

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1683 of 1992
Reserved on:29.04.2024
Pronounced on: 06.05.2024

Jeet Pal Singh

.....Appellant

Vs.

Hari Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. K.S. Panwar, Advocate for the appellant.

None for the respondents.

DEEPAK GUPTA, J.

This is plaintiff's Regular Second Appeal against concurrent findings of the Courts below, whereby his suit seeking decree for possession of the suit property by way of pre-emption, has been dismissed.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the learned trial Court.

3. By way of sale deed dated 20.12.1984 (Ex.D1), defendant No.1 – Ram Kanwar (*not a party to this appeal*) sold his 3/32 share of the land measuring 6 kanal 4 marlas comprised in Khewat No.486, Khatauni No.565, Rectangle and Killa No.87/26, situated in Village Tankari, Tehsil Bawal, District Mahendergarh, in favour of defendant No.2 – Hari Singh (*now respondent No.1 through his LRs*) for consideration of ₹3,000/-. Claiming to be co-sharer in the same Khewat, plaintiffs Jeet Pal Singh etc., (*now appellant and proforma respondents No.2 to 5*) sought to pre-empt the said sale.

4. Defendant No.1 – vendor did not contest the suit and was proceeded ex parte. Defendant No.2 – Hari Singh in his written statement took the stand that he was already owner of the Well situated in the suit property along with the rights of irrigation, having purchased the same vide registered sale deed dated 15.05.1978 (Ex.D2), against which plaintiff had earlier filed a suit for pre-emption, which was dismissed. He pleaded that in the previous sale deed, the name of the Well was described as '*Dharawala*' but as specific number of the land was not mentioned, so the sale deed dated 20.12.1984 was executed giving the description of the share and number of the Well. Said defendant No.2 – vendee denied the plaintiffs right to pre-empt the sale.

5. Necessary issues were framed. Evidence produced by the parties was taken on record. After hearing both the sides, the learned trial Court found that though the plaintiff was a co-sharer in the Well but could not pre-empt share in the Well independently of the land. As such, the suit was dismissed on 25.04.1989.

6. Appeal filed by the plaintiffs was dismissed by the First Appellate Court of learned Additional District Judge, Rewari on 30.04.1992.

7. The only issue to be considered, in this appeal, is as to whether the plaintiff- appellant had the right to pre-empt the sale deed dated 20.12.1984.

8. Since, respondent were proceed ex-parte before this court, so, learned counsel for appellant has been heard and record has been perused.

9. It has been noticed by the First Appellate Court that by virtue of the sale deed dated 15.05.1978 (Ex.D2), defendant – Hari Singh had purchased 12 kanal 04 marlas of land comprised in Khewat No.384, Khatauni No.462, Rectangle No.87, Khasra No.22(4-8); and Rectangle

No.93, Khasra No.2 (7-16); besides rights of irrigation and “*Naal Chah Dharawala*”. Plaintiffs had sought to pre-empt the said sale deed dated 15.05.1978 by filing Civil Suit No.252 of 1979, which was dismissed vide judgment dated 29.09.1980 (Ex.D3), after observing that plaintiff was not a co-sharer in the same Khewat (N: 384), in which the sold land was comprised; and rather, he was a co-sharer only in the land of the Well. It was further held that right to the Well is appurtenant to the land, which is irrigated by the Well and that these rights cannot be separated from the land sold and cannot be allowed to be pre-empted. It was further found by the Appellate Court that new sale deed dated 20.12.1984 (Ex.D1) was in fact regarding the share in the Well by describing the Khasra Number thereof, which is mere explanation of the earlier sale and, therefore, it was not pre-emptable. After holding so, the finding of the trial Court was upheld.

10. Learned counsel for the appellant contends that since the plaintiff is a co-sharer in the land, in which the Well is situated i.e. Khewat No.486, therefore, he is entitled to pre-empt the sale. This Court does not find any merit in the contention. Defendant No.2 – Hari Singh had already purchased the share of vendor- Ram Kanwar in the Well by virtue of sale deed dated 15.05.1978 (Ex.D2) along with 12 kanal 04 marls of land comprised in Khewat No.384 Khatauni No.462. Only thing is that in that sale deed, the Khasra number of Well was not specifically mentioned and thus, the sale deed dated 20.12.1984 (Ex.D1), sought to be pre-empted, is only the explanation of the earlier sale. It is not the case of plaintiff-appellant that “*Naal Chah Dharawala*”, the share of which was purchased by defendant No.2 by way of sale deed dated 15.05.1978, is different than the share as purchased by the defendant No.2 by way of sale deed dated 20.12.1984 (Ex.D1).

11 In view of the afore-said discussion, this Court does find any illegality in the concurrent findings of the Courts below, declining the prayer of the plaintiffs so as to pre-empt the sale in question.

12. In “**P. Chandrasekharan and Others vs S. Kanakarajan & Others**”*2007(3) RCR(Civil) 543*, it has been held by the Hon'ble Supreme Court that though as a general rule, High Court will not interfere with the concurrent findings of the Courts below, but it is not an absolute rule. Some of the well recognised exceptions are where:

- (i) the courts below have ignored material evidence or acted on no evidence;
- (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or
- (iii) the courts have wrongly cast the burden of proof.

13. In the present case, this Court does not find any of the exceptions mentioned above to be applicable in the findings of fact given concurrently by the Courts below.

14. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

May 06, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No