

(2014) 07 P&H CK 0844

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 4145 of 2008 (O&M)

Ranjit Singh

APPELLANT

Vs

Maharaj Singh

RESPONDENT

Date of Decision: July 31, 2014

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Anuj Balian, Advocate for the Appellant; Vineet Chaudhary, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Rajesh Bindal, J.

The plaintiff is before this court against concurrent findings of fact recorded by both the courts below, whereby the suit for possession by way of pre-emption filed by him was dismissed.

2. Briefly, the facts, as noticed by the learned courts below, are that the plaintiff claimed himself to be a tenant on the suit property. As the owner thereof had sold the same, suit for pre-emption was filed. The preemption was claimed by mentioning the following khasra numbers:

Khewat/Khatuni No. 20/36 to 41, khasra Nos. 26/12(6-17), 8//11/2(1-8), 6//22/1 min (1-19), 8/1 min (1-1), 8/10(4-8), 8//11/1(2-5), 6/19(1-10), 6//22/1(0-13), and khewat No. 50, khatauni Nos. 93 to 97, khasra Nos. 26/11(8-0), 26/18(0-6), 26/20(8-0), 26/13(0-7), 8//2/1(1-1), 8//2/1(0-2) and khewat No. 56 khatauni Nos. 104 to 115, khasra Nos. 40(0-7), 25//15/2(4-0), 27/1(4-0), 25/25 min (5-16), 26/21(7-11), 26/22(0-12), 41(0-8), 25/24 min (2-4), 28/5 min (2-12), 28/4 min (0-19), 28/4 min (0-4), 25/24 min (5-16), 25/25 min (2-4), 28/4 min (6-17), 28/5 min (5-8), total measuring 49 kanals 8 marlas and the land measuring 2 K-18 M, out of the land measuring 7 K-8 M bearing Khewat/Khatauni No. 18/29, Khasra No. 21/21(7-8) situated at village Bhukhari Hadbast No. 130 Tehsil Naraingarh, Distt. Ambala as detailed in described in the sale

deed dated 30.4.1997 bearing document No. 188/1, on payment of Rs. 72000/-.

3. Both the courts below found that the appellant had not been able to prove himself to be a tenant on the property measuring 4 kanals 19 marlas of land, as the appellant failed to establish that he had been paying any batai though was recorded as a tenant on the suit property. Further, the appellant was non-suited on the ground that in the sale deed registered in his favour, specific khasra numbers of which pre-emption was claimed, had not been mentioned. As far as 2 kanals and 18 marlas of land is concerned, even in the revenue record, the appellant was not shown to be the tenant. During the pendency of the suit, he filed application before the revenue authorities for correction of khasra girdawaris, which proceedings are still stated to be pending at some stage.

4. Learned counsel for the appellant submitted that the learned courts below had gone wrong in not perusing the jamabandis on record. In fact, those have been misread. In the jamabandis, the appellant had been clearly shown to be in possession of the suit property as a tenant under the vendor on 1/3rd batai. The vendor had deliberately not mentioned the khasra numbers in the sale-deed as he merely mentioned khata and khatauni numbers. There is a presumption of truth in favour of the revenue record. Once it is mentioned in the revenue record that the appellant was a tenant on 1/3rd batai, there was no requirement of proving that actually any amount was being paid or crop was being shared. No challenge has been made to rejection of the claim for pre-emption pertaining to 2 kanals 18 marlas of land, for which the revenue record produced on record was not showing the appellant to be the tenant on the suit property as even the application for correction of khasra girdawari was made during the pendency of the civil suit, the proceedings for which are still stated to be pending before the authorities. Learned counsel submitted that he is not pressing his claim for 2 kanals and 18 marlas of land and restricting the same to only 4 kanals and 19 marlas of land. In support of the arguments, reliance was placed upon the judgment of Hon"ble the Supreme Court in [Ram Chand Vs. Randhir Singh and others](#), and this court in [Smt. Ratni Devi Vs. Chankanda Ram and Another](#),

5. On the other hand, learned counsel for the respondents submitted that in fact the appellant was not a tenant on the suit property. There were certain stray entries in the revenue record, which could not be relied upon for the purpose. He had to prove that he was tenant before the suit was filed, at the time when the suit was filed and also at the time of passing of the decree. In fact, the respondents-defendants are in possession. There is no evidence led by the appellant that he ever paid rent or batai to the landlord. In the absence thereof, he cannot claim himself to be the tenant. Reliance was placed upon a judgment of this court in *Chhelu Ram v. Dan Singh and others*, 2010(2) RCR (Civil) 705.

6. Heard learned counsel for the parties and perused the paper book.

7. In the case in hand, as is evident from the sale deed registered in favour of the respondents, a portion of land, which has been sold to the appellant is out of a big chunk of land, in which there are number of share holders. The chunk has not been divided as yet. No doubt, some of the co-owners have been shown to be in possession of some portions of land, however, still till such time the land is divided by metes and bounds, every co-sharer is supposed to be in possession of every portion of land. The appellant herein has been sold two pieces of land measuring 4 kanals and 19 marlas and 2 kanals and 18 marlas. His claim is that in the revenue record produced, he is being shown as a tenant on 1/3rd batai under the vendor, who has been shown to be in possession thereof. In the ownership column, Mushtarka Malkan has been mentioned with number of share-holders having different share holdings. Though pertaining to part of the land sold, the appellant has referred to the revenue record showing him to be in possession as a tenant on 1/3rd batai under the vendor, however, on part of the land he has not been able to show his tenancy. His claim to that extent pertaining to 2 kanals and 18 marlas is not even being pressed. Meaning thereby, the claim for pre-emption is being restricted to 4 kanals and 19 marlas of land, even though the sale deed is one pertaining to 7 kanals and 17 marlas of land. The same can be termed to be partial pre-emption, which cannot be permitted in terms of the judgment of Full Bench of this court in [Banta Singh Ganga Singh and Others Vs. Harbhajan Kaur and Others](#),

8. In view of the aforesaid facts, I do not find any reason to interfere with the concurrent findings of fact recorded by both the courts below on proper appreciation of evidence. No substantial question of law arises in the present appeal.

9. Accordingly, the appeal is dismissed. Consequently, the accompanying applications are also dismissed.