

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2344-1993 (O/M)

Reserved on : 07.11.2024

Date of decision : 06.02.2025

Smt. Prito and others

..... Appellants

Versus

Ram Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Virender Kumar, Advocate
for appellants.

Mr. Rajesh Bansal, Advocate
for respondent No. 1.

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HARSH BUNGER, J.

1. The present Regular Second Appeal has been preferred against judgment and decree dated 06.10.1993, passed by learned District Judge, Kurukshetra, whereby appeal filed by respondent No. 1/plaintiff (Ram Singh) against the judgment and decree dated 29.10.1992, dismissing his suit for pre-emption; was allowed and a decree for possession by way of pre-emption of the suit land was passed in his favour.

2. Briefly, respondent No. 1/plaintiff (Ram Singh) filed a suit for possession by way of pre-emption, inter alia, pleading that defendants No. 4 and 5 in the suit, namely, Kundan son of Nathu Ram and Chuhar Singh son of Kundan, were the owner of the land measuring 1 kanal being part of Khasra No. 15/1/2, which was sold by them to defendants No. 1 to 3 in terms of sale deed dated 29.06.1985 for a fictitious sale

consideration of Rs. 20,000/-. It was claimed by respondent No. 1/plaintiff that he is co-sharer in the suit land and hence, had superior right of pre-emption qua the vendees i.e. defendants No. 1 to 3. It was pleaded that since the vendees did not admit the superior right of pre-emption of respondent No. 1/plaintiff, accordingly, the suit for possession by way of pre-emption was filed.

2.1 Defendants No. 1 to 3 (vendees) appeared in the suit and filed their written statement, inter alia, pleading that respondent No. 1/plaintiff had no cause of action to file and maintain the suit and that respondent No. 1/plaintiff had no superior right of pre-emption, accordingly, prayer for dismissal of the suit was made.

2.2 On the other hand, defendants No. 4 and 5 (owners of the suit land) filed their separate written statement, wherein a stand was taken that the sale in question dated 29.06.1985, was set aside by learned Sub Judge 1st Class, Kurukshetra, in terms of judgment and decree dated 15.04.1986, whereas the suit for pre-emption was filed on 24.04.1986, therefore, on the date of institution of suit, there was no sale, accordingly, the suit should be dismissed.

2.3 It transpires that during the course of proceedings before the trial Court, defendants No. 6 and 7 were impleaded as parties, who filed their separate written statement and contested the suit on the ground that the suit land already stands partitioned and, therefore, the suit be dismissed.

2.4 From the pleading of the parties, the trial Court framed the following issues :-

- “1) Whether the plaintiff has a superior right to pre-empt the sale ? OPP*
- 2) Whether the sale consideration of Rs. 20,000/- was bonafide fixed and actually paid by the vendees to the vendor ? OPD*
- 3) If issue No. 2 is not proved, then what was the market value of the suit property at the time of sale ? OPP*
- 4) Whether the suit is not maintainable in the present form ? OPD*
- 5) Whether there does not exist any sale if so its effect ? OPD*
- 6) Whether the suit is not properly valued for the purposes of court fee and jurisdiction ? OPD*
- 7) Whether the plaintiff has no locus-standi to file and maintain the present suit ? OPD*
- 8) Whether the defendants are entitled to special costs under Section 35-A CPC ? OPD*
- 9) Whether the plaintiff has no cause of action against the defendants ? OPD*
- 10) Whether the vendee-defendants are entitled to stamp and registration charges in addition to the sale-consideration ? OPD*
- 10-A) Whether the defendants No. 4 and 5 have made improvements over the suit property, if so to what extent and its effect ? OPD*
- 11) Whether the property has been transferred by sale and decree in favour of defendants no. 6 to 8 if by a decree whether it is pre-emptable ? OPD*
- 12) Whether the suit property has been shown a separate khewat and no more co-sharers with the plaintiff if so to what effect ? OPD*
- 13) Whether the suit property is not assess to the land revenue and as such not pre-emptable being not agricultural nor over the immovable property if so to what effect ? OPD*

14) Whether the plaintiff was co-vendee with defendants no. 1 to 3 at the time of sale if so to what effect ? OPD

15) Whether according to law the court fees of the suit property is required Rs. 20,000/- for which this Hon'ble court has no jurisdiction to entertain and try the present suit ? OPD

16) Whether the suit property is covered by the constructed shop and partitioned by their act and conduct at the time of sale, Hence not pre-emptable ? OPD

17) Relief.”

2.5 The trial Court, vide judgment and decree dated 29.10.1992, dismissed the suit for pre-emption filed by respondent No. 1/plaintiff. The relevant findings, as returned in para 20 and para 33 of the judgment and decree dated 29.10.1992, are reproduced as under :-

“20. After hearing the learned counsel for the parties and after having gone through the material available on record, I gather that the sale sought to be pre-empted by the vendors in favour of the vendees was effected on 29.6.1985. The said sale deed was set-aside by the then learned Sub Judge 1st Class, Kurukshetra vide judgment and decree dated 15.4.1986 and that the suit was filed on 24.4.1986 meaning thereby that as on the date of the filing of the present suit, there was no sale. Since there was no sale, therefore in view of the proposition of law laid down in case reported as 1982 PLR 677 (Supra), I have no hesitation in holding that as on the date of the filing of the present suit, no right of pre-emption was available to the plaintiff.

21. to 32. xxxxx xxxxx xxxxx

33. After hearing the learned counsel for the parties, I find that it has been proved on record that the suit land has been partitioned and the parties have raised construction thereon of the shops and residential houses. This fact is

admitted by the plaintiff, PW3 that after the sale the suit land not been put to agricultural use. This shows that the suit land is no more agricultural and hence the same is not pre-emptable.

Due to foregoing reasons, both these issues are decided in favour of the defendants and against the plaintiff.”

2.6 Feeling dis-satisfied with the aforesaid judgment and decree dated 29.10.1992, respondent No. 1/plaintiff preferred an appeal before learned District Judge, Kurukshetra, which came to be allowed, vide judgment and decree dated 06.10.1993, whereby the trial Court judgment and decree dated 29.10.1992 was set aside and a decree for possession by way of pre-emption of the suit land was passed in favour of respondent No. 1/plaintiff.

3. In the aforementioned circumstances, the present regular second appeal has been filed before this Court.

4. Heard.

5. The only question which arises for determination is whether the pre-emptor (respondent No. 1/plaintiff) had a superior right of pre-emption on the date of institution of the suit ?

5.1 Law of pre-emption is well settled. In case two views are possible in a given situation, then the view, which defeats the right of pre-emptor has to be taken. Pre-emption is a piratical right and the same can be defeated by all lawful means.

5.2 The Hon'ble Supreme Court in ***Shyam Sunder and others v. Ram Kumar and another, 2001(3) RCR (Civil) 754 (SC)***, has observed as under :-

"The court has no option but to grant decree of pre-emption where there is a sale of a property by another co-sharer. And for that reason the courts consistently have taken the view that where there is a sale of holding or property by a co-sharer, the right of pre-emption is required to be settled at the earliest either on the pre-emptor's proving his qualification to pre-empt on the date of the sale, on the date of filing of suit, and on the date of the decree of the Court of first instance or the vendee improving his status till the adjudication of the suit for pre-emption and after adjudication of the suit any loss of qualification by the pre-emptor or vendee improving his status equal or above to right of pre-emptor is of no consequence.

*In **Hans Nath v. Ragho Prasad Singh** the Privy Council held that a pre-emptor to maintain a suit for pre-emption is required to prove his right of pre-emption on three important dates. The claimant must possess right of pre-emption on the date of sale. The claimant must possess the same right on the date when the suit is instituted and that right should continue to exist on the date of adjudication of the suit. However, it is a matter of no consequence whether the trial Court decrees or dismisses the suit.*

It has also been the consistent view of the Privy Council and various High Courts that a pre-emptor must possess qualification to pre-empt a sale on the date of decree of the court of first instance only for maintainability of the suit although it is immaterial that the pre-emptor loses the right of pre-emption after the adjudication of the suit either by his own act or the vendee improving his status equal to that the pre-emptor during pendency of appeal filed against the decree of the trial Court. This view of law is in consonance with the object behind the right of pre-emption and held the field for over a century with which the Supreme Court is in

agreement, as nothing has been shown which would justify the taking of a contrary view and disturb the settled law."

In Jhabbar Singh (Deceased) v. Jagtar Singh, 2023 AIR (SC) 2074; Hon'ble Supreme Court observed as under:-

"17. At this juncture, it would be also apt to mention that apart from the fact that the right of pre-emption is very weak right and capable of being defeated by all legitimate methods, the pre-emptor must establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance. The pre-emptor or the claimant-plaintiff who claims the right to pre-empt the sale on the date of sale, has also to prove that such right continued to subsist till the passing of the decree of the first court. If the claimant-plaintiff loses that right or the vendee improves his right equal or above the right of the claimant before the adjudication of the suit, the suit for pre-emption would fail..."

6. Admittedly, the sale in question, which was sought to be pre-empted, was executed on 29.06.1985. It is not disputed that the said sale deed dated 29.06.1985 was set aside, vide judgment and decree dated 15.04.1986, passed by learned Sub Judge 1st Class, Kurukshetra. Concededly, the suit of pre-emption was filed by respondent No. 1/plaintiff on 24.04.1986 i.e. the date on which the sale deed dated 29.06.1985 already stood set aside. In effect, on the date of institution of suit for pre-emption i.e. 24.04.1986, the sale deed dated 29.06.1985 was not in existence.

7. As noticed above, since the right of pre-emption is a weak right and capable of being defeated by all legitimate methods, the pre-emptor must establish that he had the right to pre-empt on the date of

sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance, accordingly, in the present case, it can be safely held that on the date of filing the suit of pre-emption by respondent No. 1/plaintiff i.e. 24.04.1986, the sale deed dated 29.06.1985 already stood set aside, vide judgment and decree dated 15.04.1986, therefore, there was no occasion for pre-emptor (respondent No. 1/plaintiff) to file a suit for pre-emption as on the date of filing of suit; there was no sale which could be pre-empted.

8. In view of the aforesaid discussion, the question involved in this appeal is answered in favour of appellants and it is held that respondent No. 1/plaintiff (pre-emptor) had no superior right of pre-emption on the date of institution of the suit as on the date of filing of the suit i.e. 24.04.1986, the sale deed dated 29.06.1985, which was sought to be pre-empted, already stood set aside, vide judgment and decree dated 15.04.1986. Accordingly, the present regular second appeal is allowed and judgment and decree of lower appellate Court is set aside and the suit of respondent No. 1/plaintiff shall stand dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

06.02.2025
sjks

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