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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-130-1995 (O&M)
Reserved on : 08.07.2024
Date of Decision : 26.07.2024

Mahender Singh ....Appellant(s)

VERSUS

Sukhdev Singh (deceased) through LRs ....Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.K. Ganga, Advocate for the appellant.

None for the respondents.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 11.01.1995 passed by the First Appellate Court whereby the appeal filed by the defendant-respondent challenging the judgment and decree dated 16.11.1991 passed by the Trial Court was allowed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for possession by way of pre-emption in respect of land measuring 7 kanals as detailed in the plaint. It was the case set up by the plaintiff-appellant that the original vendor - Labh Singh son of Gajjan Singh - sold the suit land to the defendant-respondent vide sale deed dated 13.10.1988 for a consideration of Rs.30,000/- but to defeat the plaintiff-appellant's right of pre-emption, the defendant-respondent got a fictious amount of Rs.50,000/- as sale consideration mentioned in the sale deed. It was further averred that the possession of the suit land was delivered to the

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defendant-respondent on the spot. It was further the case set up that the plaintiff-appellant being a co-sharer in Khewat No.521 Sq. No.24 as per Jamabandi for the year 1983-84, had a superior right to pre-empt the sale in question made by the vendor in favour of the vendee. The defendant-respondent in his written statement raised preliminary objections that the suit of the plaintiff-appellant was time-barred and that the suit was not maintainable in the present form. On merits it was stated that the suit land had been sold for a sale consideration of Rs.50,000/- which was fixed in good faith and actually paid to the vendor. It was specifically pleaded that a sum of Rs.20,000/- was paid to the vendor on 06.07.1988 and sale deed was executed on 07.10.1988. It was further the case that the possession was transferred on execution of the sale deed and that Rs.30,000/- was paid at the time of the registration of the sale deed. Additional plea was also raised by the defendant-respondent regarding stamp and registration charges incurred by him on the registration of the sale deed and the improvement made by him on the suit land. In the replication, the contents of the plaint were reiterated and those of the written statement were denied.

3. On the basis of the pleadings the following issues were framed :

1. Whether the plaintiff has a superior right to pre-empt the sale as alleged ? OPP
2. Whether the sale consideration was bonafidely fixed and actually paid as per the recital in the sale deed ? OPP
3. If issue No.2 is not proved, then what was the market value of the suit property at the time of its sale ? OPP
4. Whether the suit is time-barred ? OPD

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5. Whether the plaintiff has no locus-standi to file the present suit ? OPD
6. Whether the plaintiff has no cause of action to file the present suit ? OPD
7. Whether the defendant has incurred stamp, registration and other expenses, if so, how much ? OPD
8. Whether the defendant has improved property after its purchase and made on it, if so, how much ? OPD
9. Relief.

4. The Trial Court vide judgment and decree dated 16.11.1991 decreed the suit on payment of Rs.56,751.50 i.e. Rs.50,000/- as sale consideration, Rs.6,250/- as stamp charges and Rs.501.50 as registration fee. The said amount was directed to be deposited in the treasury within a period of two months from the date of the decree. Aggrieved by the same, an appeal was preferred by the defendant-respondent which appeal was allowed by the First Appellate Court vide judgment and decree dated 11.01.1995. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant had a superior right of pre-emption being a co-sharer and that the sale deed though executed on 07.10.1988 was registered on 13.10.1988 and that the possession was also delivered on 13.10.1988. It is further the contention of the learned counsel that the First Appellate Court has erred in reversing the judgment and decree passed by the Trial Court on the ground of the suit being barred by limitation. In support of his contentions he has relied upon the judgments in the cases of **Sukhnandan**

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Singh etc. Vs. Jamiat Singh & Ors. [1971 (1) SCC 707] and **Sardar Singh Vs. Dalip Kaur & Ors. [1981 PLR 611]**.

6. None has put in appearance on behalf of the defendant-respondent despite service.

7. I have heard the learned counsel for the plaintiff-appellant.

8. In the present case the agreement to sell was executed on 06.07.1988. The sale deed admittedly was executed on 07.10.1988. The plaintiff-appellant had admitted in para 2 of the plaint that the defendant-respondent had obtained possession of the suit land at the time of the execution of the sale deed. Further, PW1 the plaintiff-appellant himself in his cross-examination stated that it was correct that the sale deed was executed on 07.10.1988 and was registered on 13.10.1988 and the possession of the suit land was delivered at the time of execution of the sale deed. Article 97 of the Limitation Act, 1963 reads as under :

Description of suits	**Period of limitation**	**Time from which period begins to run**
To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.	One year	When the purchaser take under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered

9. In the judgment relied upon by the learned counsel for the plaintiff-appellant in the case of **Sukhnandan Singh** (supra), while dealing with Article 10 of the Limitation Act, 1908, which is *pari materia* to Article 97 of the Limitation Act, 1963, it was held that in case the property was in possession of a tenant, he would be incapable of physical possession and

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therefore, *terminus a quo* for limitation would be the date of the registration of the sale deed. In the judgment relied upon by the learned counsel for the plaintiff-appellant in the case of **Sardar Singh** (supra), the Division Bench of this Court while dealing with the provisions of Article 97 of the Limitation Act, 1963 held as under :

> *"A reading of the third column shows that wherever the subject-matter of sale admits of physical possession of whole or part of the property sold then the starting point of limitation under the first part is from the date of taking of possession of whole or part thereof and where ever either whole or part of the property sold does not admit of physical possession, then the limitation starts from the date or registration of the instrument of sale. The object to provide tow different limitations for two different sets of facts is the same namely notice of the sale to the pre-emptor. If whole of the sold property is already in possession of a tenant mortgagee or a person other than the owner under some title and that person continue in possession in spite of a sale by the owner. The only way to provide knowledge to a pre-emptor would be by a registered document because under the law the moment a document is entered in the register of the Registrar, the sale is notice to the general public and the registration of such a sale would give the starting point of limitation for filing a suit for pre-emption but where a property sold or part of it was in possession of the vendor, the moment some body else comes in possession of that property there in immediate notice of change of possession from the owner to a third person giving notice to the pre-emptor to find out as to in what capacity the third person has come in possession of the same. If it is under a sake then the limitation for pre-emption would start from the*

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> *date of taking of possession. For that purpose the first part of the article was enacted to provide the starting point of limitation from the date of taking possession under the sale. Therefore, from a reading of the entire third column there would be separate starting points of limitation under two different eventualities (see Sukhnandan Singh v. Jamiat Singh AIR 1971 SC 1158 and Kashmir Singh v. Mehar Chand, 1971 Cr.L.J. 169(D.B.)"*

10 The Division Bench distinguished between the two scenarios for which two different limitations were provided. It was held that in case the property sold is already in possession of a tenant, mortgagee or a person other than the owner under any title and the person continues in possession of the same by virtue of the sale by the owner, the only way to provide knowledge to a pre-emptor would be by a registered document and hence the limitation would start from the date of the registration of the sale deed, but where the property is sold and somebody else comes in possession of the property, there is immediate notice of change of possession. In such a case the limitation would start from the date of taking possession. The present is not a case of a tenant or a person who is already in possession of the property sold to him. The defendant-respondent came in possession of the suit land on the execution of the sale deed i.e. 07.10.1988. Once the possession changed hands that would be considered as ample notice and hence the limitation would begin from the date the possession was handed over i.e. 07.10.1988. That being so, the present suit which was filed on 11.10.1989 was clearly barred by limitation.

11. No other argument has been raised by the learned counsel for the plaintiff-appellant.

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12. In view of the above, no fault can be found with the judgment and decree dated 11.01.1995 passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

26.07.2024 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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