

RSA-2504-1995

2024:PHHC:036380

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-2504-1995 (O&M)
Reserved on : 06.03.2024
Pronounced on: 14.03.2024**

HABIB AHMED

....Appellant

VERSUS

ABDUL REHMAN @ DULLA AND ANOTHER

....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr.Ram Chander, Advocate for the appellant.

Mr. Adarsh Jain, Advocate for respondent No.1.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant-appellant aggrieved by the judgments and decrees passed by the Trial Court and the First Appellate Court dated 11.11.1993 and 02.12.1994 respectively.

2. The brief facts relevant to the present *lis* are that the suit land was sold by Aktar Husain in favour of Habib Ahmed (the appellant herein) for a sum of Rs.8,000/- vide a registered deed dated 19.11.1991 (Ex. P-2). The said sale was sought to be pre-empted by plaintiff-respondent, namely, Abdul Rehman on the ground of being a co-sharer in the joint khewat and in that view he had a preferential right to pre-empt the sale and since no notice was given to him hence the suit was filed. The suit was contested by the defendant-appellant on the ground that the plaintiff-respondent was not a co-sharer in the property. He was further allowed to raise an additional plea that

the plaintiff had raised a boundary wall on the land of his share after getting the same partitioned before the sale.

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

- a. Whether the plaintiff has got superior right of pre-emption as against the defendant ? OPP
- b. Whether the suit is not maintainable ? OPD
- c. Whether the plaintiff has no locus standi to file the present suit ? OPD
- d. Whether the defendant is entitled for special consts ? OPD
- e. Relief.

4. The Trial Court decreed the suit holding the plaintiff-respondent as having a preferential right to pre-empt the sale. Aggrieved by the same an appeal was preferred which was also dismissed vide a judgment and decree dated 02.12.1994. Hence the present regular second appeal.

5. Learned counsel for the defendant-appellant would contend that the plaintiff-respondent was not a co-sharer in the joint khewat and hence the suit for pre-emption was not maintainable.

6. *Per contra*, learned counsel for plaintiff-respondent No.1 has contended that there was sufficient evidence on the record to show that plaintiff-respondent No.1 was a co-sharer in the joint khewat and that the suit property had not been partitioned.

7. I have heard the learned counsel for the parties.

8. Vide the 1995th amendment of the Punjab Pre-emption Act, the right of a co-sharer was taken away, however, vide the judgment of the Hon'ble Supreme Court in the case of **Shyam Sunder &Anr. V/s Ram Kumar &Anr. [2001 (3) RCR (Civil) 754]**, it was 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.'

Hence the suit would be maintainable even after the amendment. The Trial Court after going through the evidence had returned a categoric finding on fact that mutation No.1050 sanctioned on 11.09.1989 showed Aktar Husain had purchased half share in the total land from Badam and Hasan Mohd. vide registered sale deed dated 19.11.1986 for a consideration of Rs.8,000/-. Ex. P-3 was the mutation No.1098 sanctioned in favour of the plaintiff, namely, Abdul Rehman after the death of his father, namely, Yasin and hence it was held that the plaintiff had been able to prove himself to be a co-sharer in the land. The learned for the defendant-appellant has not been able to show an iota of evidence on the record to show that the land had been partitioned and that the plaintiff-respondent was not a co-sharer on the land. In the absence of any documentary evidence to show that the land had been partitioned, no fault can be found with the judgments and decrees passed by the both the Courts.

9. 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

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in the present case. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

14.03.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*