

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

RSA-2781-1994(O&M)

Date of decision:-3.9.2019

Budh Ram and others

...Appellants

Versus

Nand Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Mr.Jai Vir Yadav, Advocate
for the respondents No.1 and 2.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Sh.Budh Ram son of Ram Narain @ Ramratan along with Subhash, Vijay Pal, Jiwan Ram, Rajinder – minor sons and Smt.Sarti – widow of Sh.Tirkha, all residents of village Khorma, Tehsil Narnaul, District Mahendergarh had brought a suit against defendants – Nand Ram, Mange Ram sons of Sh.Sheochand, residents of village Chinalia, Tehsil Narnaul, District Mahendergarh, Suraj Parkash son of Sh.Kora Ram and Smt.Tarawati wife of Suraj Parkash, residents of village Khorma, Tehsil Narnaul seeking to preempt the sale of land by Sh.Suraj Parkash and Smt.Tarawati, defendants No.3 and 4,

respectively to Sh.Nand Ram and Sh.Mange Ram, defendants No.1 and 2, respectively for an alleged consideration of Rs.30,000/- on 28.7.1986 with regard to 8 kanals of land situated at village Khorma, Tehsil Narnaul as detailed in the jamabandi for the year 1983-84.

As per the version of the plaintiffs, they had a preferential right to purchase the suit land from defendants No.3 and 4 in the capacity of they being tenants of the land; that plaintiff No.1 and Tirkha Ram, predecessors-in-interest of plaintiffs No.2 to 5 were continuing as tenants in the land; that Tirkha Ram had died and thereafter his legal heirs came in possession as tenants; that the land was sold by defendants No.3 and 4 to defendants No.1 and 2 without any notice to the plaintiffs, though the plaintiffs had a superior right than defendants-vendees. According to the plaintiffs, the land was actually sold for Rs.8,000/-, though it was wrongly mentioned in the sale deed that the consideration amount was Rs.30,000/-.

After filing of the suit, the plaintiffs gave up defendants No.3 and 4 as unnecessary by making statement on 13.10.1987.

On being put to notice, defendants No.1 and 2 had appeared and filed a joint written statement contesting the suit contending that only plaintiff Budh Ram was in possession of the land and he claiming himself to be owner of the land had mortgaged it vide document dated 4.3.1986 for consideration, delivering possession of the land to defendant No.2 pursuant to the agreement to

mortgage, however, when the mortgage deed was to be executed, it was found that plaintiff No.1 was not the owner as he had already relinquished the possession in favour of the defendant No.2 after accepting an amount of Rs.2,880/- and even an agreement dated 4.3.1986 was executed by him, in that way plaintiff Budh Ram was not left with any right or interest in the land. Regarding plaintiffs No.2 to 5, the answering defendants contended that their father Tirkha has since died and plaintiffs No.2 to 5 did not come in possession of the land. Such defendants also denied devolution of any tenancy rights in favour of plaintiffs No.2 to 5 from their father Tirkha. According to the defendants, the sale amount was fixed in good faith and was actually paid to the vendors. The answering defendants raked up various legal objections challenging the locus standi of the plaintiffs to bring the suit contending that they were estopped by their own act and conduct from filing the suit; that the suit was time barred and further that 1/5th preemption amount had not been deposited within time; that another suit regarding declaration of the plaintiffs about existence of their tenancy rights in the land in dispute was pending, therefore, suit deserved to be stayed. In the end, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs have superior right to pre-empt the sale in question as compared to the defendants vendees as alleged in the plaint? OPP.
2. Whether the sale consideration mentioned in the sale-deed was fixed in good faith and actually paid to the defendants? OPP.
3. If issue No.2 is not proved, then what would be the market value of the land in question? OPP.
4. Whether the defendants are entitled to the stamp and registration charges as alleged? OPD.
5. Whether the plaintiffs are estopped from filing this suit by their act and conduct? OPD.
6. Whether the plaintiffs have not deposited 1/5th preemption money? OPD.
7. Whether the plaintiffs have no locus-standi to file the present suit? OPD.
8. Whether the plaintiffs have abandoned their claim? OPD.
9. Whether the suit is liable to stayed as alleged in para No.15 of the written statement? OPD.
10. Whether the suit is not maintainable? OPD.
11. Whether the defendants are entitled to special costs? OPD.
12. Relief.

The parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of plaintiffs No.2 to 5 and against the defendants, issue No.2 in favour of plaintiffs No.2 to 5 and against the defendants, issue No.3 in favour of the plaintiffs and against the defendants, issue No.4 in favour of the vendee-defendants and against the plaintiff, issue No.5 in favour of the plaintiffs and against the defendants, issue No.6 in favour of the plaintiffs and against the defendants, issue No.7 in favour of the plaintiffs No.2 to 5 and against the defendants, issue No.8 in favour of the plaintiffs No.2 to 5 and against the contesting defendants, issue No.9 in favour of the plaintiffs and against the defendants, issue No.10 in favour of the plaintiffs and against the defendants, issue No.11 in favour of plaintiffs and against the defendants. Resultantly, the trial Court vide judgment and decree dated 26.11.1991 dismissed the suit qua plaintiff No.1, whereas with regard to plaintiffs No.2 to 5, it was decreed to the extent of their half share in the suit land with proportionate costs. It was directed that plaintiffs No.2 to 5 would deposit the proportionate sale consideration of Rs.7,500/- by 24.12.1991 and in case of default, such plaintiffs would be non-suited.

Feeling aggrieved by the said judgment and decree, the

defendants No.1 and 2 had filed an appeal in the Court of District Judge, Narnaul, which was assigned to learned Additional District Judge, Narnaul, who vide judgment dated 29.3.1994 accepted the appeal, set aside the judgment and decree passed by the trial Court. Though it is not specifically mentioned but the result was that suit filed by the plaintiffs was dismissed.

Now it was turn of the plaintiffs to feel aggrieved and they have filed the present regular second appeal before this Court, notice of which was issued and the respondents-defendants No.1 and 2 have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

A perusal of the judgment passed by the trial Court goes to show that the trial Court has observed that vide an agreement dated 4.3.1986 by plaintiff – Budh Ram, he had agreed to mortgage the suit land with Nand Ram and Mange Ram defendants claiming himself to be owner thereof having received advanced mortgage consideration of Rs.2,880/- and the document in that regard stood proved from the deposition of DW2 Hari Shankar an attesting witness and Sh.Singh Raj DW3 its scribe. These witnesses had stated that at the time of execution of the agreement Ex.D1, possession of the land was given by Budh Ram – plaintiff No.1. The trial Court has dealt with that aspect in para No.22 of the judgment. The trial Court

has noticed that plaintiff Budh Ram had not appeared in the witness-box to get his statement recorded. However, no satisfactory answer was given as to how the plaintiff Budh Ram could deliver what he did not have exclusively with him and at best Budh Ram was having tenancy in common with his brother Tirkha in equal shares and could have parted with his possessory rights as tenant only to the extent of his share and not more than that. The trial Court has wondered as to how the revenue official could change the entry of cultivation in favour of the vendee-defendants in Kharif 1986 (Ex.D5) and those entries could not have come in favour of the vendee-defendants without giving notice to the persons in possession, i.e. the plaintiff Budh Ram and Tirkha predecessor-in-interest of the plaintiffs No.2 to 5 and such wrong entry continues in khasra girdawari Ex.D6 and Ex.D7 till date. The trial Court has further observed that no mention has been made as to how the tenancy rights of Tirkha, which legally and validly devolved on his sons could have been set at naught by Budh Ram even though he was a co-tenant and he could not travel beyond his own share in the tenancy rights. The trial Court has placed reliance upon the judgment between the parties dated 7.10.91 wherein it had been held that Budh Ram had already relinquished his possession in favour of defendant No.2 Mange Ram and had ceased to be in possession of the suit property as a tenant and further that Tirkha was alive on the date of

execution of the agreement dated 4.3.1986 and after death of Tirkha, plaintiffs No.2 to 5, who are his sons had taken possession of land as tenants. Ultimately the trial Court came to the conclusion that plaintiffs No.2 to 5 were continuing as tenants of the share of Tirkha, who was co-tenant in equal share with his brother Budh Ram. It was further observed that as only 8 kanals of 16 kanals of land sold to the vendee-defendants was under tenancy of the plaintiffs and out of which also half share meaning thereby 4 kanals pertaining to Budh Ram had already been bargained by him relinquishing his rights therein, plaintiffs No.2 to 5 on their superior right of tenancy were competent to preempt the sale to that extent alone on proportionate cost.

However, learned Additional District Judge, Narnaul differed with the trial Court on several important aspects. He has extensively referred to oral as well as documentary evidence while proceeding to determine as to who was in possession of the suit land. Learned Additional District Judge, Narnaul has observed that an application moved by respondents for correction of khasra girdawari with regard to the suit land was dismissed by Assistant Collector IInd Grade, Narnaul as the appellants were found in possession of the land in dispute since Kharif 1985 onwards. The Assistant Collector had come to the conclusion after inspecting the spot twice and on the basis of evidence produced before him. The appeal filed against

order of Assistant Collector IIInd Grade was dismissed by Collector, Narnaul vide order dated 19.2.1989 affirming the possession of appellants over the land in dispute.

Learned Additional District Judge, Narnaul has observed that the trial Court while coming to the conclusion that plaintiffs No.2 to 5 (respondents No.2 to 5 in appeal) are in possession of half share in the land in dispute as tenants was influenced by the observations made in the copy of judgment dated 7.10.1991 Ex.PX passed by Sh.M.M. Sharma, learned Senior Sub Judge, Narnaul, however, the said judgment has been set aside in appeal by learned Additional District Judge, Narnaul himself and he has observed that while setting aside the judgment and decree in the connected appeal, he has found Nand Ram and Mange Ram to be in possession of the suit land. The discussion contained in para No.15 of the judgment is quite important, which for ready reference is being reproduced as under:-

15. Budh Ram respondent No.1 was a co-plaintiff with respondents No.2 to 5 in the case. He has also filed appeal against the judgment and decree dated 26.11.1991. Although, it has been averred by the appellants in their written statement that he surrendered possession of the land in dispute to them and executed agreement for mortgaging the land in dispute with

possession with the appellants on receipt of consideration of Rs.2,880/- from them Budh Ram did not step into the witness-box to rebut these averments and to prove that he did not put Mange Ram appellant in possession of the suit land and he did not execute the agreement copy of which is Ex.D1. The appellant Mange Ram himself appeared in evidence and has also examined Hari Shankar attesting witness of agreement Ex.D1 and Sh.Singh Raj who drafted and typed the agreement. In such circumstances, there is no scope for disbelieving the execution of agreement Ex.D1 by Sh.Budh Ram. The agreement clearly shows that Sh.Budh Ram was in exclusive possession of the land in dispute and he put Mange Ram appellant in possession thereof. Respondents No.2 to 5 are minors and they cannot cultivate the land in dispute. The entries in the jamabandis relied upon by the respondents show Tirkha and Budh Ram cultivating the land measuring 36 kanals 19 marlas belonging to the vendors. This land measuring 36 kanals 19 marlas comprised of six fields. It cannot be ruled out that Tirkha and Budh Ram being brothers had entered into some private arrangement for cultivating separate filed and there by partitioned the land under

their tenancy. The land in dispute measuring 8 kanals comprises of a while killa. It is not the case of the parties that this killa has been divided into two segments for the purpose of cultivation. Although, Smt.Sarti refuted this suggestion that they were cultivating separate killas by mutual arrangement but she conceded in the next breath that the killa adjacent to killa No.16 of rect. No.10 is being cultivated exclusively by her. Anoop singh PW2 also conceded during his cross-examination that 8 acres of land was being cultivated by Budh Ram and 8 acres by Tirkha. He also conceded that now four acres of land is being cultivated by sons of Tirkha and the rest by Budh Ram. He also conceded that the field adjacent to killa No.16 and rect. No.10 is under exclusive cultivation of Sarti. All these admissions made by Smt.Sarti and Sh.Anoop Singh lead to the inference that Budh Ram was in exclusive possession of the land in dispute under mutual arrangement between him and Sh.Tirkha and after his death, respondents No.2 to 5 through their mother and he surrendered possession of the land in dispute. The non-appearance of Sh.Budh Ram in the witness-box to rebut the allegations that he was in exclusive possession of the land in dispute and

transferred possession to the appellant and executed agreement Ex.D1 in their favour also lends support to this inference. The Assistant Collector IInd Grade, Narnaul also found the appellants in possession of the land in dispute on the basis of the evidence produced by the parties before him and his inspection of the land in dispute twice. He accordingly dismissed the application of the respondents for correction of khasra girdawari entries. Their appeal was also dismissed by the Collector on 19.2.1989. These facts also show that the respondents were not in possession of the land in dispute at the time of sale and on the date of filing of the suit as tenants. Under Section 15 of the Punjab Preemption Act only a tenant who holds land at the time of sale and on the date of suit is entitled to preempt the land.

The conclusion arrived at by learned Additional District Judge, Narnaul is proper and appropriate based upon sound reasoning and does not call for taking of any different view. With plaintiffs having not been found to be in possession of the suit land and possession having been delivered to defendants No.1 and 2 by Budh Ram vide agreement Ex.D1, possession of defendants No.1 and 2 having been found by revenue authorities even, the plaintiffs could not preempt the sale since they were not in possession of the land at

the time of sale. As such their claim was rightly rejected by First Appellate Court and no reason to upset the said judgment is there.

No substantial question of law arises in this appeal.

Finding not merit in the appeal, the same stands dismissed.

3.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No