

Before Jitendra Chauhan. J.

ATTAR SINGH,—Defendant/Appellant

versus

JAI SINGH,—Plaintiff/Respondents

RSA No. 2853 of 1985

11th May, 2011

Code of Civil Procedure, 1908—Co-sharer's right of pre-emption—Superior right of pre-emption being a co-owner in the total land—Not tenable—Mere exchange of land does not confer the status of co-sharer—Appeal allowed—Not a co-sharer thus no superior right of pre-emption.

Held, that the stand of the learned counsel for the plaintiff/respondent that the plaintiff has superior right of pre-emption on the suit land being a co-owner in the total land in not tenable. The plaintiff/respondent came in physical possession of 4K-10M only after exchange-deed, Ex. P.3 and thus he became owner in possession of only 4K-10M in Khasra No. 10/1 and has no concern whatsoever with the remaining land i.e. 17 marlas more exchange of land would not confer status of co-sharer in the entire khasra number upon the plaintiff as the land was owned and possessed by him in personal capacity. The plaintiff has no partible interest and thus he cannot be deemed to be a co-sharer in this land. A co-sharer has an interest in the whole property and also in very parcel of it, but when some portion out of Khasra No. 10/1 was given in exchange to a stranger, the intention of parties was never to induct him as a co-sharer in the whole khasra number.

(Para 10)

Further held—that in the circumstances, this Court feels that the learned trial Court has rightly observed that the plaintiff/respondent has no superior right on the suit land. The judgment and decree passed by learned appellate Court in thus perverse.

(Para 11)

Sudhir Mittal, Advocate, *for the appellant.*

Alok Jain, Advocate, *for the respondent.*

JITENDERA CHANDER, J.

(1) This is an appeal preferred by Attar Singh (hereinafter referred to as the defendant/appellant) against the judgment and decree dated 2nd August, 1985 passed by the learned lower Appellate Court allowing the appeal of Jai Singh (hereinafter referred to as the plaintiff/respondent) against the judgment and decree dated 4th April, 1984, dismissing the suit of plaintiff/respondent for pre-emption.

(2) The case of the plaintiff is that he alongwith Tek Ram jointly owned and pssessed the agricultural land measuring 5K-7M bearing Rect. No. 23 Killa No. 10/1 situated at village Mauja Kutana, Tehsil and District Rohtak. Out of the said land, the plaintiff was having his share to the extent of 4K-10M, whereas the share of Tek Ram, the vendor, was to the extent of remaining 17 marlas. The plaintiff received his share of land from Tek Ram,—*vide* exchange-deed, dated 13th July, 1976 and the remaining area i.e. 17 marlas (suit land) out of Khasra No. 10/1, Rect. No. 23 was sold to the defendant,—*vide* sale-deed, dated 15th February, 1983. The plaintiff pleaded that he is co-sharer in the total land measuring 5K-7M alongwith the vendor and therefore, he has superior right of pre-emption in respect of sale of suit land.

(3) The defendant contested the suit on the ground that the plaintiff has no right of possession or title in the suit property. He further pleaded that he purchased the suit property on consideration from the vendor Tek Ram and possession of the same was handed over to him. The property in question is a residential plot in urban area.

(4) After framing of issues and allowing the parties to lead evidence, the trial Court,—*vide* judgment and decree dated 4th April, 1984, dismissed the suit of the plaintiff on the ground that the plaintiff has no right of pre-emption in respect of suit land.

(5) Feeling aggrieved by the judgment of the learned trial Court, the plaintiff/appellant preferred the appeal which was allowed by the learned first appellate Court. Hence, the present appeal, which was admitted on 19th November, 1985.

(6) Learned Counsel for the appellant submits that the vendor Tek Ram was in exclusive possession of the land measuring 5K-7M. out of which, 4K-10M was exchanged with the plaintiff/respondent and the remaining land i.e. 17 marlas was sold to the defendant/appellant. He has further submitted that the exchange-deed took place on 13th July, 1976, whereas sale-deed of the remaining land i.e. suit land was executed on 15th February, 1983. Both the parties are in possession of their respective shares. The remaining part of the land i.e. suit property is separate and distinct and therefore, the plaintiff/respondent cannot claim to be co-sharer in the suit land.

(7) On the other hand, learned counsel for the plaintiff/respondent has argued that the partition of the land was not by meets and bounds and therefore it is no partition in the eyes of law.

(8) I have heard the learned counsel for the parties and perused the record with their able assistance.

(9) The main question to be determined by this Court is as under :—

1. Whether the plaintiff/respondent has superior right to preempt the suit land ?

(10) As per copy of jamabandi, Ex. P2, for the year 1975, Tek Ram was in the exclusive possession of the land measuring 5K-7M in Khasra No. 10/1 Rect. No. 23, out of which, 4K-10M was exchanged with the plaintiff/respondent, which is evident from exchange-deed, Ex.P3 and the remaining land i.e. 17 marlas was sold to the defendant/appellant. The stand of the learned counsel for the plaintiff/respondent that the plaintiff has superior right of pre-emption on the suit land being a co-owner in the total land is not tenable. The plaintiff/respondent came in physical possession of 4K-10K only after exchange-deed, Ex. P3 and thus he became owner in possession of only 4K-10M in Khasra No. 10/1 and has no concern whatsoever with the remaining land i.e. 17 marlas. Mere exchange of land would not confer the status of co-sharer in the entire khasra number upon the plaintiff as the land was owned and possessed by him in personal capacity. In the exchange-deed, Ex. P3, the plaintiff got physical possession of specific area of land measuring 4K-10M, which was regegrated from

the other area of 17 marlas of land. The plaintiff has no partible interest and thus he cannot be deemed to be a co-sharer in this land. A co-sharer has an interest in the whole property and also in every parcel of it, but when some portion out of Khasra No. 10/1 was given in exchange to a stranger, the intention of parties was never to induct him as a co-sharer in the whole khasra number. From the oral and documentary evidence, it is proved that the plaintiff is not a co-sharer in the suit land, and thus has no superior right to claim pre-exption.

(11) In the circumstances, this Court feels that the learned trial Court has rightly observed that the plaintiff/respondent has no superior right on the suit land. The judgment and decree passed by learned appellate court is thus perverse.

In view of the above discussion, the present appeal is allowed. The judgment and decree passed by the learned lower appellate court is set aside while the judgment and decree dismissing the suit of plaintiff passed by the learned trial Court is restored.

A. Agg.