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

RSA-2363-1992 (O&M)
Date of decision: 29.04.2024

Mohan Lal (deceased) through his LRs

...Appellant(s)

Versus

Mahender (deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Surinder Garg, Advocate for the appellant(s).

Mr. Bahadur Singh, Advocate and
Ms. Rajni, Advocate for the respondents.

VIKAS BAHL, J. (ORAL)

1. This is the plaintiff's appeal against concurrent findings of fact. The plaintiff-Mohan Lal had filed a suit for possession by way of pre-emption of the suit land against the defendants-respondents for pre-empting the registered sale deed No.206 dated 03.05.1986. It was the case of the plaintiff/appellant that the plaintiff-appellant was one of the co-sharer(s) in khewat Nos.52 and 53, out of which, the said sale has been made. A further plea was taken that the sale had taken place for a sum of Rs.46,800/- but in order to defeat the superior right of the plaintiff/appellant to pre-empt the sale, a fictitious amount of Rs.3,000/- was also added in the sale deed and that the defendants/respondents were asked number of times to take a sum of Rs.46800/- from the plaintiff and to get the sale deed cancelled but since defendants/respondents did not agree, hence, the suit was filed for possession

by way of pre-emption.

2. In the written statement, plea taken by the defendants/respondents was that the partition proceedings were going on and further specifically denied that sale had taken place for a sum of Rs.46,800/- and that any fictitious amount of Rs.3000/- was added to the same.

3. On 28.09.1988, the trial Court had framed the following issues:-

- “1. Whether the plaintiff has superior right to pre-empt the suit land to that of the vendee defendants? OPP.*
- 2. Whether the sale consideration of Rs.49,800/- was actually paid and fixed in good faith? OPD.*
- 3. If issue No.2 not proved, what was the market value of the suit land at the time of sale? OPP.*
- 4. Whether the vendee defendants are entitled for stamp and registration charges? OPD*
- 5. Relief.”*

4. With respect to issue No.1, the trial Court observed that since the partition proceedings had been finalized prior to the passing of the judgment of the trial Court dated 10.06.1991, the status of joint ownership between the plaintiff and defendants had been severed and thus, the plaintiff had lost his right of pre-emption on account of loss of the said status and accordingly, issue No.1 was decided against the plaintiff. In coming to the conclusion that the partition had taken place, learned trial Court had relied upon the instruments of partition (*sanad takseem*) which was exhibited as Ex.D5 and Ex.D6 and also mutations Ex.D11 and Ex.D12 which showed that the mutations had been sanctioned in pursuance of the orders passed in the partition proceedings. It was further observed that it was a well settled principle of law that the joint status of the parties comes to an end as soon as

the order of partition is passed. Issue No.2 was also decided against the plaintiff as the trial Court had come to a conclusion that the sale had taken place for a sum of Rs.49,800/- and the entire amount of sale was actually paid to the vendors. With respect to issue No.3, it was stated that the same had become redundant in view of the Court's finding on issue No.2. In view of the above findings, the suit of the plaintiff for possession of the suit land by way of pre-emption was dismissed.

5. The plaintiff filed Civil Appeal No.78 of 1991 and the Additional District Judge, Bhiwani vide judgment dated 22.08.1992 dismissed the said appeal. It was reiterated by the Additional District Judge, Bhiwani that since, the partition of the suit land had already taken place prior to the judgment of the trial Court and there was severance of joint status between the plaintiff on one hand and vendors and his successor-in-interest on the other hand, thus, the plaintiff/appellant could not be stated to be a co-sharer on the date of passing of the judgment and thus, the appellant had lost his right of pre-emption because of the loss of his status as a co-sharer on the date of passing of the judgment. It was thus, observed that the suit of the plaintiff had been rightly dismissed.

6. Sole argument raised by the learned counsel for the appellant(s) for challenging the judgment(s) and decree(s) of the trial Court and the Appellate Court is that since on the date of filing of the suit, the present appellant/plaintiff was a co-sharer with the defendants/respondents thus, the suit of the plaintiff/appellant should have been decreed. It is submitted that it is a matter of settled law that the rights are to be seen on the date when the suit is filed and any subsequent change of status cannot take away the right of

the plaintiff/appellant which had crystallized on the date when the suit was filed.

7. Learned counsel for the respondents-defendants, on the other hand, has submitted that it has been repeatedly held that the right of pre-emption is a very weak right and could be defeated by all the legitimate method(s) and once, admittedly the plaintiff/appellant had lost the right prior to the decree of the trial Court, in such a situation, the trial Court as well as the Appellate Court have rightly dismissed the suit of the plaintiff and the appeal filed by the plaintiff and the said judgments are in accordance with law and do not call for any interference.

8. This Court has heard learned counsel for the parties and perused the paper book.

9. It has not been disputed by the counsel for the appellant(s) that the partition proceedings had culminated prior to the judgment and decree of the trial Court dated 10.06.1991. *Sanad takseem* Ex.D5 and Ex.D6 were executed and were placed on record before the trial Court and even subsequent mutations Ex.D11 and Ex.D12 were also duly sanctioned. The only question for determination that arises before this Court in the present appeal is as to whether the right of a pre-emptor to seek pre-emption on the ground of being a co-sharer is to be seen on the date the suit was filed or on the date of the passing of the judgment of the trial Court.

10. The Hon'ble Supreme Court of India in the case of **Jhabbar Singh (deceased) through Legal Heirs and others Vs. Jagtar Singh son of Darshan Singh,** reported as **2023 AIR Supreme Court 2074**, after considering the relevant provisions of law and the law laid down in various

judgments of the Hon'ble Supreme Court, came to the conclusion that the right to pre-emption was a very weak right and was capable of being defeated by all legitimate methods and that a pre-emptor had to establish that he had a right to pre-empt the sale 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 the first instance and that the pre-emptor or plaintiff who claims his right to pre-empt the sale on the date of sale has also to prove that such right continued to subsist till the passing of the decree of the first Court and in case the plaintiff loses the said right or the vendee improves his right equal to or above the right of the claimant before adjudication of the suit, the suit for pre-emption would fail. The said observation of the Hon'ble Supreme Court thus, squarely answers the issue raised before this Court. Relevant portion of the said judgment is reproduced hereinbelow:-

“1 to 11 xxx xxx

12. At the outset, it may be noted that the plaintiff Jagtar Singh, the predecessor of the present respondent, had filed the suits claiming himself to be the co-sharer in the joint khewat along with the vendor Jit Singh, and had sought relief against the defendant Jhabbar Singh and others with regard to the possession of the suit lands, on the ground that he as a co-sharer had a superior right to pre-empt the sales, and that he was not put to any notice of sale of the suit lands on or before the date of such sales. In a very loosely drafted plaint, the plaintiff had neither pleaded as to how he was the co- sharer, nor had he impleaded the said Jit Singh, the owner of the suit lands, with whom he claimed to be the co-sharer, and who had sold the suit lands to the defendants Jhabbar Singh and Others. It is needless to say that in a suit for pre-emption, the vendor i.e., the owner of the suit land who had allegedly not given any notice of sale to the plaintiff as required to be given under Section 19 of the Pre-emption Act and

against whom the right to pre-empt the sale is claimed would be a proper party if not a necessary party, for a complete and final adjudication on the issues involved in the suit.

13 & 14 xxx xxx

15. Now, so far as the right of pre-emption is concerned, it may be noted that it is a very weak right and could be defeated by all legitimate methods. This Court as back as in 1958, in case of [Bishan Singh and Others vs. Khazan Singh & Another](#) (supra), had set-forth the contours of the right of pre-emption. It was opined therein by the four-Judge Bench that-

“11.....The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i. e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.”

16. xxx xxx

17. At this juncture, it would be also apt to mention that apart from the fact that the right of pre-emption is very weak right and capable of being defeated by all legitimate methods, the pre-emptor must establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance. The pre-emptor or the claimant-plaintiff who claims the right to pre-empt the sale on the date of sale, has also to prove that such right continued to subsist till

the passing of the decree of the first court. If the claimant-plaintiff loses that right or the vendee improves his right equal or above the right of the claimant before the adjudication of the suit, the suit for pre-emption would fail.

18. xxx xxx

19. The Constitution Bench in case of *Shyam Sunder and others v. Ram Kumar and another* (2001) 8 SCC 24 also while examining the issues whether in a suit for pre-emption, the pre-emptor should possess his right to pre-empt on the date of sale and on the date of the decree of the First Court, and whether the loss of that right after the date of decree either by his own act or by an act beyond his control or by any subsequent change in the legislation which is prospective in operation during the pendency of the appeal filed against the decree of the Court of First instance, would affect the right of the pre-emptor or not, has laid down certain principles, after making analysis of various decisions including the decision of the Full Bench rendered by the Punjab and Haryana High Court in [Ramji Lal vs. State of Punjab](#) (*supra*)

10. On an analysis of the aforesaid decisions referred to in first category of decisions, the legal principles that emerge are these:

1. 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 the first instance only.

2. The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.

3. A pre-emptor who has a right to preempt a sale on the date of institution of the suit and on the date of passing of decree, the loss of such right subsequent to the decree of the first court would not affect his right or maintainability of the suit for pre-

emption.

4. A pre-emptor who after proving his right on the date of sale, on the date of filing the suit and on the date of passing of the decree by the first court, has obtained a decree for preemption by the Court of first instance, such right cannot be taken away by subsequent legislation during pendency of the appeal filed against the decree unless such legislation has retrospective operation.”

11. In the abovesaid case, the Hon’ble Supreme Court had come to the conclusion that the partition in the said case for all intents and purposes was finalised prior to the decision in the suit and thus, set aside the judgment of the High Court vide which the suit of the plaintiff therein had been decreed. Para 32 of the said judgment is reproduced hereinbelow:-

“32. So far as the facts of the present case are concerned, the Assistant Collector i.e., concerned Revenue Officer vide the order dated 25.05.1982 had rejected the objections raised by the plaintiff Jagtar Singh and others with regard to the mode of partition and had confirmed the mode of partition accordingly. On that day, the “Naksha Be” was already annexed to the file and the case was listed on 31.05.1982 for hearing the objections as to the “Naksha Be”. On 31.07.1982, the Assistant Collector passed the order stating inter alia that the Patwari and Kanungo were present, and they had explained the parties about the passage and the boundaries of the plots, and that as per “Naksha Be”, the partition was accepted. The details of the number of khasras allotted to both the parties i.e., to Jhabbar Singh and others and to Jagtar Singh were also mentioned in the said order. The partition having been accepted as per the said “Naksha Be”, the joint status of the parties had stood severed. Of course, the said order dated 31.07.1982 was challenged by the plaintiff Jagtar Singh by way of an appeal before the Collector who vide the order dated 12.10.1982 had dismissed the same. The said order of Collector was further

challenged by the said Jagtar Singh by filing revision application before the Commissioner. Though, the Commissioner had initially granted stay against the operation of the order dated 31.07.1982 upto 16.11.1982, admittedly the said stay was not further extended thereafter. Under the circumstances, the joint status of the parties had come to an end on 31.07.1982, when the Assistant Collector passed the order and when the same was confirmed by the Collector on 19.10.1982. The trial court and the appellate court, under the circumstances, had rightly held that the plaintiff Jagtar Singh did not possess the status of co-sharer on the date of decree i.e., on 01.12.1982, and that his right of pre-emption had not survived till the date of passing of the decree in the suits. In our opinion, the High Court had grossly erred in misinterpreting the provisions of Punjab Pre-emption Act and of Land Revenue Act, and in setting aside the judgments and decrees passed by the trial court and the appellate court.”

12. Thus, the abovesaid issue which arises in the present appeal is answered in favour of the respondents and against the appellant(s).
13. Keeping in view the abovesaid facts and circumstances, the judgment of the trial Court as well as Appellate Court are legal and in accordance with law and call for no interference, and the present Regular Second Appeal being meritless deserves to be dismissed and is accordingly, dismissed.
14. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

29.04.2024
Pawan

Whether speaking/reasoned:-

Whether reportable:-

(VIKAS BAHL)
JUDGE
Yes/No

Yes/No