

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.61 of 1990 (O&M)
Date of Order:13.02.2024

Ram Partap (Deceased) through LRs

.Appellant

Versus

Mahabir (Deceased) through LRs and others

..Respondents

RSA No.2145 of 1991 (O&M)

Mahabir (Deceased) through LRs and others

...Appellants

Versus

Ram Partap (Deceased) through LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kumar Verma, Advocate
for the appellant (in RSA No.61 of 1990)
for the respondent (in RSA No.2145 of 1991)

Mr. S.S.Salar, Advocate
for the appellants (in RSA No.2145 of 1991)
for the respondents (in RSA No.61 of 1990)

ANIL KSHETARPAL, J

1. With the consent of the learned counsel representing the parties,
two connected appeals i.e. Regular Second Appeal No.61 of 1990 and
Regular Second Appeal No.2145 of 1991, shall stand disposed of by a
common order.

2. In Indra Bai vs. Nand Kishore, (1990) 4 SCC 668, the Supreme
Court held that pre-emption is a 'weak and inequitable right' which can be

defeated by all legitimate means. In *Atam Parkash vs. State of Haryana (1986) 2 SCC 249*, the Five Judge Bench of the Supreme Court described the right of pre-emption based on consanguinity as 'feudal' 'piratical', 'tribal', 'weak', 'easily defeated' etc., therefore, declared ultra vires the Constitution. Subsequently, the Government of Haryana also recognised and repealed the pre-emption right in favour of co-sharer by Haryana Act No.10 of 1995. However, old cases are required to be decided as per un-amended provisions as held by another 5 Judges Bench in *Shyam Sunder and others vs. Ram Kumar and another (2001) 8 SCC 24*.

3. In Regular Second Appeal No.61 of 1990, the plaintiff (the appellant herein), who filed a suit for possession by way of superior rights of pre-emption on the ground that he is co-sharer. He has legal right to pre-empt the sale deed dated 04.04.1986, executed in favour of the respondents. Both the courts below have found that the appellant is not a co-sharer.

4. In Regular Second Appeal No.2145 of 1991, the defendants are in regular second appeal against the correctness of the judgment and decree passed by the First Appellate Court which in turn reversed the judgment and decree passed by the trial court. Another similar suit like the previous suit involved in Regular Second Appeal No.61 of 1990, was filed in this case. The plaintiffs claim superior right of pre-emption claiming to be co-sharers in order to pre-empt the sale deed dated 21.03.1986, in favour of the appellants. The trial court dismissed the suit after recording the findings of fact that the plaintiffs (respondents herein) were not co-sharers, however the First Appellate Court has reversed the same.

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

with the requisitioned record.

6. As per the jamabandi for the year 1981-82, Sh. Jiwan Ram son of Sh. Kusla was the sole owner of the land comprised in khewat no.9. He sold 50% of his property vide sale deed dated 08.12.1982, in favour of four brothers, namely, Sh. Ram Partap, Sh. Ram Kumar, Sh. Birbal and Sh. Balwant. Subsequently, two more sale deeds were executed by Sh. Jiwan Ram alienating different parts of the property in favour of the aforesaid four brothers. The revenue authorities vide Rapat No.1324, dated 17.04.1984, prepared two separate khewats. One was assigned khewat no.9, whereas the second one was assigned khewat no.9 min. In the revenue record, the land of Sh. Jiwan Ram and Sh. Ram Partap etc. was reflected separately comprised in different khewats. Sh. Jiwan Ram vide sale deed dated 04.04.1986, sold 31 kanals and 16 marlas land in favour of the respondents (defendants). In order to pre-empt the sale deed, Sh. Ram Partap (appellant) filed a suit.

7. Both the courts found that the property had been divided on 17.05.1984. Hence, the suit was dismissed. Even in the next jamabandi for the year 1986-1987, the khewat of Sh. Jiwan Ram was allocated separate number, whereas khewat of Sh. Ram Partap etc. was assigned khewat no.105.

8. The learned counsel representing the appellant(s) while referring to the sale deed Ex.PX, submits that while purchasing the land from Sh. Jiwan Ram, they have purchased $\frac{1}{2}$ share of the property and therefore they become co-owners. He further submits that the revenue authorities cannot partition the land in this manner.

9. This court has considered the submissions of the learned

counsel representing the parties.

10. Admittedly, Sh. Jiwan Ram was the exclusive owner of the property. Sh. Ram Patap etc. on purchase of the land were put in possession of the specific portion thereof. Even in the revenue record separate khewats were carved out. In these circumstances, the appellants Ram Partap etc. will not become co-owners with Sh. Jiwan Ram particularly when their khewats have been separated. The defendants purchased 31 kanals and 16 marlas of land vide sale deed dated 04.04.1986, from Sh. Jiwan Ram, who was the sole owner of the land comprised in khewat no.9, which in the jamabandi for the year 1986-87 was allocated separate khewat no.98.

11. The learned counsel representing the appellant(s) submits that the appellant's case is covered by the judgment of the Full Bench in **Bhartu vs. Ram Sarup, 1981 Punjab Law Reporter, 204.** This judgment has been subsequently explained by a Five Judge Bench in **Ram Chander vs. Bhim Singh and others, 2008(*3) R.C.R.(Civil), 685.**

12. In **Bhartu's case (supra)**, the question was whether the purchaser of the land from a particular rectangle becomes co-owner in the khewat or not? Both the Full Benches held that the concept of joint khewat is with reference to the khewat and not the rectangle. Hence, any purchaser of a part of the joint land, who purchases the land from a co-owner will become co-owner in the entire khewat even if he has purchased the land from a particular rectangle. The issue which arises for consideration in this case was not the same in the aforesaid judgments.

13. Even otherwise, private partition of joint khewat is well known concept and it is not necessary for the parties to file a petition in the Court for partition of the joint property. The co-sharers are entitled to mutually

partition the land without going to the court or reporting to the revenue authorities. Reliance in this regard can be placed on Ajmer Singh vs. Dharam Singh, 2006 (1) PLJ 442.

14. Hence, even for the argument sake, if it is presumed that the plaintiffs became co-owners, still they partitioned the land by reporting to the revenue authorities which resulted in separation of khewat on 17.05.1984. Hence, on the date of sale deed in favour of the defendants in both the suits, property stood divided.

15. Consequently, there is no merit in Regular Second Appeal No.61 of 1990, and hence, dismissed.

16. In Regular Second Appeal No.2145 of 1991, the facts are identical except that the sale deed in this case is dated 21.03.1986. In Regular Second Appeal No.61 of 1990, Sh. Ram Partap filed a suit, whereas in the second suit, Sh. Ram Partap along with his brothers filed a suit. For parity of reasons, RSA NO.2145 of 1991, is allowed. The judgment passed by the First Appellate Court is set aside.

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

February 13, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO