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

(103)

RSA-1921-1992
RESERVED ON 10.02.2025
DATE OF DECISION:- 25.04.2025

VIDHYA DEVI (SINCE DECEASED) THROUGH HER LRS

...APPELLANTS

VERSUS

BANWARI LAL (SINCE DECEASED) THROUGH HIS LRS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. Ramesh Hooda, Advocate
for the respondents.
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SUVIR SEHGAL, J.

1. Aggrieved of concurrent findings recorded by the two Courts, appellants/defendants have approached this Court by way of instant second appeal.

2. Facts, in brief, are that the respondent/plaintiff filed a suit for possession by way of pre-emption of sale deed dated 16.05.1988 in favour of the defendant for a sale consideration of Rs.1,93,500/-. Pleaded case of the plaintiff is that vendors, Balwinder Singh etc., sold suit land 83 kanal 11 marlas vide a registered sale deed dated 16.05.1988 in favour of the defendant for sale consideration. Plaintiff, being a co-sharer in the khewats, claims to have a superior right of pre-emption. He averred that at the time of

execution of the sale deed, no notice as required under the Punjab Pre-emption Act, 1913 was given to him and the market value of the land has deliberately been shown at Rs.2,70,000/- in order to defeat the right of the plaintiff. Upon notice, suit has been contested by the defendant by submitting that plaintiff took an active part in the bargain of the suit land and was present in the office of the Sub Registrar at the time of the registration of the sale deed. Some other objections were also taken and right of the plaintiff to pre-empt the sale was denied. Stand was taken that the defendant has made improvements on the land and suit deserves to be dismissed with special cost. Plaintiff filed a replication controverting the stand taken by the defendant. On the basis of the pleadings of the parties, Trial Court framed issues. After the parties led evidence and were heard, Trial Court decreed the suit vide judgment dated 07.04.1992 and directed the plaintiff to deposit the balance sale consideration as well as charges. Defendant remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Sirsa vide judgment dated 18.09.1992 resulting in the institution of the present appeal.

3. Mr. Sanjiv Gupta, Advocate, counsel for the appellant has argued that that during the pendency of the suit by order dated 26.12.1990, Ex.P5, Assistant Collector had directed the preparation of naksha-be, which amounted to the partition of the suit land. He urges that with the partition, the status of the plaintiff as a co-sharer came to an end and his right to pre-empt did not survive. It is also his argument that the vendors have neither been impleaded as a party nor have they been examined as witnesses and in their absence, suit cannot succeed. While supporting the impugned judgments and

decrees, counsel for the respondent has contended that an order directing the preparation of a partition plan does not result in the severance of relationship of a co-sharer. It is his argument that till the time the partition deed is not drawn, plaintiff continues to be a co-sharer and can exercise the right of pre-emption.

4. I have heard counsel for the parties and considered their respective submissions, besides examining the Trial Court record.

5. The legal position is well settled. In ***Shyam Sunder and others Versus Ram Kumar and another, (2001) 8 SCC 24***, a five judges bench of the Supreme Court has observed that in modern times, right of pre-emption based on statutes is a maligned law. Such a right is feudal, archaic and outmoded, although, it may have its origin based on custom and was subsequently codified. In changed circumstances, the right is outmoded, but as long as it is statutorily recognised, it has to be given the same treatment as any other law deserves. Supreme Court noticed that after coming into force of Haryana Amendment Act No.10 of 1995, right of pre-emption in favour of co-sharer does not survive. Apex Court has held that the statute is prospective in operation and it does not affect the rights of the parties on the date of the adjudication. The instant appeal, therefore, has to be decided on the basis of the law as it existed prior to the amendment of the Punjab Pre-emption Act, 1913, as applicable to the State of Haryana.

6. The effect of an order passed by revenue authorities directing the preparation of an instrument of partition has been considered by the Supreme Court in ***Jhabbar Singh (deceased) through legal heirs and others Versus Jagtar Singh, (2023) 14 SCC 199***. Interpreting the provisions of Punjab Land Revenue Act, 1887, Supreme Court observed as under:-

"28. 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 plaintiff-claimant 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 plaintiff-claimant 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.

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41. If the said analogy is applied to the provisions contained in the Punjab Land Revenue Act pertaining to the partition, we are of the opinion that when a decision is taken by the Revenue Officer under Section 118 on the question as to the property to be divided and the mode of partition, the rights and status of the parties stand decided and the partition is deemed to have completed. At this stage, such decision is required to be treated as the "decree". The consequential action of preparing the instrument of partition as contemplated in Section 121 of the Land Revenue Act would be only ministerial or administrative act to be carried out to completely dispose of the partition case instituted before the Revenue Officer. Hence, once the decision on the property to be divided and on the mode of partition is taken by the Revenue Officer under Section 118, the joint status of the parties would stand severed on the date of such decision, subject to the decision in appeal if any preferred by the party. The consequential action of drawing an instrument *of partition would follow thereafter. Hence, merely because the instrument of partition was not drawn, it could not be said that the partition was not completed or that the joint status of the parties was not severed."*

7. Adverting to the facts of the present case, a perusal of the order dated 26.12.1990, Ex.P5, passed by the Assistant Collector shows that pursuant to the earlier orders, a naksha-be had been prepared, which was made a part of record. Although, in appeal vide order dated 29.04.1991, Mark 'X', Commissioner, Hisar stayed the partition proceedings, but the appeal was subsequently dismissed. Therefore, the order passed by the Assistant Collector directing the preparation of the naksha-be became final, even before the suit filed by the plaintiff/respondent was finally decided. In view of the judgment of the Supreme Court in ***Jhabbar Singh's case (supra),*** reproduced above, which is fully applicable to the facts of the present case, joint status of the parties came to an end. It is established that plaintiff did not possess the status of a co-sharer when Trial Court passed the decree. The right of pre-emption did not survive when the decree was passed by the Court of first instance. Both the Courts below have failed to appreciate the legal position and the findings recorded being contrary to the judgment of the Supreme Court cannot be sustained and deserve to be set aside.

8. Furthermore, as the plaintiff has pleaded that he was not given any notice prior to the sale, the presence of the vendors before the Civil Court was necessary to effectively and finally decide the dispute between the parties. Failure to implead them or to produce them is also fatal to the suit. The judgment in ***Ram Kishan and another Versus Daya Nand (D) through***

LRs and others, 2023 (4) Law Herald (SC) 2833 supports the case of the appellant.

9. For the reasons recorded above, appeal is allowed. Judgments and decrees passed by the Courts are set aside and the suit filed by the respondent is dismissed thoughout with no order as to cost. Amount deposited, if any, by the respondent can be withdrawn by him along with interest accrued thereon.

10. Pending applications, if any, are disposed off.

(SUVIR SEHGAL)
JUDGE

25.04.2025
kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No