

HIGH COURT OF PUNJAB & HARYANA**Bench: Justice Deepak Gupta****Date of Decision: 01.07.2024**

Case No.: RSA-1685-1989 and RSA-1686-1989

APPELLANT(S): Lehri Ram and OthersAppellants**VERSUS****RESPONDENT(S): Godha Ram and OthersRespondents****Legislation:**

Section 44 of the Punjab Land Revenue Act, 1887

Section 8 of the Punjab Security of Land Tenures Act, 1953

Section 15 of the Punjab Preemption Act, 1913

Subject: Regular Second Appeals concerning pre-emption rights over agricultural land sales, involving tenancy claims and co-sharer rights.**Headnotes:**

Pre-emption Rights – Tenancy and Co-sharer Claims – Plaintiffs sought to pre-empt a sale based on tenancy claims over the suit land – Defendants claimed superior rights as tenants in possession – Rival pre-emptors, Samey Singh and Partap, also filed suit claiming rights as co-sharers and tenants.

Tenancy Rights – Evidence and Presumptions – Trial court and first appellate court found that plaintiffs failed to prove tenancy rights – Defendants Samey Singh and Partap found to be in possession as tenants – Presumptions under Section 44 of Punjab Land Revenue Act discussed.

Co-sharer Rights – Superior Right to Pre-empt – Samey Singh and Partap established as co-sharers by virtue of a prior sale deed – Court upheld their superior right to pre-empt the sale under Section 15 of the Punjab Preemption Act, 1913 – Tenancy rights of plaintiffs not supported by evidence.

Concurrent Findings – Scope of Second Appeal – Concurrent findings of lower courts based on proper appreciation of evidence – High Court cannot interfere with such findings unless specific exceptions are met – Reference to Supreme Court judgments on the scope of second appeals.

Decision: Appeals dismissed. Lower courts' judgments affirmed. Plaintiffs' suit to pre-empt the sale dismissed. Rival pre-emptors Samey Singh and Partap's suit decreed, affirming their right to pre-empt based on co-sharer status.

Referred Cases:

- Kondiba Dagadu Kadam vs Savitribai Sopan Gujar (1999) 3 SCC 722
- Sir Chunilal V. Mehta and Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314
- P. Chandrasekharan and Others vs S. Kanakarajan & Others, 2007(3) RCR(Civil) 543

DEEPAK GUPTA, J.

These two Regular Second Appeals have been filed against a common judgment dated 22.02.1989 rendered by First Appellate Court of District Judge, Rohtak, whereby, two appeals bearing CA No.43/13 of 1988 and CA No.44/13 of 1988 were dismissed.

2. Following facts are relevant to be noticed: -

(i) Lal Chand, by virtue of a sale deed dated 11.11.1982, sold the suit property comprised in Khasra No.353 measuring 2 kanal 11 marla in favour of Godha Ram for consideration of ₹3000/-. The said sold land was part of Khewat No.30 Khatauni No.165 as per Jamabandi for the year 1979- 80. Plaintiffs- Lehri Ram etc. sought to pre-empt the said sale by bringing Civil Suit No.37 of 1983, on the ground that they were tenants on the said land.

(ii) Defendant Godha Ram resisted the suit by denying the right of the plaintiffs to seek pre-emption. According to him, it is Samey Singh & Partap sons of Rama, impleaded as defendants No.3 & 4, who were in possession of the suit land as tenants and therefore, plaintiffs did not have the right to pre-empt. Plaintiffs were also denied to be tenants on the suit land.

(iii) Defendants No.3 & 4 i.e. Samey Singh & Partap in their

separate written statements claimed to be in possession of the land in dispute in dual capacity i.e. as co-sharers as well as tenants and further pleaded that they had already filed an independent suit seeking pre-emption of the sale in question. They also denied the right of the plaintiffs to pre-empt the sale.

(iv) Abovesaid defendants No.3 and 4 i.e. Samey Singh & Partap also filed independent suit bearing No.57 of 1983 seeking to pre-empt the sale deed dated 11.11.1982 on the basis that they were the cosharers and tenants over the suit land.

(v) Both suits were consolidated. Necessary issues were framed. The material issue before the trial Court was as to whether the plaintiffs had the superior right to pre-empt the sale in question; or whether, it was the rival pre-emptors Samey Singh etc., who were entitled to pre-empt the sale in question.

(vi) After taking evidence produced by both the parties, trial Court concluded that plaintiffs had failed to prove their superior right to pre-empt the sale in question, as they had failed to prove that they were the tenants in possession over the suit land at the time of execution of the sale deed. It was further found that it is the rival pre-emptors i.e. Samey Singh etc., who were in possession of the suit land as tenants. Trial Court also observed that rival

pre-emptors Samey Singh etc. had failed to produce oral or documentary evidence to show them to be co-sharers in the land. However, by holding that they were the tenants, their superior right to pre-empt the sale in question was upheld. As such, the suit filed by the plaintiffs of Civil Suit No.37 of 1983 i.e. Lehri etc. was dismissed; whereas, the suit filed by the rival preemptors Samey Sigh etc. i.e. Civil Suit No.57/1983 was decreed vide common judgment dated 26.11.1987.

(vi) This led to filing of the two separate appeals by Lehri etc. Civil Appeal No.43 of 1988 was filed by the plaintiffs against dismissal of their suit to pre-empt the sale; whereas Appeal No.44 of 1988 was filed against decreeing the suit of the rival pre-emptors Samey Singh etc. The first Appellate Court of District Judge, Rohtak upheld the findings of the trial Court on all the issues and dismissed both the appeals by common judgment dated 22.02.1989.

3. The dismissal of the aforesaid two appeals has led to filing of these two Regular Second Appeals, against concurrent findings of the courts below.

4.1 It is contended by Id. counsels that both the Courts below have failed to take note of the fact that in Jamabandi for the year 1979-80, it is Sukh Lal, the father of plaintiffs, who was recorded to be tenant in possession of the suit land. Merely because said Sukh Lal had expired in 1955, as was admitted by the plaintiff during his cross-examination, could not be a reason to ignore the entries in Jamabandi for the year 1979-80, which carries presumption of truth under Section 44 of the Punjab Land Revenue Act, 1887. Ld. counsel contends that Section 8 of the Punjab Security of Land Tenures Act, 1953 provides for continuity of tenancy and simply because Sukh Lal had expired in 1955 and after his death the entries in revenue record were not changed in favour of his sons i.e. plaintiffs, would not mean that plaintiffs were not in possession of the suit land.

4.2 Ld. counsel further contended that rival pre-emptors Samey Singh etc. had failed to place on record any document showing payment of rent etc. to the owner/landlord-Lal Chand and therefore, their tenancy rights could not be upheld and as such, the Courts below failed to appreciate the evidence on record and wrongly dismissed the suit of the plaintiffs and wrongly decreed the suit of the rival pre-emptors.

5. On the other hand, contention of Id. counsel for the contesting respondents-rival pre-emptors is that findings of the Courts below is concurrent based on

proper appreciation of evidence and that this Court in Regular Second Appeal, cannot disturb the concurrent findings of facts.

6. Submissions made by Id. counsels for both the sides have been considered and record of the trial Court perused.

7. The findings of the Courts below to the effect that plaintiffs failed to prove their tenancy on the suit land and rather, it is the rival preemptors Samey Singh etc. who were the tenants on the suit land, is a finding of fact based upon proper appreciation of evidence. There is no reason for this Court to disturb the said finding of fact.

8. In ***Kondiba Dagadu Kadam vs Savitribai Sopan Gujar 1999 (3) SCC 722***, it has been held by Hon'ble Supreme Court that: "It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this Section. The substantial question of law has to be distinguished from a substantial question of fact. This Court in ***Sir Chunilal V. Mehta and Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.***, AIR (1962) SC 1314 held that :-

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law."

It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject

witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances, two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

9. In another case titled “**P. Chandrasekharan and Others vs S. Kanakarajan & Others**” reported as 2007(3) RCR(Civil) 543, it has been held by the Hon'ble Supreme Court that though as a general rule, High Court will not interfere with the concurrent findings of the Courts below, but it is not an absolute rule. Some of the well recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.
10. In present case, none of the exceptions are found to exist so as to interfere in the concurrent findings.
11. Apart from the fact that there is concurrent finding of fact, there is another reason, overlooked by both the Courts below, for which these appeals deserve to be dismissed.
12. As noticed earlier, rival pre-emptors Samey Singh etc. had also sought to pre-empt the sale in question on the basis of being co-sharers. Ld. trial Court wrongly observed that there was no oral or documentary evidence to support this claim. The First Appellate Court also endorsed this finding without looking into the evidence on record.
13. The evidence on record would reveal that Lal Chand was owner of the land comprised in Khewat No.30. Said Khewat No.30 had two

Khatounis bearing Khatouni Nos. 163 & 165, as per Jamabandi for the year 1979-80. In Khewat N: 30, Khatouni No.163, it is Rama, the father of rival pre-emptors, who was recorded to be tenant as per Jamabandi for the year 1979-80 (Ex.D4). On the other hand, Sukh Lal, the father of plaintiffs-Lehri etc. was recorded to be tenant in the land comprised in Khewat No.30, Khatouni No.165, as per Jamabandi for the year 1979-80 (Ex.P11). The disputed Khasra No.353, which is subject matter of sale deed dated 11.11.1982, sought to be pre-empted by both the sides, is comprised in Khatouni No.165.

14. Perusal of the record would further reveal that by virtue of the sale deed dated 02.11.1982, Samey Singh etc. had purchased 1/2 share in the land measuring 18 kanal 9 marla comprised in Khewat No.30 Khatouni No.163. A copy of the said sale deed is available at Page No.25 of the original Civil Suit No.57 of 1983, though it is not exhibited. However, at the same time, defendants had tendered in evidence mutation No.1042 sanctioned on 19.11.1982 as Ex.D2, which reveals that based upon the aforesaid sale deed dated 02.11.1982, the said mutation was sanctioned in favour of them i.e. Samey Singh etc. Thus, by virtue of this sale deed dated 02.11.1982, Samey Singh & Partap had become co-sharers in the entire Khewat No.30. They had become co-sharers prior to sale deed dated 11.11.1982 (Ex.D1) sought to be pre-empted. Thus, as on 11.11.1982, when the sale deed Ex.D1 was executed by Lal Chand in favour of Godha Ram, Samey Singh & Partap were the already co-sharers in Khewat No.30; whereas plaintiffs Lehri etc. were claiming to be tenant on the land comprised in Khatouni No.165 only.
15. Section 15 of the Punjab Preemption Act, 1913, at is existed at the relevant time, reads as under: -

15. Persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property ~

(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest-

- (a) where the sale is by sole owner- . First, in the son or daughter or son's son or daughter's son of the vendor;

Secondly, in the brother or brother's son of the vendor;

Thirdly, in the father's brother or father's brother's son of the vendor;

Fourthly, in the tenant who holds under tenancy of vendor the land or property sold or apart thereof.

(b) Where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly –

First, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors;

Secondly, in the brothers or brother's sons of the vendor or vendors; Thirdly, in the father's brother or father's brother's sons of the vendor or vendor's;

Fourthly, in the other co-shares;

Fifthly, in the tenants who hold under tenancy of the vendor or vendor the land or property sold or a part thereof;

(c) where the sale is of land or property owned jointly and is made by all the co-shares jointly –

First, in the sons or daughters or son's sons or daughters sons of the vendors;

Secondly, in the brothers or brother's sons of the vendors; Thirdly, in the father's brother's or father's brother's sons of vendors;

Fourthly, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(2) xxxxxxxxxxxxxx (not relevant)"

16. It is clear, on perusal of the aforesaid provision, that when the sale is made out of the share of the joint land by one of the cosharers, the first right to pre-empt the sale vests in sons or daughters or sons' sons or daughters' sons of the vendor. The second right vests in favour of brothers or brother's sons of the vendor. The third right vests in favour of father's brother or father's brother's sons of the vendor. The fourth right to pre-empt the sale in question lies in other co-sharers and it is only thereafter that the right to pre-empt will become available in favour of tenants.

17. In the present case, since Samey Singh etc. i.e. rival pre-emptors had become co-sharers in Khewat No.30 by virtue of sale deed dated 02.11.1982, regarding which mutation No.1042 had been sanctioned as Ex.D2, prior to the sale deed dated 11.11.1982, therefore, they had become entitled to pre-empt the said sale deed dated 11.11.1982, which was executed by Lal Chand in favour of Godha Ram.

18. For the reasons, as stated above also, the plaintiffs' suit to seek pre-emption deserves to be dismissed.
19. As such, finding no merit in any of these two appeals, both of them are hereby dismissed.

Pending application(s), if any, stand disposed of.

A photocopy of this order be placed on the file of connected case.

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