

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

119

RSA-654-1992 (O&M)
Date of Decision: 03.05.2024

LAL SINGH AND OTHERS

... Appellants

VERSUS

SUKHBIR SINGH

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Saurabh Dalal, Advocate
for the appellants-defendants.

Mr. Sanjay Mittal, Advocate
for the respondent-plaintiff.

VINOD S. BHARDWAJ, J. (ORAL)

The appellants-defendants are in second appeal against the judgment and decree dated 05.03.1992 passed by the then Addl. District Judge-II, Rohtak, whereby he had allowed the appeal filed by the respondent-plaintiff against the judgment and decree dated 09.04.1991 passed by then Sub-Judge First Class, Jhajjar dismissing the suit.

Briefly summarized, the facts of the present case are that the respondent-plaintiff had filed a suit for possession by way of pre-emption averring that Karan Singh son of Tek Chand and Rajbir son of Karan Singh were owners in possession of the suit land comprised in Khewat No.23, Khata No.28, Rect. No.16 Killa numbers 20 and 21 total measuring 16 kanals situated within the revenue estate of village Talav and that the same was sold away to the appellant-defendant for a consideration of Rs.1,40,000/- vide registered sale deed dated 01.09.1988. The suit for possession by way of pre-emption was

accordingly filed by respondent-plaintiff claiming that being a co-sharer in the Khewat of the suit land, he has superior right of pre-emption.

On notice, the appellant-defendant No.3 did not appear despite service and was ordered to be proceeded against *ex parte* vide order dated 07.02.1990. A joint written statement was, however, filed by the appellants-defendants No.1, 2 and 4 controverting the averments contained in the plaint and pleading that the respondent-plaintiff was not a co-sharer in the suit land and had no preferential right to pre-empt the sale in question. Preliminary objections with regard to the locus standi, maintainability, limitation as well as jurisdiction were also taken.

After filing of the replication, the following issues were framed:

- (i) Whether the plaintiff has superior right of pre-emption as alleged? OPP
- (ii) Whether the sale consideration was fixed in good faith and was actually paid? OPD
- (iii) If issue No.1 is not proved then what was the market value of the suit land at the time of sale? OP Parties.
- (iv) Whether the plaintiff has no locus standi to file the present suit? OPD
- (v) Whether the suit is not maintainable in the present form? OPD
- (vi) Whether the civil Court has no jurisdiction to try the suit? OPD
- (vii) Whether 1/5th pre-emption security has not been deposited? OPD
- (viii) Whether the defendants are entitled to special costs? OPD.
- (ix) Relief.

Parties led their respective evidence and on consideration thereof, the Sub-Judge Ist Class, placed reliance on the judgment in the matter of ***Lachhman Singh Vs. Pritam Chand*** reported as ***AIR 1970 P&H 304*** and ***Mahesh Pal Versus Desh Raj Singh*** reported as ***AIR 1983 P&H 435*** wherein it

was held that in a case where a co-sharer sells his 1/4th share out of a defined part of the joint land of the co-sharer, but not out of the whole of their joint land holding, the sale is not of a share out of the joint land within Section 15 (1)(b) of the Punjab Pre-emption Act, 1913 and that the respondent-plaintiff thus was not a co-sharer in the joint land. He was thus held to be not having any preferential right to seek the pre-emption of the suit land. The suit of the respondent-plaintiff was accordingly dismissed.

Aggrieved thereof, Civil Appeal No.50 of 24.04.1991 was filed by the respondent-plaintiff.

On consideration of the respective submissions advanced by the parties, the Addl. District Judge-II, Rohtak reversed the judgment and decree dated 09.04.1991 passed by the Sub-Judge Ist Class, Jhajjar after noticing that the respondent-plaintiff had purchased land of killa No.16 and 24 of Rect. No.15 measuring 15 kanals 12 marla vide registered Sale deed dated 30.08.1988 (Ex.P1) and that the Full Bench Judgment of this Court in the case of **Bhartu Vs. Ram Sarup** reported as **1981 PLJ 204**, wherein the Full Bench of this Court had ruled in favour of the respondent-plaintiff to the effect that the respondent-plaintiff would be a co-sharer in the joint land. He thus was held to have a preferential right to seek pre-emption of the land. The suit of the respondent-plaintiff was accordingly decreed for possession by way of pre-emption subject to payment of Rs.1,58,000/- (Rs.1,40,000/- as sale consideration and Rs.18,000/- being the amount spent by the appellants-defendants to purchase the stamps papers and registration of sale deed) less the 1/5th pre-emption money deposited by the respondent-plaintiff. Hence, the present appeal.

Learned counsel appearing on behalf of the appellants-defendants has vehemently argued that the Addl. District Judge-II, Rohtak has wrongly reversed the well reasoned and speaking judgment and decree dated 09.04.1991 passed by the then Sub Judge Ist Class, Jhajjar. It is further argued that the respondent-plaintiff having purchased specific number out of the khewat, he cannot claim himself to be a joint owner in the remaining land. Hence, there was no preferential right vested in the respondent-plaintiff and that Addl. District Judge-II, Rohtak fell in an error in giving a preferential right in favour of the respondent-plaintiff.

Responding to the above, counsel for the respondent-plaintiff contends that the argument raised by the counsel for the appellants-defendants is no more tenable since their claim is based on the judgment in the matter of ***Lachman Singh (surpa)*** which such judgment alongwith the judgment of ***Bhartu Versus Ram Sarup (supra)*** was under consideration before Five Judges' Full Bench of this Court in the matter of ***Ram Chander Versus Bhim Singh and others*** reported as ***2008(3) RCR (Civil) 685***. It had been specifically held by the Full Bench of this Court that where a co-owner sells land from joint khewat by reference to any specific rectangle and khasra numbers, the vendee becomes a co-sharer in the entire khewat and the fact that the sale deed evidenced purchase of specific killa numbers from a specific rectangle number would not disentitled him to pre-empt the sale. The relevant part of the said judgment reads thus:

"14. Any answer to this difference in opinion, namely, as to which of the views is the correct enunciation of the law, would necessarily lie in the nature of joint property, the rights and

liabilities of joint owners, and the legal nature and value of revenue entries.

15. Property held in common, by two or more persons, whatever be its nature or origin, is said to be joint property and the owners thereof joint owners. Joint property, envisages a community of interest (ownership) and a commonality of possession vested in the entire body of owners called co-sharers/joint owners. This body of owners is joint, both in possession and in ownership of the property and every co-sharer shall be owner in possession of every inch of the joint estate. Inherent in his status as a co-sharer/joint owner and flowing from his status as a joint owner or a co-sharer of the joint property is the right to assert ownership with respect to every part and parcel of the joint property. The status as a co-sharer would be preceded by a tangible act of conferring proprietary status, whether by way of membership of a co-parcenary or by devolution of interest, pursuant to inheritance or by assignment of property by sale etc. A co-sharer asserts joint title and possession even, where other co-sharers/joint owners are in separate possession of different parcels of land and as a natural consequence, a co-sharer in possession of a specific area of joint property possesses the property for and on behalf of all other co-sharers/joint owners. Co-sharers may and often do for the purpose of better management of the joint estate hold separate possession of parcels of joint land. This separation of possession, without a corresponding intent, to sever the joint status of the community of joint owners does not confer a right upon a co-sharer in separate possession to assert his separate ownership. A joint owner, therefore, would be owner of a specified share in the entire joint property but would not be entitled to claim separate ownership of any specified and particular portion of the joint property till such time, as the property remains joint

16. A joint owner/co-owner, just as an individual owner, has an inherent right to alienate the joint property, limited to the extent and the nature of his share holding. Upon transfer of his share or a part thereof, a co-sharer transfers only such rights as vest in him as a joint owner, namely, his specified share or a part thereof in the community of joint owners with commonality of possession. A vendee from such a joint owner or a co-sharer would, therefore, receive the property so transferred, with all the rights and liabilities that vested in his vendor, namely, a right to assert a community of interest (ownership) and a commonality of possession in the entire joint estate and along with the entire body of joint/co-owners. Our above conclusion draws sustenance from Section 44 of the Transfer of Property Act and a reproduction thereof would place our conclusions in perspective, as under:

“44. Transfer by one co-owner. Where one or two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.”

17. In order to lend weight to our conclusions, we draw upon the observations of a Division Bench judgment of this Court, relied upon and referred to in both the Full Bench Judgments, that we are called upon to interpret. While considering the nature of joint property and the inter se rights and liabilities of co-sharers, a Division Bench in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram**, AIR 1961 Punjab 528 set out in detail the inter-se rights and liabilities of co-sharers in the following terms:-

- "(1) A co-owner has an interest in the whole property and also in every parcel of it.*
- (2) Possession of joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.*
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*
- (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.*
- (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.*
- (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.*
- (7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition."*

18. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When

a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers.

19. *Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record. transfers any right, title or interest, from the portion in his specific possession, his vender would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned.*

20. *In order to place our above conclusion in perspective, we deem it appropriate to reproduce a paragraph from the judgment in **Bhartu v. Ram Sarup's** case (supra) that succinctly explains our opinion, as under*

"6. *Take another example where 'A' and 'B' jointly own a khewat in equal shares measuring 200 bighas. 'B' is in separate possession of 100 bighas of land comprised of specific khasra numbers and transfers it to 'C'. This is not disputed that in spite of this sale, 'A' continues to be a co-sharer in the land transferred by B. If that is so how can it be disputed that 'C' would necessarily be a co-sharer in the remaining 100 bighas of land in possession of 'A' as otherwise it would mean that A is exclusively owner of 100 bighas*

of land in his possession and also a co-sharer with C in the remaining 100 bighas which obviously is not possible. The matter can further be illustrated by another example. 'A' and 'B' are co-sharers in the joint khewat, say of 100 bighas of land in equal shares. 'B' who is in exclusive possession of land measuring 40 bighas of land comprised of khasra Nos.1, 2, 3 and 4 transfers two khasra numbers, that is, 1 and 2, measuring 20 bighas to specifically stating in the deed that he is in possession of these khasra numbers as a co-sharer and is transferring his interest as such. Can it be said on these facts that 'C' has purchased anything except a co-sharer's interest in khasra Nos.1 and 2 in spite of the fact that the sale is of specific numbers and of the specified area. The answer obviously would be in the negative and if so then the sale is obviously of a share by the co-sharer out of the joint land and nothing else."

21. *As a result of the above discussion, we express our complete agreement with the opinion, recorded in the Full Bench in Bhartu v. Ram Sarup's case (supra) and are sanguine in our understanding of the law so as to hold that the Full Bench judgment in Lachhman Singh's case (supra) does not lay down the correct position in law, as while considering the rights of a vendor/co-sharer, flowing from his status as a co-sharer/joint owner, the Full Bench in Lachhman Singh's case (supra) disregarded the nature of joint property and the status of joint owners, and placed undue significance upon artificial divisions of land, made by revenue authorities intended to identify land, namely rectangle numbers, killa/khasra numbers etc.*

22. *Revenue entries reflect the rights of the parties as opposed to conferring rights and raise rebuttable presumptions as to their*

correctness. They reflect an existing state of affairs, namely, an existing title or a state of possession. Entries in revenue records neither confer nor deprive a person of his title, whether joint or separate. Rectangle numbers and Killa numbers are revenue measures, used by revenue authorities to identify and describe fields that constitute the ownership of a land owner A holding may be divided into different Khewats, Khataunis, rectangles and killas/khasras all bearing different numbers. Where parties are joint owners or co- sharers, the land would comprise of a Khewat or khewats, different khataunis, rectangles and/or khasra/killla numbers. Thus, where a group of land owners holds land in joint ownership and are reflected as owners in common of the khewat, commonly known as the joint khewat, they would continue to remain owners in possession of the land, though described as being situated in different khataunis, rectangles and khasra/killla numbers. Division of land into different rectangles, khasra or killla numbers does not alter the nature of property held in common or the rights of co-sharers flowing therefrom. The Full Bench in Lachhman Singh's case (supra), disregarded the nature of joint property and by placing undue reliance upon artificial divisions of land meant to identify land, erred while holding that a vendee, who purchases land from a joint khewat by reference to specific rectangles and khasra numbers, does not become a co-sharer in the entire joint khewat.

23. *Consequently, and in view of what has been stated herein above, we hold that the opinion recorded in Bhartu v. Ram Sarup's case (supra) is the correct enunciation of law with respect to rights conferred upon a vendee, who purchases land out of a joint khewat, and the opinion recorded in Lachhman Singh's case (supra) does not lay down the correct position of law and is, therefore, over-ruled. The reference is accordingly answered in the aforementioned terms."*

He further submits that the aforesaid judgment has been followed in numerous successive petitions by this Court including the matter of **Ram Avtar Singh Vs. Jai Pal Singh** reported as **2024(2) RCR (Civil) 124**.

Counsel for the appellants-defendants is not in a position to controvert the ratio laid down by the Full Bench of this Court in the matter of **Ram Chander Vs. Bhim Singh (supra)**.

Having heard the learned counsel for the parties and having gone through the judgments relied upon by the learned counsel for the respondent-plaintiff, I am of the opinion that the judgment passed by the Addl. District Judge-II, Rohtak reversing the judgment and decree dated 09.04.1991 passed by the then Sub Judge Ist Class, Jhajjar is well reasoned and speaking. The same is also protected by the Full Bench Judgment of this Court in the matter of **Ram Chander (supra)**. There is no illegality, perversity, error or misreading of the evidence or misinterpretation of law, pointed out by the respondent-plaintiff, in the judgment and decree dated 05.03.1992 passed by the Addl. District Judge-II, Rohtak. No question of law much less the substantial question of law arises for consideration in the present case in view of the position having already been settled by the Full Bench of this Court.

The present appeal is accordingly dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

MAY 03, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No