

Chandan Vs Inder Singh and Others

None

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 4, 2008

Acts Referred:

Transfer of Property Act, 1882 " Section 54

Citation: (2008) 152 PLR 572

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This judgment shall dispose of four appeals i.e. R.S.A. Nos. 193 to 196 of 1993 which arises out of Civil Appeal

Nos. 75 to 78 of 1992 decided by Additional District Judge, Sonapat by one common judgment and decree impugned herein, as a common

question of law on similar facts has been raised by the appellant, who is common in all the four appeals against different vendees of land for pre-

emption of sale from the same joint Khata on the basis of same agreement. However, for the sake of convenience, facts are taken from appeal No.

193 of 1993.

2. By way of this appeal, the plaintiff has challenged the judgment and decrees of "the Courts below whereby his suit for possession by way of

pre-emption, having a preferential right being co-sharer and tenant in the suit land, has been dismissed.

3. It has been, alleged in the plaint that defendant No. 4 (now respondent No. 4) sold the agricultural land measuring 11 marlas comprised in

Khewat No. 181 Khata No. 233 (Rectangle No. 32 Killa No. 16/2 min East South corner to defendant No. 1 to 3 (now respondents No. 1 to 3)

vide registered sale deed dated 8.6.1988 for a consideration of Rs. 45,000/- without any notice to the plaintiff (now appellant) who is a co-sharer

as well as a tenant in the suit land and therefore, is having a preferential right to pre-empt the sale in dispute whereas defendant No. 1 to 3 are

strangers. Hence, this suit.

4. Upon notice, defendants No. 1 to 3 filed written statement controverting the claim of the plaintiff on various grounds. Apart from other grounds,

it was stated that the plaintiff is neither a co-sharer nor a tenant in respect of the suit land. It was further submitted that defendants No. 1 to 3 were

already in possession of the suit land as tenants much prior to the impugned sale. It was also submitted that the plaintiff was well (sic) of the sale

deed dated 8.6.1988 as he was present in the office of Sub Registrar at the time of registration of the sale deed. Moreover, the plaintiff was also a

party to the agreement to sell which was jointly made by the parties with vendor so, the plaintiff is estopped from filing the present suit by his act

and conduct.

5. Defendant No. 4 refused to accept the service of summons and therefore, exparte proceedings were initiated against him.

6. Replication was filed by the plaintiff denying all the allegations made in the writ ten statement and further reaffirming the contents of the plaint.

From the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff has got superior right to preempt the sale in dispute? OPP

2. Whether the suit is not maintainable in the present form? OPD

3. Whether the plaintiff is estopped from filing the present suit by his acts and conduct? OPD

4. Whether the suit is bad for partial pre-emption? OPD

5. Whether the defendants were tenants of the suit land on the date of its sale, if so, to what effect? OPD

6. Relief.

7. In evidence of the plaintiff, Satbir son of Chandan appeared as PW-1 Special power of attorney Ex.P-1, copy of sale deed dated 8.6.1988

EX.P2, treasury challan Ex.P-3 and copy of jamabandi for the year 1986-87 Ex.P4 were placed on the record.

8. On the other hand, in evidence of the defendants, Rajpal son of Roop Chand DW-1, Raj Singh s/o Daryao Singh as DW-2, Sunder Dass

Patwari as DW-3 and Mahabir Parsad Deed Writer DW-4 were examined. Copies of the agreement of sale and receipt, dated 8.1.1988 Ex.D-1

and Ex.D-2 respectively and copy of mutation No. 1341 Ex.D-3 were placed on the record.

9. After perusing the entire evidence on record, material circumstances of the case and the arguments advanced by die learned Counsel for the

parties, the trial Court vide its judgment and decree dated 8.2.1992 dismissed the suit filed by the plaintiff, holding that the claim of the plaintiff

based upon his tenancy in respect of the suit land is not proved, as no evidence has been led to substantiate this plea. However, it was found that

the plaintiff was co-sharer of the suit land on the date of sale and has continued as such. It was further found that the plaintiff was a party to the

agreement to sell dated 8.1.1988 which stands proved and therefore, it cannot be said that the plaintiff had no knowledge of the contents of the

agreement of sale.

10. It was also found that the suit land was also included in the agreement. This fact shows that the plaintiff had undertaken not to exercise his right

of pre-emption in respect of the sale in favour of the defendant out of the joint khata mentioned in the agreement and this act on the part of the

plaintiff amounts to waiver of the right of pre-emption of the defendants.

11. Feeling aggrieved against the judgment and decree of the trial Court, the plaintiff filed an appeal. Defendants No. 1 to 3 also filed cross-

objections. The appeal was dismissed by the Additional District Judge, Sonapat vide judgment and decree dated 12.12.1992. While dismissing the

appeal, the findings of the trial Court on issue No. 1 to the extent that the plaintiff had failed to prove himself as a tenant over Khasra No. 32/16

were affirmed. The findings of the trial Court to the effect that the plaintiff succeeded in proving himself to be a co-sharer in Khewat No. 181 were

also confirmed. It was also held that the conduct of the plaintiff certainly amounts to waiver and thus, the findings of the trial Court on issue No. 3

were affirmed. While dismissing the appeal, the Additional District Judge, Sonapat also dismissed the cross-objections filed by the defendants.

12. Still not satisfied, the plaintiff has filed this appeal to challenge the impugned judgment and decrees of the Courts below by raising following

substantial questions of law:

1. That the onus was on the defendant-vendee to prove that whether the plaintiff-appellant herein is estopped from filing the present suit for pre-

emption by his own act and conduct but defendant-vendee has miserably failed to discharge the onus and that being so whether the Courts below

are justified in law in dismissing the suit of the plaintiff-appellant herein?

2. That the onus to prove that the thumb impression on the alleged agreement to sell dated 8.1.1982 was that of Chandan appellant but having led

no evidence to prove said thumb impression on the agreement, whether the Courts below are justified in law in deciding issue No. 3 against the

plaintiff-appellant herein?

3. That it is well settled law that contract of sale by itself does not create any interest in or charge on such property (See Section 54 of the Transfer

of Property Act) so there cannot be any estoppel on the part of the plaintiff-appellant herein to file suit for pre-emption for the execution of the sale

deed by the vendor in favour of the vendee?

4. That to constitute waiver on the part of the pre-emptor, it has to be established that before effecting sale, property was offered for sale to pre-

emptor by the vendor and he refused to purchase the same by some word or action but in the present case no such evidence has been led by the

defendant-vendee and that being so the judgment and decree of the Courts below are not sustainable in the eyes of law?

13. The short controversy on which both the parties have argued is as to whether the plaintiff-appellant has waived his right of pre-emption.

14. In support of his case, learned Counsel for the appellant has argued that the mere fact that the pre-emptor had knowledge of the transaction is

not sufficient to hold waiver, when there is no explanation why the pre-emptor at the time of sale waived his right to purchase the suit land. It was

further argued that in order to prove waiver it was incumbent upon the vendees that the pre-emptor knew about the contents of agreement. The

contention of the learned Counsel for the appellant is that in the present case, the agreement of sale dated 8.1.1988 was not thumb marked by the

plaintiff. It has been argued that waiver means abandonment of a right and it may either be express or implied from conduct but its basic

requirement is that it must be an intentional act with knowledge and there can be no waiver unless the person who is said to have waived his right,

is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. It is further argued that there is no clear and

cogent evidence on record to justify the findings of the Courts below that the appellant has waived his right of preemption and the evidence on

record is not enough to prove that the appellant positively relinquished the enforcement of his right of pre-emption. It has been further argued that

the right of pre-emption is provided by statute and it cannot be held to be waived unless by word or action, the plaintiff has debarred himself from

exercising it.

15. However, on behalf of the respondents, it has been argued that there was a single agreement executed by the prospective vendors in favour of

vendees and pre-emptor Chandan Singh-appellant, for selling the land in equal shares and that agreement was thumb marked by Chandan himself

also as a prospective vendee and in this way he was a party to the agreement (Ex.D1). In addition to it, there is a receipt Ex.D2 which reveals that

the prospective vendors had received Rs. 15,000/- from Daryao Singh, Rajpal and Chandan and that receipt was also thumb marked by

Chandan. Chandan has not entered into the witness box to deny his thumb impression on the agreement and the receipt and he preferred to

examine his son Satbir as his Special Power of Attorney, who denied the thumb impression of Chandan on the agreement and receipt. Simple

denial on the part of Satbir is not sufficient as there is ample evidence adduced by the respondents from which agreement as well as receipt stand

proved. Moreover, the appellant did not specifically deny the contents of paragraph 3 of the written statement. Thus, from the conduct of the

appellant it stands proved that the appellant waived his right of preemption.

16. In the present case, it is not in dispute that agreement to sell Ex.D1 and receipt D-2 are thumb marked by the appellant though the same have

been denied by the appellant. There is evidence adduced by the defendants from which agreement as well as receipt stand proved. DW4 Mahabir

Parsad is the scribe of the agreement and receipt and he proved that Chandan had put his thumb mark on those documents. DW1 Raj Pal and

DW2 Raj Singh also made statements on oath regarding Chandan putting his thumb impressions on the agreement as well as receipt dated

8.1.1988. This agreement and the receipt were shown to have been thumb marked by Chandan in the written statement filed by the vendees. But

in replication Chandan did not specifically deny the contents of paragraph No. 3 of the written statement.

17. It is well settled that if the denial is not specific, the Court is entitled to draw an inference that the same stands admitted. The Hon"ble Supreme

Court of India in the case of M. Venkataramana Hebbar (D) by L.Rs. Vs. M. Rajagopal Hebbar and Others, has held that if a plea which was

relevant for the purpose of maintaining a suit had not been specifically traversed, the Court is entitled to draw an inference that the same had been

admitted and an admitted fact need not be proved.

18. The conduct of Chandan certainly amounts to waiver. By virtue of the agreement the defendant vendees and Chandan had agreed to purchase

the land out of khewat No. 181. The only inference that could be drawn from a joint agreement was that each of the three prospective vendees

would purchase the land in 1/3rd share each and in this way none of them would exercise any right of pre-emption regarding the land sold to

others.

19. On the case of Indira Bai v. Nand Kishore 1991(1) L.J.R. 186 (S.C.), on facts it was found that the respondent knew of the sale deed,

assisted the appellant in raising the construction and after the construction was completed he gave the notice for exercise of the right and filed a

pre-emption suit and on the basis of these facts, the Hon"ble Supreme Court of India held that the conduct of the respondent amounts to waiver

and the respondent cannot be permitted to defeat the right of the appellant as estoppel is good defence to the right of pre-emption which is weak

right and can be defeated by any legitimate method.

20. The facts of the case in hand are similar.

21. The Hon"ble Apex Court has approved Indira Bai's case (supra) in a subsequent judgment reported as P.A. Rahim and Anr. v. R.K.

Ravindran alias Ravichandran and Ors. 2005 S.T.P.L (LE) 37080 S.C.

22. In view of the above, I find no merit in these four appeals. No substantial question of law arises in the appeals.

23. No merit. Dismissed.