

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****206****RSA-1776-1995 (O&M)****Reserved on : 12.09.2024****Date of Decision : 15.10.2024**

Surat Singh

....Appellant

VERSUS

Jagmal Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vishal Pundir, Advocate for the appellant.

Mr. Ashok Giri, Advocate for respondent No.1.

ALKA SARIN, J.

1. Present appeal has been preferred by the defendant-appellant aggrieved by the judgement and decree dated 23.07.1993 passed by the Trial Court and the judgement and decree dated 09.03.1995 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that plaintiff-respondent No.1 herein filed a suit for possession by way of pre-emption averring in the plaint that defendant-respondent Nos.2 and 3 were owners in possession of agricultural land measuring 02 Kanals 18 Marlas being 2/3rd share out of land measuring 04 Kanals 07 Marlas comprised in Khewat No.343 Khatauni No.527 Rectangle No.57 Khasra No.5/1 (4-7) situated at Village Ramana Ramani, Tehsil and District Karnal as per the Jamabandi for the year 1983-84. It was further averred that plaintiff-respondent No.1 had purchased agricultural land measuring 01 Kanal 09 Marlas out of the land fully detailed above from one Ghansham Dass, who was owner of agricultural land measuring 01 Kanal 09 Marlas being 1/3rd share out of the

land measuring 04 Kanals 07 Marlas situated in Village Ramana Ramani, Tehsil and District Karnal and as such the plaintiff-respondent No.1, by virtue of the registered sale deed executed on 21.11.1986 and registered on 10.12.1986, had become owner of the land measuring 01 Kanal 09 Marlas out of the land measuring 04 Kanals 07 Marlas. It was further pleaded that defendant-respondent Nos.2 and 3 had sold their share i.e. 02 Kanals 18 Marlas being $\frac{2}{3}$ rd share out of the land measuring 04 Kanals 07 Marlas to the defendant-appellant herein for an ostensible consideration of Rs.11,000/- vide registered sale deed dated 27.01.1987 registered on 28.01.1987. The plaintiff-respondent No.1 claimed his superior right of pre-emption being a co-sharer in the suit property. Defendant-respondent Nos.2 and 3 did not appear despite service and the suit was contested by the defendant-appellant herein. Written statement was filed. The stand in the written statement was that the suit was time-barred and not within limitation and the same was bad for non-joinder and mis-joinder of necessary parties. It was further averred that the agreement to sell was executed on 14.06.1986 between the defendant-appellant and defendant-respondent Nos.2 and 3 herein and at that time the said Ghansham Dass was the owner of the land and he could have filed the suit and not the plaintiff-respondent No.1. It was denied that plaintiff-respondent No.1 was a co-sharer in the suit property. It was further pleaded that the suit land had been partitioned between defendant-respondent Nos.2 and 3 and Ghansham, the vendor of plaintiff-respondent No.1. Replication was filed. On the basis of the pleadings the following issues were framed :

1. Whether the plaintiff is a co-sharer in the joint holding of which the suit land forms a part and as such he has got superior right of pre-emption ? OPD

2. Whether defendant No.3 incurred the expenses of registration of sale deed and stamp charges, if so, to what amount ? OPD
3. Whether the suit is time-barred ? OPD
4. Whether the plaintiff has no locus standi to file the present suit ? OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
6. Whether the plaintiff is estopped from filing the present suit ? OPD
7. Relief.

3. The Trial Court vide judgment and decret dated 23.07.1993 decreed the suit for pre-emption. Aggrieved by the same, an appeal was preferred by defendant-appellant herein which appeal was also dismissed vide judgment and decree dated 09.03.1995. Hence, the present regular second appeal.

4. Initially, the question raised in the present appeal was that post the 1995 amendment to the Punjab Pre-emption Act, 1913, the right of a co-sharer was taken away. Hon'ble Supreme Court in the case of **Shyam Sunder & Anr. vs. Ram Kumar & Anr. [2001(3) RCR (Civil) 754]** held as under :

“From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into

consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise. We have carefully looked into new substituted section 15 brought in the parent Act by Amendment Act 1995 but do not find it either expressly or by necessary implication retrospective in operation which may effect the right of the parties on the date of adjudication of suit and the same is required to be taken into consideration by the appellate Court. In Shantidevi (Smt) and another vs. Hukum Chand [1996

(5) SCC 768] this Court had occasion to interpret the substituted section 15 with which we are concerned and held that on a plain reading of section 15 it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not effect the right of the parties which accrued to them on the date of suit or on the date of passing of the decree by the Court of first instance. We are also of the view that present appeals are unaffected by change in law in so far it related to determination of the substantive rights of the parties and the same are required to be decided in light of law of preemption as it existed on the date of passing of the decree.”

The question stood answered in the above referred to judgment.

5. Learned counsel appearing on behalf of the defendant-appellant would contend that the suit land was partitioned between the parties and hence there was no question of pre-emption. It is further the contention that the mutation was entered on 15.06.1989 (Ex.P8) and the sale in favour of the defendant-appellant was on 28.01.1987 and hence he was a *bonafide* purchaser without notice. In support of his contention, learned counsel for the defendant-appellant has relied upon the judgments in the cases of **Jhabbar Singh (Deceased) through Legal Heirs & Ors. vs. Jagtar Singh**

s/o Darshan Singh [AIR 2023 SC 2074]; Dalel Singh & Anr. vs. Kalu & Ors. [2015(2) RCR (Civil) 682]; Bhuban Mahto & Anr. vs. The State of Jharkhand & Ors. [2006(15) RCR (Civil) 10]; and Smt. Satya Narayani alias Jhamli Devi vs. Hanuman Prasad & Smt. Asha Devi [AIR 1999 Raj 74].

7. *Per contra* the learned counsel for the plaintiff-respondent No.1 would contend that there is no evidence that the suit property was partitioned and even in the sale deed in favour of the defendant-appellant there is not a word that the suit property had been partitioned. Further, the Khasra Girdawaries clearly reveal that the suit property was jointly held by the parties. Learned counsel for the plaintiff-respondent No.1 would further contend that though a plea of bonafide purchaser has been raised before this Court, however, the same was neither pleaded nor proved before the Courts.

8. I have heard learned counsel for the parties.

9. Learned counsel for the defendant-appellant has vehemently contended that since the mutation was entered in 1989 and the land was purchased by the defendant-appellant in the year 1987, hence, he was a bonafide purchaser without notice. A perusal of the written statement filed by the defendant-appellant would reveal that the ground of bonafide purchaser was not even raised in the written statement much less argued and proved before both the Courts. In the absence of the plea of bonafide purchaser having been raised by the defendant-appellant before the Trial Court and the First Appellate Court, the said plea cannot be entertained by this Court in regular second appeal. Further still, there is not an iota of evidence on the record to show that there was any partition of the suit property. In the absence of any document to show that the suit property was partitioned between the co-sharers, this Court finds no reason to interfere in

the judgments and decrees passed by both the Courts. There can be no quarrel with the proposition of law as enunciated in the judgments referred to by the learned counsel for the defendant-appellant however the same would not come to the aid of the defendant-appellant as the learned counsel has not been able to show any evidence on the record to defeat the right of the plaintiff-respondent No.1. The learned counsel has been unable to point any legitimate means for defeating the right of pre-emption. This Court is conscious that the right of pre-emption is a weak right and can be defeated by legitimate methods. However, in the absence of any legitimate method having been pointed and in the absence of even pleadings to the effect that the defendant-respondent was a bonafide purchaser for valuable consideration, no fault can be found with the judgments and decrees passed by both the Courts.

10. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

15.10.2024
jk

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