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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

RSA-1092-1992
Date of decision: 16.03.2020
- Dhan Kaur

versus

....Appellant
- Bhagwani Devi and another

....Respondents
2.

RSA-1093-1992
- Dhan Kaur

versus

....Appellant
- Bhagwani Devi and another

....Respondents
3.

RSA-1094-1992
- Dhan Kaur

versus

....Appellant
- Bhagwani Devi and another

....Respondents
4.

RSA-1095-1992
- Dhan Kaur

versus

....Appellant
- Bhagwani Devi and another

....Respondents
5.

RSA-1096-1992
- Har Sarup

versus

....Appellant
- Bhagwani Devi and another

....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. M.S. Rana, Advocate
for the appellant.

Mr. Bhupesh Dogra, Advocate
for the respondents.

FATEH DEEP SINGH, J.(ORAL)

The above detailed regular second appeals though have arisen as a consequence of different suits, filed by Smt. Bhagwani Devi against Smt. Dhan Kaur and others and having been decreed by judgment decree dated 13.05.1991 by the Court of the learned Senior Sub Judge, Rohtak and the appeals of the unsuccessful defendants having been dismissed by orders dated 07.03.1992 on account of consanguinity of facts and law point are taken up and disposed off together by this common judgment.

The facts have been drawn from RSA-1092-1992, one, Bhagwani Devi, then plaintiff, filed against defendant No.1, Smt. Dhan Kaur, defendant No.2, Sultan Singh and defendant No.3 Har Sarup, of suit for possession by way of preemption of land measuring 09 canal 1½ marlas being total share of the total land detailed and described in the plaint by way of pre-emption of sale deed dated 12.10.1988. The claim is on the grounds that the plaintiff is a co-sharer of the suit land along with defendant No.2-Sultan Singh and, therefore, had superior right to pre-empt the sale deed dated 12.10.1988 claiming that Sultan Singh had sold the land for Rs.15,000/- through registered sale deed dated 12.10.1988 to Dhan

Kaur without notice to the plaintiff/co-sharer and therefore, has prayed that decree of pre-emption with possession of the land be based subject to payment of Rs.15,000/- in favour of the plaintiff as the defendant No.2, Dhan Kaur has tried to lease out the land in favour of defendant No.3, Har Sarup, who happens to be husband of Dhan Kaur to defeat access to right of preemption. The defendants in their stand besides taking up usual preliminary objections as to misjoinder of parties, causes of action, the plaintiff having no *locus standi* to file the suit. On merits, took the plea denying that the plaintiff had any superior right to pre-empt and further that the lease deed executed in favour of Har Sarup was for a period of 50 years and who is in cultivating possession of the same. The learned Trial Court framed the following issues:-

The plaintiff to prove her case testified as PW-1 and proved the sale deeds Ex. P1 and P2, *jamabandi* Ex.P3 and P4, copy of plaint Ex.P3 and P6 (sic), copy of written statement Ex.P2 and documents P5 and P7 (sic). The defendants on the other hand examined Har Sarup as DW-5, Phool Chand as DW-2, Kashmiri Lal as DW-2 and Partap Singh as DW-3 and re-treating the case proof documents sale deed as Ex.D1. (A II sic)

The learned Trial Court vide judgment dated 06.04.1991 decreed the suit, the appeal of the appellant too stood dismissed and that is how the parties are before this Court in this second appeal.

Heard both the sides.

It is golden principle of law that pleadings are the very foundation of a case of a party in the present case; the claim of the plaintiff that she is co-sharer of the suit property has not been denied or displaced. The copies of *jamabandi* Ex.P3 and P4 are illustrative to this. Furthermore, the sale deeds Ex.P1 and P2 executed by defendant-Sultan Singh selling his share to defendant No.2, Dhan Kaur are well illustrative to this. There is nothing substantial brought on the record to establish that the alleged lease deed executed between the husband, Har Sarup and wife, Dhan Kaur for the period of 50 years has any illegal entity. It has been rightly submitted by the counsel for the respondent to controvert the arguments of the appellants that the very perusal of the same shows that there is no provision as to payment of rent, if not paid regularly what right the lesser would exercise. There is a only testimony of the husband that he has taken the land on lease for a period of 50 years subject to payment of Rs.250/- as rent and claims to be in possession of the same since 10.10.1988. It has been rightly submitted by the respondents' side that both the husband and the wife claim that they took possession of the suit land on the same very date i.e. 10.10.1988 is highly unbelievable and it has been rightly deduced that the lease deed Ex.P2 has nothing but a bogus and sham document only created between the husband and the wife to defeat the rights of pre-emption. It needs to be stressed here that a pre-emptor has inherent right in the pre-emptional property and on its

infringement by sale in derogation to the inherent right to the remedial rights come into play, a right of pre-emption as per the judicial recognition is a personal and non-transferable one and it is open to the pre-emptor to transfer with the permission decree so as to enable his transferee to execute it and secure possession. Furthermore, once a right of pre-emption is recognized in the shape of decree and the terms thereafter, complied with the rights comes into estate of pre-emptor and passes to his heirs on his death, thereafter. In the present case, the plaintiff on the date of the execution of the sale deed is shown to be a co-sharer of the property and, therefore, a superior right of pre-emption vests in her and which rights were intact at the time when the sale deed was executed by Sultan Singh in favour of Dhan Kaur and which is indefeasible by virtue of Section 28-A to the Punjab Pre-emption Act. A twist has sought to be given by the parties, whereby, the defendant with an intent to defeat the rights of the plaintiff and regarding which, his suit for pre-emption was pending and at the time of filing of the suit, the plaintiff was certainly a co-sharer in the suit land and which is detrimental to the interest of the vendee. This Court in Dhan Singh vs. Rattan Singh and others, since the element of being a co-sharer is an essential ingredient in exercising the right of pre-emption as has been laid down by this Court in judgment titled as '**Dhan Singh vs. Rattan Singh and others**' 2006(1) PLJ 464, therefore, the findings needs to be upheld.

The Courts below have given a concurrent finding which does not calls for any interference and being illegally firm and factually correct, needs to be upheld the appeals being totally divide on merit, stand dismissed.

16.03.2020

Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No