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

**RSA-1272-1992 (O&M)
Date of Decision : 14.03.2024**

RAJ KUMAR

.....Appellant/defendant no.1

VERSUS

DHARAMVIR

.....Respondent/Plaintiff-Pre-emptor

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Ritesh Aggarwal, Advocate,
for the appellant.

Mr. Sumit Sangwan, Advocate,
for the respondent.

KULDEEP TIWARI. J.(Oral)

1. Through the instant regular second appeal preferred by defendant no.1 (before trial court), challenge is thrown to the concurrent findings recorded by the learned trial court, vide judgment and decree dated 03.10.1991 and to the first appellate court concerned, vide judgment and decree dated 19.05.1992.

2. The appellant was arrayed as defendant no.1, whereas respondent herein was plaintiff/pre-emptor. For the sake of convenience the parties are hereby referred to their respective status as before the learned trial court.

3. To pre-empt the sale deed dated 08.11.1989, plaintiff-Dharamvir filed a suit for pre-emption on the ground that that he has a superior right to pre-empt, whereas no notice of intended sale was given to him, being the co-sharer.

The plaintiff in order to assail the sale deed (*supra*), filed the present suit for

possession on the ground that defendant no.2-Ram Saran was owner-in-possession of the suit property to the extent of 1/4th share, and he entered into an agreement to sell with defendant no.1 on 07.10.1985. Thereupon, defendant no.2-Ram Saran, failed to honour the agreement to sell which propelled defendant no.1 to prefer a suit for specific performance of contract. The suit was ultimately decreed on 28.07.1989 and the sale deed with the intervention of the Court was duly executed on 08.11.1989, for a sale consideration of Rs.49,500/-.

4. It is important to note here that during the trial of the instant suit, defendant no.2-Ram Saran was given by learned counsel for the plaintiff by making statement on 30.04.1990 and the suit was in fact contested by the present defendant no.1.

5. Defendant no.1 upon notice caused appearance and filed his written statement and controverted the contentions made in the plaint, however, it was admitted that the agreement for the sale was entered into between the defendants *inter se* and the suit for specific performance was filed which was subsequently decreed and a sale deed dated 08.11.1989 was executed in compliance of the said decree. The status of the plaintiff as a co-sharer was denied, and it was alleged that neither at the time of agreement to sell dated 07.10.1985, nor even at the time of filing a suit for specific performance, the plaintiff was a co-sharer. All other pleadings of the plaintiff were denied and some additional objections were also made including the plaintiff has no *locus standi* to file the present suit; and he be estopped from filing the same by his own act and conduct. A specific objection was taken that the plaint does not bear the thumb impression of the plaintiff and the suit has been filed in collusion with the vendor, and further the 1/5th pre-emption money as required under the Act, has not been deposited on

time. Finally, it was pleaded by defendant no.1 that he had to incur expense for registration, and made improvement over the disputed property worth Rs.10,000/- and the suit is now time barred.

6. The plaintiff defended his claim by filing a replication to the aforesaid written statement of defendant no.1, thereafter, on the basis of pleadings of the parties, following issues were framed:-

1. Whether the plaintiff has superior right to pre-empt the sale in dispute as alleged?OPP
2. Whether the suit is bad for partial pre-emption?OPD
3. Whether the plaintiff has no locus standi to file the present suit?OPD
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the defendant no.1 incurred registration and stamp expenses. If so, to what effect?OPD
6. Whether the defendant no.1 incurred a sum of Rs.10,000/- on improvement of the land. If so, to what effect?OPD
7. Whether the suit is time barred?OPD
8. Whether the defendant is entitled to special costs. If so, to what amount?OPD
9. Relief.

7. The issue no.1, whether the plaintiff has a superior right to pre-empt the sale deed in dispute, was decided in favour of the plaintiff, and issues no.2, 3, 4, 6, 7 and 8, were not pressed by defendant no.1. Finally, the suit was decreed the suit in favour of the plaintiff.

8. Having aggrieved with the judgment and decree (*supra*), passed by the learned trial court concerned, defendant no.1, preferred a statutory first appeal, which was also dismissed vide judgment and decree (*supra*). Hence, the present regular second appeal has been filed.

9. The concurrent finding recorded by both the courts below, have been challenged through the instant regular second appeal by the defendant no.1, on the ground that in fact it was a collusive transfer to mar the right of appellant which accrued upon passing the judgment and decree dated 28.07.1989, in his

favour. It was further argued by learned counsel for the appellant-defendant no.1 that respondent-plaintiff had purchased the disputed suit property from one co-sharer Bani Singh, who in fact was a close relative of defendant no.2- Ram Saran. The collusive sale deed was executed at the instance of vendor and even the pre-emption money was not be deposited in time.

10. He further submits that in fact the mode of partition had already been finalised vide order dated 07.06.1991, passed by the revenue authority concerned, i.e. before passing of decree by the learned trial court concerned on 03.10.1992, therefore, plaintiff cannot be considered as a co-sharer. Hence, the status of plaintiff ceases to be exist as a co-sharer.

11. Before this Court adjudicate upon the submissions made by learned counsel for the appellant/defendant no.1, it is important to note that alongwith the instant appeal, an application bearing CM-2260-C-1992, under Order 41 Rule 27 of the CPC read with Section 151 thereof, has also been filed for placing on record a copy of order dated 07.06.1991, i.e. an order passed by the Assistant Collector Ist Grade, Jhajjar, sanctioning the mode of partition and preparation of Naksha 'B'.

12. It is important to note here that the appellant/defendant no.1, had also preferred a similar application preferred before the first appellate court, at the time of adjudication of appeal, for placing on record copies of orders dated 07.06.1991, 15.06.1991, 26.06.1991 and 08.06.1991, passed by the revenue authority concerned, however, the same was dismissed while pronouncing the final judgment and decree dated 19.05.1992, with the observation such document has no impact on the issue in dispute.

13. It is apt to mention here that the respondent/plaintiff-Pre-emptor has

also filed an application bearing CM-1766-C-1993, under Order 41 Rule 27 read with Section 151 CPC, for placing on record the order dated 02.12.1991 passed by the Collector, Jhajjar, whereby, while setting aside the order dated 07.06.1991 passed by the Assistant Collector Ist Grade, remanded the case to the Assistant Collector Ist Grade, Jhajjar, for deciding the issue of partition afresh and to submit that the mode of partition was never finalised before passing of the impugned judgment and decree passed of the learned trial court concerned. He further submitted before the first appellate court, appellant/defendant no.1-Raj Kumar only sought to place on record copies of orders dated 07.06.1991, 15.06.1991, 26.06.1991 and 08.06.1991, passed by the revenue authority concerned, to establish that the mode of partition was determined prior to passing of the impugned judgment and decree passed by the learned trial court, and therefore, the plaintiff/respondent-Dharamvir, ceased to be a co-sharer. appellant/defendant no.1-Raj Kumar, very conveniently avoided making reference of order dated 02.12.1991, passed by Collector, Jhajjar.

14. During the course of arguments, both learned counsel for the parties did not make any objection for allowing the application for the additional evidence and for taking on record the orders passed by the revenue authorities, being *per se* admissible and a supervening event. Therefore, the application preferred by both the parties concerned are allowed, and the order dated 07.06.1991 alongwith the Naksha 'B' is taken on record as Annexure A-1, whereas order dated 02.12.1991 is taken on record as Annexure R/1.

15. A perusal of the order dated 02.12.1991, which was placed on record by the plaintiff/respondent-Dharamvir makes a revelation that the Collector, Jhajjar, has set aside the order dated 07.06.1991, vide which the mode of partition

was accepted, and parties were directed to appear before the Assistant Collector Ist Grade, Jhajjar, on 16.12.1991. Therefore, it can safely be concluded that the partition proceedings were finalised only after 16.12.1991, i.e. after passing of the decree by the learned trial court concerned on 03.10.1991. Thus, the plaintiff/respondent herein was a co-sharer on the date of passing of final decree by the learned trial court concerned.

16. In the instant case, the plaintiff/respondent became a co-sharer under the sale deed dated 08.06.1989 and the mutation Ex.P-1 was sanctioned accordingly. Whereas, the date of agreement to sell between the defendants no.1 and 2 *inter se*, was admittedly on 07.10.1985, therefore, at the time, when the agreement to sell was executed between the defendants *inter se*, the plaintiff was admittedly not the co-sharer. However, before the passing of the decree for specific performance of contract, i.e.28.07.1989, the plaintiff became co-sharer on 08.06.1989, which is prior to the date of decree, in a suit for specific performance of contract.

17. Now the question which arises for consideration, whether the Punjab Pre-emption Act, 1913 (as amended by Haryana Amendment Act, 10 of 1995), which came into force on 17.05.1995, would have any impact on the decision of the present appeal as during the pendency of the present appeal, the Amended Act 10 of 1995 (*supra*), has taken away the pre-emption right of a co-sharer.

18. This issue was dealt with by the Hon'ble Supreme Court in the case of '**Pirithi vs. Mohan Singh and others**', AIR 2011 (SC) 3070, wherein it was held that the pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the court of first instance. Reliance is also placed upon judgment of a Constitution Bench of in

'Shyam Sunder vs. Ram Kumar', 2001 (3) RCR (Civil) 754.

19. In the present case, the learned trial court concerned, being the court of first instance, decreed the suit on 03.10.1991, though the amendment dated 17.05.1995, does not have any impact on the right of the plaintiff (respondent herein), as his right to pre-empt got crystallized on 03.10.1991.

20. Finally, the submissions made by learned counsel for the appellant/defendant no.1 that the suit was collusive in nature, has also been considered.

21. I have gone through the pleadings of defendant no.1/appellant, wherein though it is mentioned that the present suit has been filed in collusion at the behest of vendor, however, there is no pleading that the vendor as well as present plaintiff/respondent are in close relations. No evidence whatsoever, has been led to prove that the sale deed vide which the plaintiff/respondent became co-sharer was executed in connivance only to defeat the right of defendant no.1/appellant and no issue, whatsoever, was framed by the learned trial court concerned, in this regard. Therefore, the said submission cannot be considered at this stage in the absence of any such issue framed by the learned trial court concerned, the pleadings and the evidence.

22. This Court does not find any illegality and perversity in the judgments and decrees passed by the courts below, therefore, the instant appeal is ordered to be **dismissed**, with no order as to costs.

23. Since this Court vide its order dated 10.09.1992, permitted the respondent/plaintiff (pre-emptor) to withdraw the pre-emption amount and re-deposit the same at the time of disposal of this appeal, in compliance of the judgement and decree (*supra*), therefore, the respondent/plaintiff (pre-emptor) is

directed to deposit the pre-emption money, upto 30.09.2024.

24. Pending applications (if any), also stand disposed of accordingly.

March 14, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No