

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

RSA-3119-1994 (O&M)
Date of decision: 18.03.2024

BRIJA SINGH (DECEASED) THROUGH LRS ..Appellant

Versus

RATI RAM AND ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pritam Singh Saini, Advocate
with Ms. Lovejeet Poonia, Advocate
for the appellant.

Mr. R.N. Lohan, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. Though, the enabling right of pre-empting the sale deed under the Punjab Pre-Emption Act, 1913 (hereinafter referred to as the '1913 Act'), has been characterized as feudal, archaic, out-moded, piratical, and inequitable, however, as per the judgment by the Five Judge Bench in Shyam Sunder Vs. Ram Kumar, (2001) 8 SCC 24, the pending appeal claiming superior rights of pre-emption on the ground of pre-emptor being co-sharer are required to be decided in accordance with unamended provisions of the Act before the amendment in the year 1995.
2. This is defendant No.2's appeal against the judgment and decree passed by the First Appellate Court.
3. The plaintiffs namely Sh. Rati Ram, Sh. Hari Kishan and Sh. Jai Kishan sons of Sh. Puran Chand filed a suit for possession by way of pre-emption in order to pre-empt the sale deed executed by defendant No.1 in favour of defendant No.2 Sh. Brij Singh (appellant herein) son of Sh.

Ujagar Singh on 21.06.1990, with respect to the land measuring 2 kanal being 1/16th share in the land measuring 32 kanal. The defendant contested the suit on the ground that he is already a co-sharer and is in cultivating possession of the land as a tenant. The sale deed was in favour of Sh. Brija Singh and his son Sh. Jagtar Singh (who was not co-sharer), however, in the family settlement, the land came to the share of defendant No.2, which was acknowledged by settlement dated 25.09.1990 and thereafter, its defendant No.2, who is in possession of the same. The trial Court decreed the suit, which was modified by the First Appellate Court as the appellant was granted an enhanced amount of Rs.21,078.50/- instead of Rs.14,078.50/-.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the appellant submits that Sh. Brija Singh was already a co-sharer in a joint land and therefore, the suit for pre-emption is not maintainable against him. He submits that today after a passage of 34 years, if the plaintiffs are permitted to exercise right of pre-emption, it would be inequitable.

6. Per contra, the learned counsel representing the respondents (plaintiffs) submits that in view of the judgment passed by a Full Bench of this Court in **Garib Singh Vs. Harnam Singh, 1971 PLJ 578**, a co-sharer, who associates a stranger is pre-emptable in subsequent improved in the status of the vendee would not defeat pre-emptor's right.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. The judgment passed by the Full Bench of this Court is relating to a case where Sh. Garib Singh and his wife purchased the property, subsequently, Sh. Garib Singh’s wife gifted the property in favour of Sh. Garib Singh. The Court held that under Section 21A of the 1913 Act, any improvement in the status of the vendee would not defeat the pre-emptor’s right to pre-empt. In fact, the facts of this case are also *pari materia* with the facts of the Full Bench.

9. Keeping in view the aforesaid facts, the appeal is dismissed, however, there was an interim order passed in favour of the appellant while admitting the appeal.

10. The amount has remained with the plaintiffs. Hence, the decree shall stand slightly modified and the plaintiff shall be liable to pay the amount as directed by the First Appellate Court along with the interest at the rate of 12% from the date of filing of the suit till its payment within a period of 30 days from the date of the order, positively.

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

March 18th, 2024

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(ANIL KSHETARPAL)
JUDGE

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