

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

RSA No. 1772 of 1996

DATE OF DECISION :- March 20, 2023

Amarjit Singh and others

...Appellants

Versus

Pritam Singh and others

...Respondents

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

Present:- Mr. Jagdish Manchanda, Advocate for the appellants.

Ms. Rupinder Kaur Thind, Advocate for respondents
No. 1(i), 2, 3 (g) and 4.

Briefly stated the facts of the case are that plaintiff Kehar Singh son of Shri Santa Singh @ Sant Singh (since dead) represented by his legal representatives, had brought a suit against defendants Pritam Singh son of Shri Lachhman Singh son of Shri Roop Singh, Makhan Singh, Lakha Singh and Banta Singh all sons of Pritam Singh son of Lachhman Singh, all residents of that very village for possession of land measuring 79 kanals 18 marlas by way of pre-emption contending that plaintiff happened to be a co-sharer in the suit land with Bachan Singh etc. and the latter had sold of their share in the joint land to the defendants vide registered sale deed No. 559 dated 19.2.1988. The plaintiff had a right to pre-empt the sale being a co-sharer in the joint land, therefore, he has brought the suit in question.

On getting notice, the defendants appeared and contested the suit. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the trial Court of Additional Senior Sub Judge, Sirsa gave issue wise findings and vide judgment dated 20.9.1994 decreed the suit giving a direction to the plaintiffs to deposit the sale consideration amount of Rs.49,000/- after deducting 1/5th pre-emption amount already deposited by them on 6.10.1994. It was further directed that plaintiff shall pay to defendants the stamp and registration charges amounting to Rs.6200/-, failing which the suit of the plaintiff shall stand dismissed.

Feeling aggrieved by the said judgment and decree the defendants had preferred an appeal before District Judge, Sirsa which was assigned to Additional District Judge, Sirsa, who vide judgment dated 3.4.1996 had accepted the appeal simply for the reason that as per amendment made in the Punjab Pre-emption Act by the Haryana Government vide notification dated 17.5.1995 right of pre-emption was confined to tenants only and not given to the co-sharers.

Feeling dissatisfied, the legal heirs of deceased plaintiff Kehar Singh had brought an appeal before this Court, notice of which was given to the respondents defendants, who had put in appearance through counsel.

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

Learned counsel for the appellants has referred to judgment by the Apex Court titled 'Shyam Sunder and another versus Ram Kumar and another' 2001(3) R.C.R (Civil) 754 wherein it has been clarified that right of co-sharer to pre-empt shall not be effected by the amendment carried out by the Government since that amendment shall not have any retrospective effect. It was further observed that view taken in the earlier judgment titled

‘Didar Singh etc. versus Ishar Singh, 1994(1) Scale 1 that right to pre-empt must exist up to the date of decree of final appellate Court as well as in case titled ‘Ramjilal and others versus Ghisa Ram etc.’ 1996(2) RCR (Civil) 456 (SC) to the effect that right to pre-empt must exist upto the date of decree of final appellate Court and on the conflicting view on the subject taken, the view taken in the case of Didar Singh was found to be correct and was upheld. It was further observed that pre-emptor has to prove continuation of subsistence of his right till the passing of the decree of the First Court.

In this case the trial Court has decreed the suit filed by the plaintiff on 20.9.1994 whereas amendment by the Haryana Government had come into operation w.e.f. 17.5.1995. At that time appeal filed by the defendants against judgment and decree passed by the trial Court was pending. In view of the law laid down in judgment Shyam Sunder and another (supra) the suit could not have been dismissed in view of the amendment carried out and learned Additional District Judge, Sirsa had though relied upon the law laid down at that time in the process dismissing the suit but that judgment cannot be sustained. Learned Additional District Judge, Sirsa had not taken into view the merits of the case while disposing of the appeal. Learned counsel appearing for the respondents defendants states that as per her instructions the LR's of plaintiff who are appellants before this Court have withdrawn the 1/5th of the amount so deposited by them from the trial Court, therefore, this fact shall have to be seen.

Accordingly, the case is remanded to the Court of Additional District Judge, Sirsa with a direction to dispose of the appeal afresh considering the merits of the case. The parties through counsel are directed to appear there on 24.4.2023. The Registry is directed to return the original

record to the Court of Additional District Judge, Sirsa immediately well before the next date of hearing fixed there since the case relates to the year 1996.

Learned Additional District Judge, Sirsa is directed to dispose of the appeal expeditiously preferably within a period of three months from the date of receipt of copy of this order.

The appeal is allowed accordingly.

(H.S. MADAAN)
JUDGE

March 20, 2023
p.singh

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