

(2011) 163 PLR 198

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3693 of 1986

Jagbir Singh and
another

APPELLANT

Vs

Rampat and others

RESPONDENT

Date of Decision: March 22, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 14, Order 20 Rule 14(1), 35A
- Land Acquisition Act, 1894 - Section 16, 6, 9

Citation: (2011) 163 PLR 198

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.

The defendants/vendees are in second appeal in a suit for preemption, which has been decreed by both the Courts below on the ground of superior right of co-sharer.

2. In brief, the plaintiffs filed suit for possession by way of preemption claiming a superior right of co-sharer in respect of land measuring 15 Kanals 13 Marias situated in Badh Malik, Sonapat, which was sold by vendor/defendant No3 to the vendees/defendants No.1 & 2 for a consideration of Rs.22,000/- vide registered sale deed 8.1.1982. The vendees contested the suit only on the ground that the plaintiffs are not co-sharers and thus, have no locus standi. On the pleadings of the parties, issues were framed on 31.8.1984, which reads as under:

"1. Whether the plaintiffs have superior right of pre-emption? OPP

2. Whether the defendants are entitled to stamp & registration charges? OPD

3. Whether the suit is time barred? OPD

4. Whether the proper court fee has not been affixed on the plaint? OPD

5. Whether the defendants are entitled to special costs u/s 35-A of CPC? OPD

6. Relief."

3. The learned trial Court vide its judgment and decree dated 15.9.1986 decreed the suit of the plaintiffs for possession in respect of land bearing Kilia No. 10/3(7-4), 8(7-12), 13/2(0-17), measuring 15 Kanals 13 Marias on payment of Rs.25,100/- (Rs.22.000/- as sale price Rs.2,750/- as stamp charges Rs.288.75/- as registration charges and Rs.61.25 as incidental expenses) on or before 1.10.1986 and it was made clear that in case of default of non-payment of aforesaid amount his suit would be deemed to be dismissed. Aggrieved against the judgment and decree of the learned trial Court, pursuant to which plaintiffs were required to deposit the amount of Rs.25,100/- in the stipulated time, the vendees filed First Appeal in which finding of the trial Court was assailed only on issue No.1 that the plaintiffs were not co-sharers and had no superior right to preempt the sale. The learned Appellate Court modified the judgment and decree of the learned trial Court only to the extent that vendor had sold 7 Kanals 16 Marias of land in stead of 15 Kanals 13 Marias, therefore, the decree shall be deemed to be in respect of 7 Kanals 16 Marias of land. With this modification, the appeal of the vendees was dismissed on 6.11,1986. The vendees preferred second appeal in this Court which was admitted on 8.1.1987 and their dispossession was stayed. During the pendency of this appeal, the plaintiffs filed CM No.11661-C-2008 for the purpose of seeking exemption from filing certified copies of Annexures P1 and P2 and for taking them on record and CM No.11662-C-2008 for stay. Notice in the application CM No.11662-C-2008 was issued on 4.12.2008 for 8.12.2008 and on that day it was agreed between the parties that the main appeal may be decided and the application shall be heard with the main appeal.

4. I had heard the arguments of both the learned counsel for the parties in this case and reserved the judgment on 18.3.2011.

5. Since CM No.11661-C-2008 was not earlier disposed of therefore, the same is hereby allowed as prayed for. In CM No.11662-C-2008, it is alleged by the plaintiffs that during the pendency of this appeal the land in dispute stood acquired vide notification dated 20.10.2006 issued u/s 6 of the Land Acquisition Act, 1894 (for short "the Act") for the public purpose, namely, development of Industrial Sector 38. It is also alleged that the compensation of the acquired land is likely to be disbursed to the vendees who have been shown to be the interested persons in terms of Section 9 of the Act, which is evident from the notice (Annexure A-I), which has been taken on record while allowing CM No.11661-C-2008. It is thus, prayed in CM No.11662-C-2008 that the disbursement of compensation arising out of the acquired land to the vendees may be stayed during the pendency of this Appeal.

6. The fate of this application, which was ordered" to be, heard along with the main case depends upon the decision of the main appeal.

7. In the normal circumstances, there was hardly anything for the vendees/appellants to argue in second appeal on the right of the pre-emptor, which has been found by both the Courts below in favour of the plaintiff that he was a co-sharer with the vendor in the land in dispute and maintained his status at the time of sale, suit and trial Court decree but in this case since the land has been acquired before the possession could have been delivered to the plaintiffs against the amount which they had deposited in terms of the decree of the learned trial Court the question raised by learned counsel for the appellant is that "can a decree for possession by way of pre-emption be passed if the land in dispute stands acquired? " He also raises an issue that whether right of a pre-emptor survives in case of non-delivery of possession due to acquisition of land in dispute. It is argued by learned counsel for the petitioners that Order 20 Rule 14(1)(b) of the Code of Civil Procedure, 1908 (for short "CPC") clearly provides that on the deposit of the decretal amount directed by the trial Court the defendant has to deliver possession of the property and in case the- possession cannot be delivered due to the acquisition of land, the pre-emptor loses his right of pre-emption. In this regard, he has relied upon a decision of the Supreme Court in the case of [Dattaraya Tawalay Vs. Shaikh Mahboob Shaikh Ali and Another](#), . He also submits that since preemption is a practical right, therefore, vendee can defeat it in all possible means and ways. In this regard he has relied upon a decision of the Supreme Court in the case of [Radhakisan Laxminarayan Toshniwal Vs. Shridhar Ramchandra Alshi and Others](#), .

8. On the contrary, learned counsel for the respondents has submitted that as soon as the pre-emptor deposits the decretal amount in terms of the trial Court decree, title and ownership accrues in favour of the pre-emptor from such date of payment and he becomes the owner for all intents and purposes of the pre-empted property and once he becomes the owner, it hardly makes any difference to him whether he can obtain the possession or not due to the acquisition of land as he would be entitled to claim compensation of the said land being the owner. In this regard, he has relied upon a decision of the Supreme Court in the case of Shyam Sunder and another v. Ram Kumar and another, 2001(3) R.C.R. (Civil) 754 , Single Bench judgment of this Court in the case of [Roshan Lal and Others Vs. Sadhu and Another](#), and a decision in R.S.A. No. 815 of 1984 titled as Sher Singh v. Kewal Krishan, decided on 11.9.1996.

9. In order to appreciate the controversy, it would be relevant to refer to Order 20 Rule 14 of CPC, which provides for a decree in pre-emption suit. Order 20 Rule 14 is reproduced as under:

"14. Decree in pre-emption suit- (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase - money has not been paid into Court, the decree shall -

(a) Specify a day on or before which the purchase - money shall be so paid and

(b) Direct that on payment into Court or such, purchase - money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase - money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

2. Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct-

(a) If and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect;

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions"

10. According to the above provision, where the Court decrees a suit for pre-emption and the purchase money has not been paid into Court, the Court shall draw a decree in which a period shall be specified for the purpose of deposit of purchase money and also that on deposit of the purchase money the defendant shall deliver possession of the preempted property to the pre-emptor whose title to that property would accrue from the date of payment. It also provides that if the purchase money and the cost, if any, are not paid as stipulated in the decree then the suit of the pre-emptor would stand dismissed with costs. Thus, the provisions of Order 20 Rule 14 are though procedural, but are mandatory in nature as it takes away a substantive right as it put a sanction in respect of the substantive right which accrues to the pre-emptor in the event of the decree in his favour.

11. In the present case, there is no dispute that the plaintiff had deposited the decretal amount as directed by the trial Court because it was not raised as an issue by the vendees either before the First Appellate Court or before this Court. The question is thus, whether by depositing the amount of purchase money, the pre-emptor had become the owner of the property in dispute, which does not depend upon delivery of possession. This view has been taken by this Court in R.S.A. No.161 of 1984 titled as Tek Singh (Dead) through his LRs and others v. Partap Singh minor through his guardian Hazura Singh and others, decided on 21.2.2011. The same view has been taken by the Supreme Court in the Case of Shyam Sunder and another (supra) in which it has been held that

"It was argued by learned counsel for the appellant that an appeal being continuation of suit, the appellate court is required to notice and consider the subsequent event, namely,

loss of qualification by the pre-emptor during pendency of an appeal. In fact, argument is that where a co-sharer loses the right to pre-empt during pendency of appeal the pre-emptor's suit must fail. It is no doubt true that in certain context an appeal is continuation of suit and appellate court is rehearing the suit, but such wide appellate power has not shown to be exercised to affect the vested right of a pre-emptor. It is not disputed that a claimant's right to get the property in preference to the vendee is an inchoate one upto the date of adjudication of the suit but it becomes effective as soon as a decree is passed in his favour. Order 20 sub-rule (1) of Rule 14 CPC provides that where a court decrees a claim to pre-empt in respect of a particular sale of property and a decree holder has deposited the purchase money along with the cost of the suit in the Court, the vendee is required to deliver possession of the property to the decree holder and title to the property stands transferred in favour of claimant. In view of said provision, on deposit of purchase money in the Court by the claimant the right and title to the property vest in pre-emptor and it becomes vested right of the pre-emptor. The right of pre-emption prior to decree may be weak but after it becomes vested right, it can only be taken away by known method of law. The loss of qualification of pre-emptor or Vendee acquiring status above to pre-emptor during pendency of appeal cannot be allowed to influence the Court as a Court of Appeal is mainly concerned with the correctness of the judgment rendered by the Court of first instance. As earlier noticed that an appellate court is entitled to take into consideration subsequent event taking place during pendency of appeal and a Court in an appropriate case permits amendment of plaint or written statement as the case may be but "such amendment is permitted in order to avoid multiplicity of proceedings and not where such amendment causes prejudice to the plaintiffs vested right rendering him without remedy. It is thus only those events which have taken place or rights of the parties prior to adjudication of pre-emption suit and which the trial court was entitled to dispose of, can only be taken into consideration by the appellate court. We find support of our view from decision in *Sakina Bibi v. Amiran* (supra) wherein the High Court of Allahabad held that a Court of Appeal was only required to see, whether the trial court had wrongly dismissed the claim of pre-emptor and it is irrelevant that during the pendency of appeal land was sold in an execution proceeding in another suit. In a pre-emption case where an appeal is filed against the decree of court of first instance, the scope of appeal is confined to the question whether the decision of the trial court is correct or not. This being the legal position which held that field for over a century any subsequent event taking place during pendency of appeal cannot be allowed to be taken into consideration by the appellate court otherwise it may displace the case of a pre-emptor".

12. Similarly in the case of *Roshan Lal and another* (supra) an equivalent view was taken and in the case of *Sher Singh* (supra) this Court had held that the right of the parties are supposed to be determined in a suit for preemption on the date of sale, on the date of filing of suit and on the date of decree and any transaction during the pendency of the proceedings would not effect the right of the pre-emptor which would crystallize on the date of decree even if the land which is sought to be pre-empted is acquired. The

judgment, which has been relied upon by learned counsel for the appellants in the case of Radhakishan Laxminarayan Toshniwal (supra) only provides that preemption is a piratical right and there are no equities in favour of a pre-emptor, whose sole object is to disturb a valid transaction by virtue of the rights created in him by Statute. This judgment at its juncture would not help the appellants because the decree has already been drawn by the learned trial Court in favour of the pre-emptor, who has also complied with the decree as a result of which right of ownership in the pre-empted property has accrued in his favour which made him the owner. Insofar as the second judgment in the case of Dattatraya (supra) is concerned that judgment is not applicable to the facts and circumstances of this case because in that case the appellant was the pre-emptor, who got a decree in March 1945 against the payment of balance sale consideration of Rs.5,000/- within six months in consequence of which he was to put in possession by the vendee. The vendee filed an appeal before the District Court but it was confirmed on 28.1.1955. The amount of Rs.5,000/- was deposited by the pre-emptor on 20.12.1954 within time granted in the trial Court decree but it was subsequently withdrawn under the orders of the Court. The District Judge further directed the pre-emptor to deposit the sum of Rs.5,000/- on or before 30.4.1955 and also directed the vendees to deliver the possession simultaneously. There was also a condition that in case the amount is not paid on the due date the suit shall stand dismissed with cost. The vendees filed second appeal in the High Court and pending disposal of the appeal prayed for stay of execution of decree which was granted on 23.3.1955 by which execution of the decree of lower Appellate Court was stayed. The said order was received by the trial Court on 19.4.1955 and the pre-emptor, who was to deposit Rs.5,000/- on or before 30.4.1955 in terms of the order of the lower appellate Court made a default but he deposited the said amount on 2.5.1955. He then filed an application giving an excuse for not depositing the amount on or before 30.4.1955 on the ground that he fell ill yet the vendees' second appeal was dismissed by the High Court on 6.10.1960 and the pre-emption decree in favour of the appellant was confirmed. On 3.2.1961, the pre-emptor filed an application for possession, which was delivered to him but on 8.2.1961 the vendee filed an application in the Executing Court for restitution of possession on the ground that the pre-emptor had defaulted in depositing the purchase money on or before 30.4.1955 as required by the Appellate Court decree. The said application was contested by the pre-emptor on the ground that there was a stay order by the High Court in the second appeal and after the dismissal of the second appeal by necessary implications he got a fresh starting point for depositing the purchase money. The Executing Court dismissed the claim of the vendees for restitution and allowed it to proceed on behalf of the pre-emptor. This order was challenged before the District Court, which dismissed the appeal and confirmed the order of the Executing Court and then the matter was taken in the second appeal to the High Court of Bombay, who differed with the order of the District Court and allowed the appeal of the vendees. It was opined by the High Court that since there was a default on the part of the pre-emptor in depositing the purchase money, therefore, his suit stood dismissed automatically and the pre-emptor was not entitled to possession in the enforcement of preemption decree. Thus, the question arose before the Supreme Court as to whether the

High Court was right in taking the view that effect of stay order dated 23.3.1955 was merely to stay the delivery of possession by the vendees and was not a stay regarding the deposit of purchase price by the pre-emptor. In this view of the matter, the Supreme Court held that the High Court had committed an error because the decree framed under Order 20 Rule 14 of the CPC declares reciprocal rights and obligations between the parties as the rules says that on payment of purchase money in the Court, the vendee shall deliver possession of the property to the pre-emptor and as such the decree imposes obligations on both sides and they are so conditioned that performance by one is conditional on performance by the other. This judgment which has been strongly relied upon by the learned counsel for the appellants is not at all applicable to the facts and circumstances of the case because this was a case where due to operation of stay, not only the delivery of possession of the vendee was stopped but also payment of balance sale consideration by pre-emptor was stopped because it was held that both are reciprocal. Admittedly, it is not the dispute in the present case.

13. It is well settled that pre-emption is a right of substitution. After the pre-emptor acquires the decree, name of the vendee is rubbed from the sale deed and is replaced by that of the pre-emptor. Meaning thereby, the pre-emptor steps into the shoes of the vendee insofar as the land in dispute is concerned. If there is a difficulty in getting the possession of the pre-empted land because of its acquisition, it is not necessary that possession should be delivered to him as the land would be deemed to have been acquired in the hands of the pre-emptor because his title had accrued immediately the moment he deposits the pre-emption amount as directed in the decree. Looking from another angle, had the land acquired during the pendency of the suit which is sought to be pre-empted, then the pre-emptor would have no right to the property because by that time he would not have become the owner of the land which would have vested in the acquiring authorities free from all encumbrances by virtue of Section 16 of the Land Acquisition Act but once there is a decree in his favour, which has been complied with, the pre-emptor becomes the owner of the pre-empted property for all intents and purposes and is entitled to its compensation if it is acquired.

14. In view of the above discussion, I do not find any merit in the present appeal and as such the same is hereby dismissed with costs through out. The application CM No. 11662-C-2008 is also allowed and the acquiring authority much less District Revenue Authorities-cum-Land Acquisition Collector, Sonapat is directed not to disburse the amount of compensation to any other person but for the pre-emptors