

(2013) 10 P&H CK 0355

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 904 of 1987

Nar Singh and Others

APPELLANT

Vs

Balkar Singh and Others

RESPONDENT

Date of Decision: Oct. 8, 2013

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

Bench: Single Bench

Advocate: R.S. Tacoria, for the Appellant; R.M. Singh, Advocate for Respondents No. 1 to 4, Mr. S.S. Swaich, Advocate, Respondents No. 6 and 7 and Mr. Deepak Girotra, Assistant Advocate General, Haryana for Rajbir Singh - Respondent No. 1 (in CM No. 4640-C of 2007), for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Plaintiffs having failed in both the Courts below have filed this regular second appeal, assailing judgments and decrees of both the lower Courts. Plaintiffs filed suit for preemption of the suit land claiming preferential right of preemption on the ground of being co-sharers in the joint land of which the suit land was share. Respondents No. 1 to 4/vendees resisted the suit. During pendency of instant second appeal, respondents No. 1 to 4 have further sold the suit land and said subsequent vendees have been impleaded as respondents No. 6 and 7 vide order dated 19.12.2008.

2. I have heard counsel for the parties and perused the case file.

3. Trial Court dismissed the suit vide judgment and decree dated 20.8.1986. It is undisputed that plaintiffs had to maintain their superior rights of preemption till date of decree of the trial Court i.e. till 20.08.1986. However, during pendency of the suit, Assistant Collector Second Grade vide order date 03.03.1986 Exhibit P-8 ordered final partition of the joint land in question. It was also stipulated that appeal could be preferred up to 02.04.1986. Appeal against the said order was dismissed by

the Collector vide order dated 30.04.1986. Thereupon vide order dated 07.05.1986 Exhibit D-1, Sanad Takseem (instrument of partition) Exhibit D-2 of even date was prepared and issued.

4. Counsel for the appellants contended that plaintiffs had preferred further revision petition before Financial Commissioner who vide order dated 26.05.1986 Exhibit P-7 stayed operation of order dated 30.04.1986 passed by the Collector and the said stay order was operative on 20.08.1986 the date of decree of trial Court and, therefore, joint status of the suit land and status of the plaintiffs as co-sharers continued till decree of the trial Court and, therefore, the plaintiffs are entitled to preempt the sale of the suit land. Reliance has been placed on Division Bench judgment of this Court in the case of [Pritam Singh Vs. Jaskaur Singh](#),

5. On the other hand, counsel for respondents contended that joint status of the suit land was severed and plaintiffs ceased to be co-sharers in the suit land with the issuance of instrument of partition on 7.05.1986 i.e. during pendency of the suit and, therefore, plaintiffs did not retain their preferential right of preemption till 20.08.1986, the date of decree of the trial Court and consequently suit filed by the plaintiffs has been rightly dismissed by both the Courts below. Reliance has been placed on Division Bench judgment of this Court in the case of Har Devi versus Ram Jas and others, 1974 PLJ, 345.

6. I have carefully considered the rival contentions. In view of admitted factual position, it is apparent that joint status of the suit land came to an end on 15.06.1986, the date from which instrument of partition dated 07.05.1986 was to be effective after harvest of Rabi 1986 crop. Stay order dated 26.05.1986 issued after issuance of instrument of partition could not revive the joint status of the suit land or status of the plaintiffs as co-sharers. Moreover, Financial Commissioner vide order dated 26.05.1986 stayed operation of only order dated 30.04.1986 passed by the Collector but did not stay operation of order dated 03.03.1986 passed by the Assistant Collector regarding partition of the suit land nor stay operation of instrument of partition dated 07.05.1986. Consequently, the plaintiffs ceased to be co-sharers in the suit land after 15.06.1986 when the instrument of partition dated 07.05.1986 became operational. In other words, plaintiffs were not co-sharers in the suit land on 20.08.1986 date of decree of the trial Court and, therefore, they had no right to preempt the suit land.

7. Judgment in the case of Pritam Singh (supra) cited by counsel for appellants also does not help them because even according to the said judgment, joint status continues till the date specified in the instrument of partition. In the instant case, therefore, the joint status continued till harvest of Rabi 86 crop i.e. till 15.06.1986 only as specified in instrument of partition dated 07.05.1986. Consequently, even according to this judgment, plaintiffs were not co-sharers in the suit land on 20.08.86, the date of decree of the trial court.

8. Division Bench judgment in the case of Har Devi (supra) cited by counsel for respondents is directly applicable to the instant case. In that case, instrument of partition was prepared by the Assistant Collector during pendency of appeal preferred against the partition order passed by the Assistant collector. The appeal was subsequently dismissed as not pressed. It was held that plaintiff had lost her right of preemption when instrument of partition was prepared. It was also held that the order of partition remained alive and whatever happened pursuant to it could not be just wiped out since the appeal against the partition order had been dismissed. In the instant case, counsel for the appellants having sought instructions stated that revision petition preferred by the plaintiffs/appellants in the partition case was dismissed by the Financial Commissioner in the year 1990. Consequently, the partition order passed by the Assistant Collector remained alive and instrument of partition also remained alive and became operative w.e.f. 15.06.1986. Thus examined from any angle, the plaintiffs did not retain their superior right of preemption till date of decree of the trial Court. Consequently, pre-emption suit filed by the plaintiffs has been rightly dismissed by the Courts below.

9. In the aforesaid context, it may also be noticed that right of preemption is a piratical right. Even if two view are possible, the view against the preemptor has to be accepted. Consequently in the instant case also, even assuming for the sake of argument only that two views wee possible, the view against plaintiffs/preemptors has been rightly accepted by the Courts below. However, I may add that the only reasonable view that is possible in the instant case is that the plaintiffs had ceased to be co-sharers in the suit land during pendency of the suit due to partition of the joint land and, therefore, the plaintiffs had no right of preemption.

10. For the reasons aforesaid, I find no merit in this second appeal. Preemption suit filed by the appellants has been rightly dismissed by the Courts below. No substantial question of law arises for determination in this second appeal nor any such question is mentioned in the grounds of appeal to be arising in this second appeal nor mentioned in the order of admitting the appeal. Accordingly the appeal is dismissed, leaving, however, the parties to suffer their respective costs throughout. Pending miscellaneous application, if any, is disposed of as infructuous.