

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2138 of 1994 (O&M)
Date of Order:19.04.2024

Aman Khan and others

.Appellants

Versus

Narender Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Sachin Mittal, Advocate
for the appellants.**

ANIL KSHETARPAL, J

1. This is the plaintiffs' regular second appeal against the judgment passed by the First Appellate Court which in turn has reversed the judgment passed by the trial court.

2. While filing the suit on 12.06.1990, the plaintiffs prayed for pre-empting the sale deed dated 19.06.1989, executed in favour of the defendant by a co-sharer, namely, Sh. Abdul Rahim. The plaintiffs claim that they being co-sharers/co-owners have a superior right of pre-emption. As per the settled law, the superior right to pre-empt the sale deed is required to be maintained on the date of the sale deed, the date of institution of the suit and the date of decree passed by the first court. In this case, the trial court decreed the suit, however, the First Appellate Court reversed the decree on the ground that the objections against 'Naksha Be' in a partition proceedings stood finalized much before the date the trial court decreed the

suit. Thus, the First Appellate Court held that the plaintiffs could no longer exercise superior right of pre-emption.

3. At one stage, a Division Bench of this Court held that severance of status between the co-sharers comes into effect from the date notified in the instrument of partition. However, the aforesaid view has been overruled by the Supreme Court in **Jhabbar Singh (deceased) through Legal Heirs and others vs. Jagtar Singh s/o Darshan Singh, 2023 AIR (Supreme Court) 2074**. It has been held by the Supreme Court that severance of status between the co-sharer is complete on the date 'Naksha Be' is finalised after deciding the objection filed thereto.

4. In this case on 27.07.1992, after hearing objection on the proposed partition, the Assistant Collector decided the matter. The appellants filed an appeal before the court of Collector which was remanded back to the Assistant Collector with direction to the concerned officer to take a fresh decision after visiting the land in dispute. In compliance therewith, the Assistant Collector passed the order on 22.08.1992, he visited the disputed land on 19.08.1992 along with Patwari and respectable. Previously also he had visited the property on 12.03.1992. Ultimately, on 22.08.1992, a detailed order was passed accepting the proposal. It was directed that the instrument of partition shall be prepared by the authorities after waiting for expiry of the period for filing appeal. The attention of the court has not been drawn to any order by which the order dated 22.08.1992, was set aside.

5. Keeping in view the aforesaid facts, there is no scope for interference.

6. Dismissed.

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

April 19, 2024

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO