpose in entering into a long debate on the provision in the Act of 1913, yet, a reference to the provision was considered necessary.

29. In view of what has been held in this judgment, this appeal is allowed with the judgment and decree issued by the learned 1st appellate court set aside and that issued by the trial court reinstated, thereby dismissing the suit of the respondent-plaintiffs on the ground of limitation alone.

The parties are however left to bear their own costs throughout.

A decree sheet be prepared accordingly.

April 30, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes