(2011) 02 P&H CK 0142

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 863 of 2011

Rakesh and Others		APPELLANT
	Vs	
Devi Dutt and Others		RESPONDENT

Date of Decision: Feb. 21, 2011

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Respondent No. 1-Plaintiff Devi Dutt filed preemption suit against proforma Respondents No. 2 and 3 (original vendees) who purchased the suit land measuring 42 kanals 7 marlas from Smt. Chhano vide registered sale deed dated 22.8.2005. Chhano was originally impleaded as Defendant No. 3 but was given up as unnecessary. Original vendees were impleaded as Defendants No. 1 and 2.

2. Plaintiff claimed right of preemption on the ground of tenancy over the suit land.

3. Defendants No. 1 and 2 denied the plea of tenancy raised by the Plaintiff.

4. Learned Additional Civil Judge (Senior Division), Jhajjar vide judgment and decree dated 19.5.2010 decreed the Plaintiff''s suit for possession by preemption of 19 kanals 18 marlas land out of the suit land, on which Plaintiff''s tenancy was held proved. Appellants herein claimed to be subsequent vendees from the original vendees/Defendants No. 1 and 2. Defendants No. 1 and 2 along with Appellants herein jointly filed first appeal against judgment and decree of the trial court. Learned Additional District Judge, Jhajjar vide judgment and decree dated 15.11.2010 has dismissed the said appeal. Feeling aggrieved, the instant second appeal has been preferred by the subsequent vendees only.

5. I have heard learned Counsel for the Appellants and perused the case file.

6. In jamabandi for the year 1950-51, Plaintiff''s father Jai Gopal was recorded to be in possession of the suit land (19 kanals 18 marlas for which suit has been decreed) as tenant. The said entry continued for more than four decades till the year 1993 when vendor Chhano was recorded in possession of the suit land in revenue record. However, again Plaintiff was recorded to be in possession of the suit land as tenant in the revenue record. The said entry was ordered to be corrected in favour of the vendor by the revenue officer vide order dated 9.4.1999. However, said order was successfully challenged by the Plaintiff by filing civil suit and again the revenue entry came to be recorded in favour of the Plaintiff. It is, thus, manifest that tenancy of the Plaintiff over the suit land for which the suit has been decreed is fully established by long standing revenue entries spreading over five decades. Stray entry in favour of the vendor in the year 1993 shall not carry any weight in these circumstances when the said entry was again changed in favour of the Plaintiff.

7. Learned senior counsel for the Appellants emphatically contended that the revenue officer on the basis of spot inspection ordered correction of khasra girdawari in favour of vendor vide order dated 9.4.1999 and therefore, it cannot be said that the Plaintiff was tenant over the suit land. The contention cannot be accepted. Mere order of correction of khasra girdawari passed by the revenue officer would not have the effect of terminating the Plaintiff''s tenancy. The Plaintiff (including his father) continued as tenant over the suit land for almost five decades as per revenue entries. Consequently, on the basis of order passed by revenue officer regarding correction of khasra girdawari, it cannot be said that the Plaintiff has ceased to be tenant over the suit land. Even the said order passed by the Assistant Consolidation Officer was successfully challenged by the Plaintiff in the civil court.

8. From the aforesaid, it is manifest that Plaintiff is proved to be in possession of the suit land as tenant and therefore, his preemption suit has been rightly decreed. There is concurrent finding by both the courts below regarding Plaintiff''s tenancy. The said finding is fully justified by the evidence on record and is supported by cogent reasons. The said finding is not shown to be perverse or illegal in any manner so as to warrant interference in the second appeal. The said finding is also not based on misreading and misappreciation of evidence. Consequently, the said finding does not give rise to any question of law much less substantial question of law for determination in this second appeal.

9. Learned Counsel for the Appellant next contended that in addition to the Plaintiff, there are also other heirs of Plaintiff''s father who was the original tenant and all the said heirs became tenant in common on the death of Plaintiff''s father but the suit has been filed by Plaintiff alone and therefore, the suit is not maintainable in view of Section 13 of the Punjab Pre-emption Act, 1913 (in short, the Act). The contention cannot be accepted. Section 13 of the Act is reproduced hereinunder:

13. Joint right of pre-emption how exercised.-Whenever according to the provisions of this Act, a right of pre-emption vests in any class or group of persons, the right may be exercised by all the members of such class or group jointly, and if not exercised by them all jointly, by any two or more of them jointly and, if not exercised by any two or more of them jointly, by them severally.

10. The aforesaid provision consists of three parts. First part states that all the tenants in common have to exercise the right jointly. Second part states that if all of them do not exercise the right jointly, two or more of them can exercise the right jointly. Third part states that if the right is not exercised by two or more jointly, then it can be exercised by them severally. Consequently, in view of third part of Section 13 of the Act, even one of the several tenants in common can exercise the right of preemption. To be fair to the counsel for the Appellant, he has brought to my notice judgment of this Court in Partap Singh and Anr. v. Kalu Ram 1969 CLJ 829 supporting the aforesaid view which I am taking. It is, thus, apparent that Plaintiff being one of the tenants-in-common was competent to exercise the right of preemption.

11. Learned Counsel for the Appellants next contended that vendor Chhano was given up although she was necessary party as it has been found that no notice prior to sale was given to the Plaintiff as required by Section 19 of the Act. The contention is devoid of substance because it has been consistently laid down by this Court that vendor is not necessary party in preemption suit.

12. For the reasons aforesaid, I find no merit in the instant second appeal which is accordingly dismissed in limine.