

(2013) 1 RCR(Civil) 181

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 4099, 4152 and 4154 of 2011

Satnam Singh and
Others

APPELLANT

Vs

Mohinder Singh and
Another

RESPONDENT

Date of Decision: May 3, 2012

Acts Referred:

- Punjab Pre-emption Act, 1913 - Section 30

Citation: (2013) 1 RCR(Civil) 181

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: C.B. Goel, for the Appellant;

Final Decision: Dismissed

Judgement

Tejinder Singh Dhindsa, J.

This judgment shall decide three regular second appeals bearing Nos. 4099, 4152 and 4154 of 2011 as the controversy in all the three appeals is identical. For the sake of brevity, the facts are being extracted from RSA No. 4099 of 2011. A suit filed by the plaintiff/appellant against the respondent/defendants for possession of land measuring 9 kanals, 4 marlas i.e. the suit land by way of pre-emption of sale vide deed dated 23.06.1999 has been dismissed by both the Courts below.

2. Briefly noticed, the suit was instituted by the plaintiff in terms of pleading that he was in possession of the suit land as a tenant under the owners since long time. The suit land was previously owned by Harinder Singh s/o Uttam Singh, Ranjit Kaur w/o Daljit Singh and d/o Uttam Singh and Harjit Singh s/o Uttam Singh, who were co-sharers and they had sold the same to the defendants vide registered sale deed dated 23.06.1999. It was pleaded that the plaintiff had no information with regard to the aforementioned sale deed. Plaintiff asserted that it was only in the first week of January, 2005 that the defendants

had come to the suit land to take possession and it was only thereupon that he became aware of the sale deed dated 23.06.1999. Against such factual background, the suit had been filed. The suit was contested by the defendants in terms of filing a joint written statement, wherein, a specific objection with regard to the suit being time barred was raised. The defendants claimed themselves to be owners in possession of the suit land since the date of purchase and it was also stated that the plaintiff had the knowledge of the sale deed dated 23.06.1999.

3. Upon the pleadings of the parties, the Trial Court framed the following issues:

1. Whether the plaintiff is entitled for possession by way of pre-emption of the suit land, as alleged? OPP

2. Whether suit is not maintainable? OPD

3. Whether suit has not been properly valued for the purpose of court fee and jurisdiction? OPD

4. Whether the suit is barred by limitation? OPD

5. Whether plaintiff has no locus standi to file the present suit? OPD

6. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD

7. Relief.

4. Upon due appreciation of evidence, the trial Court returned findings in terms of holding the plaintiff to be in cultivating possession of the suit land as a tenant as also having a preferential right of pre-emption as regards the sale vide sale deed dated 23.06.1999. However, the suit was dismissed holding the same to be barred by limitation. Aggrieved of the judgment and decree dated 15.12.2009 passed by the Trial Court, the plaintiff/appellant, Harinder Singh since deceased represented through legal representatives, preferred a civil appeal and the same has been dismissed vide impugned judgment dated 25.08.2011 passed by the District Judge, Yamuna Nagar at Jagadhari, thereby affirming the decision of the Trial Court.

5. Mr. Chatur Bhuj Goel, Advocate appearing for the appellants has been heard at length.

6. Learned counsel would contend that Courts below have erred in holding the suit filed by the appellants to be time barred and in regard thereto, has referred to Section 30 of the Punjab Pre-emption Act, 1913. Counsel would accordingly contend that as the mutation pertaining to the sale deed dated 23.06.1999 was admittedly sanctioned only on 19.01.2004 and as such, the suit having been filed on 18.01.2005 was well within the prescribed period of limitation.

7. I have given my thoughtful consideration to the submissions advanced by the learned counsel and have perused the case filed minutely.

8. Section 30 of the Punjab Pre-emption Act, 1913 would apply only where sales were effected not by registered deeds but were oral sales and were thus, evidenced by mutation. Mutation under such situation admittedly, did not pass title but were evidence towards an oral sale and u/s 30 of the Punjab Pre-emption Act, 1913 would be starting point of limitation.

9. Article 10 of the second schedule of the Indian Limitation Act provides a period of 1 year to enforce a right of pre-emption from the date, when the purchaser takes under a sale sought to be pre-empted physical possession of the whole of the property, sold or where the subject of the sale does not admit of physical possession. Such date would be instrument of sale registered. In the facts of the present case, the suit land in possession of the tenants i.e. the present appellants were incapable of physical possession and therefore, the terminus-a-quo would be the date of registration of the sale deed. Section 30 of the Punjab Pre-emption Act, 1913 would have no applicability to the facts of the present case.

10. For the reasons recorded above, I find no infirmity in the impugned judgments and decrees of the Courts below in holding the suit to be time barred as the same has been filed only on 18.01.2005, whereas, the starting point of limitation was the registration of the sale deed i.e. 23.06.1999. The second appeal must fail as it does not raise any question of law much less substantial question of law. For the reasons recorded above, the present second appeal is dismissed.

For the same reasons RSA No. 4152 of 2011 & RSA No. 4153 of 2011 are also dismissed.

Ordered accordingly.

A photocopy of this judgment be placed on the record of connected cases.