

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

2024:PHHC:036459

RSA-2101-1994 (O&M)

Date of decision: 14.03.2024

BISHAMBER

..Appellant

Versus

RAM SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S. Yadav, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. This is the plaintiff's regular second appeal to challenge the correctness of the findings of fact arrived at by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial Court.

2. The appellant filed a suit for possession by way of superior right of pre-emption to pre-empt sale deed dated 21.06.1989, executed by Sh. Gauri Sahai and Sh. Hansa, sons of Sh. Dayala in favour of defendant-respondent Sh. Ram Singh with respondent to the land measuring 6 kanal and 15 marlas.

3. In **Indra Bai vs. Nand Kishore, (1990) 4 SCC 668**, the Supreme Court has held that pre-emption is a 'weak and inequitable right' which can be defeated by all legitimate means. In **Atam Parkash vs. State of Haryana (1986) 2 SCC 249**, the Five Judge Bench of the Supreme Court described the right of pre-emption based on consanguinity as 'feudal' 'piratical', 'tribal', 'weak', 'easily defeated' etc., therefore, declared it as ultra vires the Constitution. Subsequently, the Government of Haryana also recognised and repealed the pre-emption right in favour of co-sharer by Haryana Act No.10 of 1995.

However, old cases are required to be decided as per un-amended provisions as held by another 5 Judges Bench in *Shyam Sunder and others vs. Ram Kumar and another (2001) 8 SCC 24.*

4. In *Jhabbar Singh (deceased) through legal heirs and others Vs. Jagtar Singh son of Darshan Singh, 2023(1) ARC 812*, the Supreme Court in the year 2023, once again reiterated that the right of pre-emption is a 'feudal' 'piratical', 'tribal', 'weak', 'easily defeatable' etc. right.

5. In this case, the plaintiff filed a suit for pre-emption with respect to the land comprised in Rectangle No.8, Khasra No.2/2 and 4/1. The First Appellate Court has found that as per the revenue record, there is no Khasra No.2/2 in Rectangle No.8.

6. Thus, the First Appellate Court has reversed the judgment and decree passed by the trial Court. The learned counsel representing the appellant submits that the aforesaid mistake is due to the fact that in the sale deed, there is a typographical error. He submits that the aforesaid mistake was committed by the plaintiff while filing the suit. He further submits that the appellant's superior right of pre-emption should not been defeated for such an inadvertent mistake.

7. This Court has considered the submission of the learned counsel representing the appellant.

8. Ordinarily, such mistake could be overlooked, however, the plaintiff is seeking a right, which has been recognized by the Courts as inequitable and easily defeatable right. Two Five Judge Benches of the Supreme Court have already declared that this is outmoded right, which is not in consonance with the developments, which have taken place during

all this while. This Court also exercises equitable jurisdiction. It will not be equitable after a passage of 33 years to permit the appellant to exercise superior right of pre-emption on being co-sharer in the undivided land particularly when the superior right to pre-empt the sale deed on the basis of the co-sharer has already been omitted by Haryana Act No.10 of 1995. As already mentioned, the old cases are being decided as per the unamended provisions.

9. The right of pre-emption is a right of substitution. Today, after a passage of 35 years, it will be inequitable to take away the respondent's land on payment of Rs.17,000/-, whereas, the market price may run into lacs of rupees.

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

11. Dismissed accordingly.

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

March 14th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*