

2024:PHHC:057601
**104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1609-1994 (O&M)
Date of decision: 26.04.2024

Nafe Singh and others

....Appellants

Versus

Bishan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep Punchhi, Advocate for the appellants
Mr.Rajender Goel, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the courts below while dismissing their suit for possession by way of pre-emption.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The defendants (vendees) purchased 110 kanals 5 marlas land out of 333 kanals 12 marlas land by virtue of sale deed dated 12.05.1989 for a sum of Rs.4,00,000/-. While filing a suit, the plaintiff claims they have superior right of pre-emption on the ground that as per PEPSU custom, the sale is pre-emptable by a co-sharer. In the written statement, the defendants denied that the plaintiffs have any superior right. It has come on record that Sh.Sheo Chand had gifted 2 kanals land in favour of defendant no.1 to 4 by virtue of gift deed dated 15.06.1989 and thereafter, the defendants are at an equal status to that of the plaintiffs. It will be noted here that Section 21 A of the Punjab Pre-emption Act, 1913 debars the court from taking into consideration any

improvement in the status of the parties except on the ground of inheritance after the institution of the suit. However, in this case, the gift deed was executed on 15.06.1989 whereas the suit was filed on 08.07.1989. Thus, both the courts below dismissed the suit.

4. Learned counsel representing the appellants contends that the aforesaid gift deed has been executed to defeat the plaintiffs' right to pre-empt the land. He submits that only 2 kanals land was transferred to ensure dismissal of the suit.

5. This Court has considered the submissions made by the learned counsel representing the parties.

6. As already noticed, the right of pre-emption is a weak, unequitable, piratical and feudal right. In **Jhabbar Singh (deceased) through legal heirs and others vs. Jagtar Singh 2023 AIR (SC) 2074** the Hon'ble Supreme Court has held that defendants can defeat the right by legitimate means. In this case, the defendants- vendees took steps before filing of the suit. Such improvement in the status is permissible.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.

8. Hence, dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

26.04.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE