



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-670 of 1994 (O&M)

Date of Order:14.05.2024

Ram Chand (since deceased) through LRs and another

.Appellants

Versus

Satbir Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K.Chaudhary, Advocate
for the appellants.

Mr. Adarsh Jain, Advocate
for the respondent.

ANIL KSHETARPAL, JCM-3478-C-2024

1. For the reasons stated in the application which is supported by an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Ram Chand [appellant no.1] mentioned in paragraph 2 of the application, is allowed, subject to all the just exceptions.

2. The amended memo of parties is taken on record.

3. CM stands disposed of.

MAIN

4. In this regular second appeal, the defendants assail the correctness of the judgment passed by the First Appellate Court while decreeing the plaintiff's suit for possession by way of pre-emption which in turn has reversed the judgment of the trial court.

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



6. Smt. Harbheji and Smt. Jai Devi being co-sharers in the joint land sold the suit land to Sh. Ram Chand and Sh. Nathu Ram sons of Sh. Thundi Ram vide sale deed dated 07.11.1988. Sh. Satbir Singh, the plaintiff, filed a suit for possession by way of pre-emption on 04.11.1989. He had purchased some part of the property of the joint khewat by virtue of sale deed dated 31.10.1989. He claimed that he was a co-sharer on the day the sale deed was executed. Hence, he has a superior right to pre-empt the same.

7. The defendants while contesting the suit claimed that the suit property has already been partitioned by the Assistant Collector Ist Grade on 06.04.1990.

8. The trial court dismissed the suit while observing that though the appeal against the order of partition is pending, however, the status of the co-sharers came to an end on preparation of 'Naksha Be'. However, the first appeal filed by the plaintiff was allowed because the order dated 06.04.1990, sanctioning 'Naksha Be' was set aside on 21.02.1991, and a fresh 'Naksha Be' was passed only on 15.12.1991.

9. It is a settled law that the plaintiff is required to prove his superior right of pre-emption on the date of the sale deed, the date of institution of the suit and the decision by the first Court. The trial court decided the suit on 03.01.1991. In that context, the right of the plaintiff is required to be examined on three dates, namely, 07.11.1988 (the date of sale deed), 04.11.1989 (the date the suit was filed) and 03.01.1991 (the date on which the trial Court passed the judgment).

10. The learned counsel representing the appellants contends that



same 'Naksha Be' has been again approved by the Assistant Collector vide subsequent order dated 15.12.1991. He submits that the Assistant Collector has specifically recorded in the order dated 15.12.1991 that the plaintiff was delaying the disposal of the suit. He never filed any objection even after the remand of the case. He also relies upon the judgment passed in *Har Devi vs. Ram Jas and others, 1974 PLJ 345.*

11. Per contra, the learned counsel representing the respondent(plaintiff) submits that as per the judgment passed by the Supreme Court in *Jhabbar Singh (Deceased) through Legal Heirs and others vs. Jagtar Singh, 2023 AIR (SC) 2074,* the status of the parties as co-sharers would come to an end on the date the 'Naksha Be' was finalized. He submits that in this case, the order dated 06.04.1990 was set aside on 21.02.1991 and thereafter fresh order sanctioning 'Naksha Be' was passed only on 15.12.1991.

12. This court has considered the submissions of the learned counsel representing the parties.

13. Whenever a suit for possession by way of pre-emption is filed on the basis of co-sharer, usually the defendant would file an application seeking partition of the property in order to defeat the plaintiff's right. Thereafter, there is a race going on between the plaintiff and the defendant. The plaintiff is always interested in getting his suit for possession decreed before partition is finalized. Whereas, on the other hand, it is the defendant who is interested in getting the suit land partitioned before the first court passes its judgment. However, this is the fact and ground situation. This court cannot avoid the same. The court is required to decide the case on the



basis of material which has come on record. The conduct of the plaintiff in delaying the disposal of partition proceedings would not take away his right in the suit for possession by way of pre-emption. As is evident in this case after previous order sanctioning 'Nakhsa Be' was set aside the fresh the 'Naksha Be' was sanctioned on 15.12.1991, whereas the trial court decided the suit on 03.01.1991. Hence, the plaintiff successfully proved his superior right of pre-emption on three crucial dates, namely, the date of sale, the date of institution of the suit and the date of decision by the trial Court.

14. In Har Devi's case (supra), an appeal was filed against instrument of partition which was pending. The court observed that against the instrument of partition, no appeal is maintainable and in any case, the doctrine of merger is not a universal rule. Moreover, 'Naksha Be' or instrument of partition was never set aside by the Appellate Court. Hence, the Division Bench while dismissing the Letters Patent Appeal held that the doctrine of merger is not a doctrine of universal application.

15. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

16. Dismissed.

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

May 14, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO