

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2968 of 1994 (O&M)

Date of Order: 28.08.2023

Gian Singh

.Appellant

Versus

Smt. Joginder Kaur (since deceased) through LRs and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. KeshavPratap Singh, Advocate
Mr. Namish Sodhi, Advocate,
for the appellant.

Mr. Sanjay Verma, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. The correctness of the judgment passed by the First Appellate Court is assailed by the plaintiff in this second appeal.

2. The trial court decreed the plaintiff's suit for possession by way of pre-emption on the ground that he has a superior right to pre-empt the sale deed dated 13.01.1989 being co-sharer. It has come in evidence that in the year 1985, the plaintiff agreed to purchase the suit land from defendant no.3 for a sum of Rs.42,000/-, however, the aforesaid agreement was not honoured but defendant no.3 (the owner of the property) returned the earnest money to the plaintiff.

3. In the year 1913, the Punjab Pre-emption Act (hereinafter referred to as 'the 1913 Act') was enacted. Subsequently, the operation of the 1913 Act was discontinued in the State of Punjab, however, in the State of Haryana, the 1913 Act continues to be enforceable. In **Atam Prakash vs.**

State of Haryana and others, 1986 AIR 859 a five Judge Bench of the Supreme Court held that the pre-emption right granted to kinsfolk on the basis of consanguinity is illegal.

4. With the changing time, the State Legislature also recognized that, such right on the basis of a person being co-sharer, was also omitted from the 1913 Act by Act No.10 of 1995. However, in another five Judge Bench in *Shyam Sunder and others vs. Ram Kumar and another, (2001) 8 SCC 24*, held that such amendment will have only prospective operation and would not affect the pending appeals.

5. In this case, the First Appellate Court has reversed the judgment and decree passed by the trial court on the following grounds:-

(1) The plaintiff had the knowledge of the intention of respondent no.3 (the vendor) to sell the property and in fact, he after entering into the agreement to sell did not come forward to purchase the property.

(2) Sh. Harbhajan Singh, the husband of Smt. Joginder Kaur was in possession of the property as a tenant and the amount of sale consideration was paid from the funds of Joint Hindu Family.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the appellant while referring to the jamabandi for the year 1983-1984 contends that the possession of Sh. Harbhajan Singh as 'Gair Marusi' has been recorded, however, there is no entry in Column No.9, which proves the relationship of landlord and tenant between Smt. Puran Sawaraj (Vendor) and Sh. Harbhajan Singh. He

submits that the entry of 1/3 batai was incorporated for the first time in the jambanadi for the year 1988-1989, as a result of order passed by the revenue officer and therefore, Sh. Harbhajan Singh is not proved to be tenant in possession of the land. He further submits that there is a 4 years gap between the agreement to sell in favour of the plaintiff and the sale deed and therefore, these are based on two independent cause of action. Hence, in the absence of notice before the execution of the sale deed in the year 1989, the plaintiff's superior right of preemption continues.

8. On the other hand, the learned counsel representing the respondents contends that the competent authority after inquiring into the matter held that Sh. Harbhajan Singh is in possession of the property as a tenant vide order dated 17.03.1987 and therefore, the plaintiff does not have superior right of preemption. He further submits that as per the provisions of the 1913 Act, the vendor (owner) is required to give opportunity to the co-sharer to purchase the property at the first instance. He submits that the aforesaid offer was given and the plaintiff entered into an agreement to sell, however, the same was not honoured by the plaintiff. Therefore, it was safe for the vendor to presume that the plaintiff is not interested in purchasing the property.

9. This Court has considered the submissions of the learned counsel representing the parties.

10. As far as the first argument of the learned counsel representing the appellant, there is substance in the same. In the proceeding for correction of entry in the khasra girdwari, the order dated 17.03.1987 was passed. This application was filed by Sh. Harbhajan Singh claiming that he is required to be recorded as tenant on 1/3rd batai. In the ex-parte

proceedings, the revenue officer ordered the revenue authorities to correct the revenue record.

11. The tenancy can be created by a contract between the parties which can even be oral. However, there has to be evidence of some sort of contract between the owner or the landlord and the tenant. An entry in the revenue record has a rebuttable presumption, however, the aforesaid entry is required to be corroborated by evidence. In this case, the evidence to prove the payment of 'batai' is unreliable. Moreover, in the jamabandi for the year 1983-1984, there is no entry in column no.9 to prove any agreement to pay the rent. The entry "Gair Marusi" in absence of corresponding entry in column no.9 is not sufficient to prove the relationship of landlord and tenant between the parties. Additionally, the sale deed has been executed in favour of Smt. Joginder Kaur and Smt. Lajwanti. These ladies were never in possession as tenants. Moreover, there is no evidence to prove that Smt. Joginder Kaur and Smt. Lajwanti constituted a joint hindu family along with Sh. Harbhajan Singh particularly when Smt. Lajwanti was not related to the family of Sh. Harbhajan Singh. In view of the aforesaid, the findings of the First Appellate Court on issue no.1 is set aside.

12. Now this Bench proceeds to examine the second issue.

13. As already noticed, the superior right of preemption under Section 15 of the 1913 Act is based on prior information to the person who has superior right to purchase the property. In fact, the Hon'ble Supreme Court in **Atam Prakash's case (supra)** held that with the changing times and development, such right is 'archaic', 'feudal', 'piratical' 'outmoded' and so on. In this case, the suit property has been sold for Rs.42,000/-. It is evident from the reading of the agreement to sell dated 18.02.1985 (Ex.D17) that the

suit property was offered to be sold to the plaintiff in the first instance and he agreed to purchase the same. Thus, the plaintiff was in the knowledge of the fact that the vendors intends to sell the same. The sale deed is also for the same amount. It has been executed within a period of less than 4 years. In such circumstances, the plaintiff cannot claim that he had no knowledge of the intention of the vendor to sell the property. The purpose of serving notice to the persons who have superior right to purchase the property is to give them the first opportunity to purchase. Such requirement stands fulfilled once the agreement to sell was entered into.

14. Moreover, now 34 years have elapsed. At this stage, it will not be equitable to permit the plaintiff to exercise superior right of preemption, at this stage.

15. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

16. Dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

August 28, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO