

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1316-1992
Reserved on: 05.04.2024
Pronounced on: 08.04.2024
2024:PHHC: 047321

ISHWAR SINGH AND ANOTHER

.... APPELLANTS

Vs.

ATTAR SINGH AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. Amitabh Tewari, Advocate, with
Mr. Dilmrig Nayani Sharma, Advocate,
for the appellants.

Mr. Babbar Bhan, Advocate, for the respondents.

DEEPAK GUPTA, J.

This Regular Second Appeal is against the concurrent findings of the Courts below, whereby the suit for possession by way of pre-emption filed by the plaintiffs (*respondents herein*) was decreed; and the appeal of the defendants (*appellants herein*) was dismissed.

2. Trial Court record, as available on DMS of this court, has been perused. In order to avoid confusion, parties shall be referred to as per their status before the trial Court.

3.1 One Raj Singh (vendor) was owner of 1/3rd share in the suit property comprised in Khewat No.140 Min, Khatouni No.180, situated within the revenue estate of Village Dubaldhan Dhikan, Tehsil Jhajjar, Distt. Rohtak. He sold his share to defendants Ishwar Singh and Ram Chander (*appellants herein*) by way of a registered sale deed dated 14.12.1987. Plaintiff - Smt. Bhateri (*now represented through her LRs – Respondents herein*) filed the suit (*Civil Suit N: 873 of 1988 instituted on 10.12.1988*) seeking pre-emption of

the sale, on the ground that she was the co-sharer in the same Khewat and had superior right to pre-empt the sale.

3.2 The defendants denied the right of the plaintiffs to pre-empt the sale, by pleading that they had purchased 8 kanal of land in the same Khewat from Mohinder Singh, the brother of Raj Singh (vendor), by way of sale deed dated 14.12.1987 i.e. prior to the institution of suit by Smt. Bhateri and as they were also the co-sharers prior to the institution of suit, so plaintiff could not pre-empt the same.

4. The trial Court [*Ld. Addl. Senior Sub Judge, Jhajjar*] decreed the suit on 03.12.1991, as the defendants failed to prove that they had improved their status as co-sharers before filing of the suit.

5. In the appeal (*CA N: 132 of 1991*) filed by the defendants, same plea was taken to the effect that they had improved their status, having purchased share in the same Khewat from Mohinder Singh, the brother of Raj Singh, but defendants again failed to place on record original or copy of the sale deed in their favour, purported to have been executed by Mohinder Singh and after referring to Section 21A of the Punjab Pre-emption Act, as applicable to Haryana, the appeal was dismissed by *Ld. Appellate Court [Addl. District Judge, Rohtak]* on 05.06.1992.

6. In the present Regular Second Appeal, defendants moved an application bearing CM-2342-C-1992 so as to produce the sale deed dated 20.04.1988 executed by Mohinder Singh, one of the co-sharers in the same Khewat, in their favour. Said application was allowed by this Court vide order dated 16.02.2024 and the sale deed dated 20.04.1988, duly registered with Sub Registrar, was taken on record. The respondents-plaintiffs were given opportunity to lead evidence, if any, to counter the additional evidence, but no

such rebuttal has been produced.

7. Having considered submissions of both the sides and having perused the entire record, this Court finds that appeal deserves to succeed.

8. The suit for pre-emption was filed by Smt. Bhateri, the predecessor of respondents, on 10.12.1988, on the ground of being the co-sharer in the same Khewat. Copy of the sale deed vasika No.164 dated 20.04.1988, as taken on record in additional evidence, produced by the appellants/defendants would reveal that they had purchased 160/1244 share of Mohinder S/o Chandgi in the same Khewat No.140 Khatouni No.180 and thus, had become co-sharers in the same Khewat. It is, thus, clear that defendants/appellants had improved their status as co-sharer in the same Khewat on 20.04.1988 i.e. prior to the institution of the suit, which was filed on 10.12.1988.

9. In view of the aforesaid facts and circumstances, plaintiffs did not have the right to pre-empt the impugned sale deed dated 14.12.1987, executed by Raj Singh, in favour of the defendants-appellants.

10. As such, present appeal is hereby allowed. Judgments and decrees passed by the courts below are hereby set aside. The suit of the plaintiffs-respondents is hereby dismissed. Parties are left to bear their own cost. Decree-sheet be prepared accordingly.

08.04.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No