

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R.No.6897 of 2013(O&M)

Reserved On: 23.11.2023

Pronounced On: 11.01.2024

Hamir Singh

...Petitioner

Versus

Naresh Kumar and others

...Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present: Mr. Mani Ram Verma, Advocate,
for the petitioner.

Mr. Rajesh Sethi, Advocate
Mr. Arun Biriwal, Advocate
Mr. Paramdeep Singh, Advocate
Ms. Preeti Bansal, Advocate
for respondent no.1 to 6.

Mr. Gurinder Pal Singh, Advocate
for respondent no.7.

ANIL KSHETARPAL, J.

1. This revision petition has been filed to assail the correctness of the order passed by the Executing Court on 31.03.2011, by which decree holder's execution petition has been dismissed.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. As per unamended Section 15 of the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the 1913 Act'), the right to preempt the sale of the agricultural land and village immovable property is originally vested in the relatives, co-sharers and tenants. Subsequently, the State of Punjab repealed the 1913 Act, however it continued to operate in the area of State of

Haryana. In Atam Parkash vs. State of Haryana and others, (1986) 2 SCC

249, a Five Judge Bench of the Supreme Court held that the right of pre-emption based on consanguinity is a relic of feudal past and therefore, is declared ultra vires. Taking clue from the observations made by the Supreme Court, the State of Haryana substituted Section 15 by the Haryana Act 10 of 1985 in order to give the right of pre-emption only to the tenant who holds the property under tenancy of the vendor or vendors. The matter again went to the Supreme Court with regard to applicability of the amended Act on the pending litigation. In *Shyam Sunder and others vs. Ram Kumar and another, (2001) 8 SCC 24*, another Five Judge Bench held that Section 15 as substituted by Haryana Act 10 of 1985 was held to be prospective. However, the Court noticed that such right is outdated and piratical. The Supreme Court also held that if the decree has already been passed in favour of the pre-emptor the amendment shall not be applicable. However, if Section 15 has been substituted during the pendency of the suit, the amended Act would be applicable.

4. In this case, Mr. Jeet Singh and others sold 40 kanals 13 marlas of agricultural land to Mr. Naresh Kumar vide sale deed dated 03.05.1988. This sale deed was sought to be pre-empted by filing two different suits, one by Mr. Bant Singh and Mr. Baldev Singh, whereas the second by Mr. Hamir Singh which were decreed by the trial Court vide judgment dated 08.10.1995. It was held that the petitioner shall pre-empt 7 kanals 18 marlas land, whereas his rival pre-emptor Mr. Bant Singh and Mr. Baldev Singh would pre-empt land measuring 5 kanals and 3 marlas. Two appeals were filed by the vendee which were accepted by the learned District Judge, Hisar vide judgment dated 23.01.1996, on the ground that Section 15 as substituted by Act 10 of 1985, does not grant right of pre-emption to the co-

sharers. The correctness of the judgment passed by the first appellate court was challenged by Mr. Bant Singh and Mr. Baldev Singh in RSA No.854 of 1996. The aforesaid appeal was allowed in view of the judgment passed by the Five Judge bench of the Supreme Court in *Shyam Sunder's case (supra)*. The matter was remanded back to the first appellate court to decide the appeal on merits. The first appellate court dismissed both the appeals vide judgment and decree dated 27.05.2006.

5. The petitioner filed an execution petition on 02.09.2006. During the pendency of the execution petition, it was realized that the petitioner had, in fact, withdrawn 1/5th of the pre-emption money after the vendee's appeals were allowed by the first appellate court on 23.01.1996. The application filed by the petitioner to deposit the entire amount including 1/5th of the pre-emption money has been dismissed by the Executing Court. The petitioner filed an appeal which was subsequently withdrawn upon realizing that such appeal is not maintainable. Thereafter, this revision petition was filed along with an application for condonation of delay which was allowed.

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 petitioner while relying upon the following observations made by the first appellate court contends that the petitioner had withdrawn the amount as directed by the Court, the relevant portion is extracted as under:-

“The amount, if any, deposited on account of 1/5th pre-emption money or the balance be refunded to the plaintiffs concerned. Decree sheet be prepared and the

file be consigned to records. The file of the learned Trial court be sent back with a copy of the judgment.”

8. He submits that the petitioner had not withdrawn the amount on his own and he withdrew the amount without prejudicing his pre-emptory rights. He submits that the decree passed in favour of the petitioner is required to be implemented and the trial court has erred in refusing the permission to deposit the amount. While relying upon a Division Bench judgment in **Sanwal Dass vs. Jagomal and others, AIR 1924, Lahore 68**, he contends that Section 22 (5) (a) of the 1913 Act shall not be applicable if the amount was withdrawn after the decree. He further contends that the Executing Court is not expected to go behind the decree and therefore, the Court should permit the petitioner to deposit the amount.

9. On the other hand, the learned counsel representing the respondent contends that once 1/5th of the pre-emption money deposited under Section 22(1) has been withdrawn, there is no provision to re-deposit the same. He submits that under Section 22(5)(a) of the 1913 Act, the suit or appeal is required to be dismissed the moment the amount is withdrawn.

10. This court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

11. For the decision of the present case, the pivotal issue that arises before this court relates to the interpretation of Section 22 of the 1913 Act, which is extracted as under:-

22. Plaintiff may be called on to make deposit or to file security. - (1) In every suit for pre-emption the Court shall at, or at any time before, the settlement of issues, require the plaintiff to deposit in Court such sum as does

not, in the option of the Court, exceed one-fifth of the probable value of the land or property, or require the plaintiff to give security to the satisfaction of the Court for the payment, if required, of a sum not exceeding such probable value within such time as the Court may fix in such order.

(2) In any appeal the Appellate Court may at any time exercise the powers conferred on a Court under sub-section (1).

(3) Every sum deposited or secured under sub-sections (1) and (2), shall be available for the discharge of costs.

(4) If the plaintiff fails within the time fixed by the Court or within such further time as the Court may allow to make the deposit or furnish the security mentioned in sub-sections (1) or (2), his plaint shall be rejected or his appeal dismissed, as the case may be.

(5) (a) If any sum so deposited is withdrawn by the plaintiff, the suit or appeal shall be dismissed.

(b) If any security so furnished for any cause becomes void or insufficient, the Court shall order the plaintiff to furnish fresh security or to increase the security, as the case may be, within a time to be fixed by the Court and if the plaintiff fails to comply with such order, the suit or appeal shall be dismissed.

(6) The estimate of the probable value made for the

purpose of sub-section (1) shall not affect any decision subsequently come to as to what is the market value of the land or property.”

12. On careful reading of Section 22, it is evident that the court has a discretion to call upon the plaintiff to deposit or to file security to the extent of 1/5th of the probable value of the land or property. Sub-section (4) of Section 22 provides that if the plaintiff fails within the time limit fixed by the Court or within such further time as the Court may allow to make the deposit, his plaint shall stand rejected or his appeal shall stand dismissed. Clause (a) of Sub-section (5) provides that if any sum so deposited is withdrawn by the plaintiff, the suit or appeal shall be dismissed.

13. In **Sanwal Dass's case (supra)**, the Court held that Section 22(5)(a) of the 1913 Act is not applicable if the entire sale consideration or the pre-emption money is withdrawn after the decree has been passed. The aforesaid judgment is not with respect to 1/5th of the probable value of the land or property. Once, there is a direction by the Court to deposit 1/5th of the probable value of the land or property, the aforesaid amount is required to be deposited within the time prescribed failing which the plaint or the appeal is liable to be rejected. Hence, the Division Bench judgment is not applicable to the facts of the present case.

14. The second argument of the learned counsel representing the petitioner is also without substance because the first appellate court while deciding the two appeals on 23.01.1996, had observed that the amount deposited on account of 1/5th of the pre-emption money be refunded. It is the petitioner, who applied for refund. Once he had decided to file appeal to challenge the correctness of the judgment dated 23.01.1996, no one forced

him to withdraw the amount. Furthermore, in the alternative the petitioner was required to atleast apply for re-deposit of the amount once the High Court vide order dated 09.12.2003, remanded the case back to the first appellate court for deciding it afresh on merits. In these circumstances, this court is called upon to decide the *inter-se* dispute between the parties. As already noticed, the Supreme Court in *Atam Parkash's case(supra)* has recognized that such right is outmoded piratical and a relic of feudal past. In *Kundan Singh and others vs. Mukanda and others, 1970, Punjab Law Journal, 585*, this Court has held that once the plaintiff on his own volition withdrew the 1/5th of the pre-emption money, the suit or the appeal is liable to be dismissed. Similarly, in *Avtar Singh vs. Ramesh Kumar and another, AIR 1983 P&H, 259*, while interpreting Clause (a) of sub-section 5 the Court held that once a Zar-e-panjam i.e. 1/5th of the pre-emption money is withdrawn, the court is not empowered under Section 22 or any other provision to order re-deposit of the aforesaid amount.

15. It may be noted here that by now approximately 35 years have elapsed from the date of execution of the sale deed. Hence, the Court does not find it appropriate to permit the petitioner to re-deposit the amount particularly when there is neither any provision for re-deposit of the same nor the petitioner took any steps in furtherance re-deposit the same when Regular Second Appeal was allowed by the High Court on 09.12.2003. It may be noted here that the submission of the learned counsel representing the petitioner that the Executing Court cannot go behind the decree lacks substance. It may be noted here that in a pre-emption case a conditional decree is passed in accordance with Order XX Rule 14 CPC, and once the same has not been complied with, the decree cannot be executed.

16. Hence, finding no merits, the revision petition is dismissed.
17. All the pending miscellaneous applications, if any, are also
disposed of.

11th January, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO

Whether reportable :YES/NO