

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**207****RSA No.549 of 1990****Date of Decision : 27.03.2023**

Basant Kaur

....Appellant

VERSUS

Baldev Singh and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Saurabh Garg, Advocate for the appellant.

Mr. Alok Jain, Advocate for the respondents.

ALKA SARIN, J. (Oral)

The present appeal has been filed by the defendant No.1-appellant against the judgment and decree dated 20.05.1989 passed by the First Appellate Court decreeing the suit for pre-emption filed by the plaintiff-respondents.

The brief facts relevant to the present *lis* are that defendant No.2 – Nikko – who was originally impleaded as proforma respondent No.4 in the present appeal and whose name stands deleted vide order dated 16.03.1990 passed by this Court, was owner of agricultural land measuring 3 kanals 13 marlas as detailed in para 2 of the plaint situated in village Kanipala. She sold the same in favour of the defendant No.1-appellant vide registered sale deed dated 27.02.1987 for an alleged sale consideration of Rs.19,000/- along with all rights appurtenant thereto. The plaintiff-respondents filed a suit for pre-emption on the ground that they were co-sharers in the joint *Khewat* and further that they were not given any notice of the intended sale by the vendor-defendant. The defendant No.1-appellant contested the suit on the ground that the same was not maintainable and that

the suit was bad for partial pre-emption and that the plaintiff-respondents had no preferential right to pre-empt the sale.

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

1. Whether the plaintiffs have got the superior right to pre-empt the sale in question ? OPP
2. What is the market price of the suit land at the time of sale ? OPP
3. Whether the sale price was not fixed and paid in good faith ? OPP
4. If issue no.2 and 3 are not proved, then what is the market value of the suit land at the time of sale ? OPD
5. Whether the suit is not maintainable in the present form ? OPD
6. Whether the plaintiffs are the step sons of Smt. Nikko vendor, if so to what effect ? OPD
7. Whether the plaintiffs are estopped by their own act and conduct ? OPD
8. Whether the suit of the plaintiffs is time-barred ? OPD
9. Whether the suit is bad for partial pre-emption ? OPD
10. Whether the defendants are entitled for stamp registration and incidental charges ? OPD
11. Relief.

The Trial Court, holding that the plaintiff-respondents, who are step-sons of the vendor Nikko, had no right of pre-emption and on the basis of the judgment of the Hon'ble Supreme Court in the case of **Atam Parkash vs. State of Haryana [1986 (1) PLR 329]**, dismissed the suit. Aggrieved by the judgment and decree dated 07.01.1989 passed by the Trial Court, an appeal was preferred by the plaintiff-respondents. The First Appellate Court,

vide judgment and decree dated 20.05.1989, allowed the appeal and decreed the suit for possession by way of pre-emption. It was inter-alia held that :

“8. In view of my above discussion, the judgment and decree under appeal is set aside and the suit of the plaintiff is decreed for possession of the suit land by way of pre-emption on their payment of Rs.17080/- less 1/5th pre-emption money already deposited, i.e. Rs.14447/- on account of sale consideration i.e. Rs.19000/- minus Rs.4553/- mortgage amount plus Rs.2375/- and Rs.258/- on account of stamp and registration charges on or before 20.07.1989, failing which the suit of the plaintiffs shall stand dismissed. In either events the parties are left to bear their own costs.”

Learned counsel for the plaintiff-respondents, on instructions, has made a categoric statement that the entire amount as directed by the First Appellate Court since stands deposited.

Learned counsel for the defendant No.1-appellant has contended that being the step-sons of the vendor Nikko, the plaintiff-respondents could not have pre-empted the sale and that as per the judgment of the Hon'ble Supreme Court in the case of **Atam Parkash** (*supra*), the right to pre-empt on the basis of consanguinity was held to be *ultra vires*. That being so, the suit itself was not maintainable. Learned counsel for the defendant No.1-appellant would further contend that notice was given to the plaintiff-respondents prior to the execution of the sale deed and hence the suit itself would be barred in law.

Per contra, learned counsel for the plaintiff-respondents has contended that the suit in the present case was not filed on the basis of consanguinity but on the ground that the plaintiff-respondents were co-sharers in the property and the factum of the plaintiff-respondents being co-

sharers was never disputed by the defendant No.1-appellant. It is further the contention that even in the written statement there was no such ground raised. Though an issue was framed whether the plaintiff-respondents were step-sons of Nikko, however, nothing would turn on the said finding inasmuch as the suit was simpliciter for pre-emption on the ground of being a co-sharer.

I have heard the learned counsel for the parties and with their assistance gone through the Trial Court record.

In the present case the plaintiff-respondents approached the Court by filing a suit for possession on the basis of pre-emption. The categorical case of the plaintiff-respondents was that they are co-sharers in the suit land. It is pertinent to note that the co-sharership of the plaintiff-respondents was never disputed by the defendant No.1-appellant and it was noted in para 8 of the judgment of the Trial Court that the defendant No.1-appellant did not opt to say anything on the factum of co-sharership of the plaintiff-respondents in the *Khewat*. It has also been noticed by the First Appellate Court that there is no dispute regarding the co-sharership. The argument raised by learned counsel for the defendant No.1-appellant that the suit was based on consanguinity and in view of law laid down in the case of **Atam Parkash** (*supra*) the suit itself was not maintainable, deserves to be rejected on the ground that this was neither the case set up by the plaintiff-respondents in their plaint nor was this the defence taken by the defendant No.1-appellant in his written statement. Rather, the Trial Court only on the basis of the averments made in the written statement that the plaintiff-respondents were the step-sons of Nikko went on to frame an issue as to whether the plaintiff-respondents were step-sons of Nikko. It is apt to note

that the plaintiff-respondents never sought pre-emption on the ground of consanguinity and the only ground for pre-emption was that they were co-sharers in the *Khewat*, which remained undisputed. The judgment in the case of **Atam Parkash** (*supra*) would therefore not be applicable to the present case.

No other point has been argued.

In view of the above, I do not find any illegality or infirmity in the judgment and decree passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

27.03.2023
jk

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO