

Before G. C. Mital, J.

LAKHWINDER SINGH and others,—Appellants.

versus

BALVINDER SINGH and others,—Respondents.

Regular Second Appeal No. 1786 of 1984 with CMs. 2405 and 2576-C/
84 and CM 1951-C-87

July 16, 1987.

Punjab Pre-emption Act (I of 1913)—S. 15(1) (a) Fourthly—Right of pre-emption being co-sharer—Suit decreed by trial Court—Partition of land effected at the instance of vendee—Such partition after decree by trial Court—Loss of special right during pendency of appeal—Effect of such loss.

Held, that it is a settled rule that a pre-emptor must retain right of pre-emption till the date of decree of the trial Court and not beyond that. Herein the pre-emptor possessed superior right of pre-emption on the date of suit and retained it till the decree of the trial Court. Therefore, it has to be held, that the loss of right for the first time during the pendency of the second appeal will have no effect on the pre-emption suit and the pre-emptor would be entitled to a decree. (Paras 7 and 8)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Kurukshetra dated the 12th day of June 1984, affirming that of the Sub Judge 1st Class, Kurukshetra, dated the 5th December, 1983 decreeing the suit of the plaintiff subject to the condition that the plaintiff shall pay an amount of Rs. 58,626-50 inclusive of the already deposited 1/5th prepaid amount on or before 4th January, 1984. This total amount of Rs. 58,626-50 includes the amount of Rs. 49,000 as sale consideration, an amount of Rs. 6,125 as stamp and an amount of Rs. 50-50 as fee for the registration of the sale deed and an amount of Rs. 3,000 as improvement charges including cost of the new electric motor fitted in the suit land and further ordering that in case the said amount is not paid by the said date, the suit shall be considered to have been dismissed with costs.

C.M. No. 2405-C of 1984.—Application under Order 41 Rules 27 read with order 42 Rule 1 and section 151 C.P.C. praying that these two copies of the sale deeds in favour of the respondents may be placed on the record as additional evidence.

C.M. No. 2576-C of 1984:—

Application by respondent under Order 41 Rule 27 and Section 151 C.P.C. praying that the Jamabandi for the year 1973-74 of village Taska Ali may be allowed to place on record as additional evidence in this case.

C.M. No. 1951-C of 1987:—

Application by the appellants/petitioners under Order 41 Rule 27 read with section 151 C.P.C. praying that the accompanying documents may kindly be placed on record as additional evidence.

Y. P. Gandhi, Advocate, for the Petitioner.

Surjit Kaur Taunque, Sr. Advocate with Mrs. K. Duggal, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

Balvinder Singh and Raj Pal Singh sought to pre-empt sale dated 24th June, 1981 on the ground that they are the co-sharers of the vendor, who had sold his 1/3rd share of the joint land to five persons (hereinafter called the vendees). The pre-emptors are not related to the vendor, and, therefore, the decision of the Supreme Court in *Jagdish v. Nathi Mal* (1) is not attracted.

(2) Both the Courts below decreed the suit after recording a finding that the pre-emptors are proved to be co-sharers of the vendor, and have superior right as compared to that of the vendees. This is vendees' second appeal.

(3) During the pendency of the second appeal, the vendees filed an application CM No. 1951/C of 1987 under order 41 rule 27 of the C.P.C. for permission to lead additional evidence to prove that the joint land was partitioned by order of Revenue Court,—vide

(1) A.I.R. 1987 S.C. 68.

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order dated 13th June, 1984 and attached documents Annexures P1 and P2 in this behalf. They also attached document Annexure P3, to show that another piece of land was sold by other co-sharers, which the two of the vendees in this case sought to pre-empt on the ground of being co-sharer, and there, the partition effected by the Revenue Court dated 13th June, 1984 was given effect to and it was held that in view of the partition the right to claim as co-sharer was lost.

(4) Earlier thereto the pre-emptors had filed Civil Misc. No. 2576-C of 1984 under Order 41 Rule 27 C.P.C. for production of additional evidence to defend the appeal and vendees filed C.M. No. 2405-C/1984 for additional evidence. All these applications were ordered to be heard along with the appeal.

(5) Shri Y. P. Gandhi, Advocate, appearing for the vendees has argued that partition having been effected by order of the Revenue Court dated 13th June, 1984, the right of pre-emption has been lost by the pre-emptors during the pendency of the proceedings, and, therefore, the appeal should be allowed on this short ground and the suit for pre-emption dismissed. He has placed reliance on decision of J. V. Gupta, J. in *Santokh Singh v. Lajja Ram* (2).

(6) As against the above, Miss Surjit Kaur Taunque, Senior Advocate, appearing for the pre-emptors has argued that a pre-emptor has to possess superior right of pre-emption on the date of sale and on the date of suit which is to be retained by him only till the date of decree of the trial Court and if he loses his status to claim superior right of pre-emption thereafter that hardly matters. Adverting to the facts it is argued that because pre-emptors had superior right of pre-emption on the ground of co-sharers on the date of sale, on the date of suit and on the date of decree of the trial Court, dated 5th December, 1983 and, therefore, ceasing to be co-sharers on 13th June, 1984 has no bearing on the decision of the case. In support of the argument reliance is placed on a Full Bench judgment of this Court in *Ramji Lal v. State of Punjab* (3), which was upheld by the highest Court of the land in *State of Punjab v. Ram Ji Lal* (4), *Bhagwan Dass (dead) by his legal representatives v.*

(2) 1986 P.L.R. 406=1986 P.L.J. 496.

(3) A.I.R. 1966 Pb. 374.

(4) A.I.R. 1971 S.C. 1228.

Chet Ram (5) and my decision in *Jagdish Singh v. Dalip Singh* (6) and a decision of J. V. Gupta, J. in *Didar Singh v. Ishar Singh* (7), besides large number of Division Bench and Single Bench judgments of this Court and Lahore High Court, all of which have clearly stated in terms that a pre-emptor has to possess superior right of pre-emption on the date of sale, and the date of suit, which he must continue to retain or possess till the decree of the trial Court:

(7) After hearing the learned counsel for the parties, the factual position which emerges on record is that admittedly the pre-emptors possessed superior right of pre-emption on the date of sale, on the date of filing of the suit as well as on the date of passing of the decree by the trial Court. Not only that the pre-emptors possessed superior right of pre-emption even till the decree of the lower appellate Court but they had no superior right when the matter was taken up for consideration by this Court. The loss of right during the pendency of the second appeal is the point which falls for consideration of this Court. The view of this Court and its predecessor Court, till before the decision was rendered by J. V. Gupta, J. in *Santokh Singh's case* (supra) throughout has been that the right of pre-emption must be retained by a pre-emptor till the decree of the trial Court and this view is enunciated in the Full Bench judgment of this Court in *Ramji Lal's case* (supra) in the following terms:—

“It is, therefore, a settled rule in pre-emption law that a pre-emptor must maintain his qualification to pre-empt to the date of the decree of the first Court only, whether that decree is one dismissing the suit or decreeing it, and his loss of qualification, whether by his own act or by an act beyond his control such as the improvement of his status by the vendee so as to equal or better the status of the pre-emptor, after the date of that decree does not affect the fate of his claim in such a suit.....”

This view was enunciated after making reference to large number of decisions of the Privy Council, Single Bench, Division Bench and Full Bench judgments of the Lahore High Court, besides some judgments of the Allahabad High Court. When the Full Bench

(5) A.I.R. 1971 S.C. 369.

(6) 1982 P.L.J. 461.

(7) 1984 P.L.J. 489.

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judgment in *Ramji Lal's case* (*supra*) was upheld by the Supreme Court, other matters were decided and this matter was not pointedly gone into either because it was a settled rule or because this very rule had been laid down by the Supreme Court in *Bhagwan Dass's case* (*supra*). Similar rule has been laid down in *Rikhi Ram v. Ram Kumar* (8). So upto the highest Court the settled rule is that a pre-emptor must retain right of pre-emption till the date of decree of the trial Court and not beyond that.

(8) Similar view was taken by J. V. Gupta, J. in *Didar Singh's case* (*supra*). The following observations bear testimony for the same:—

“The plaintiff pre-emptor was required to maintain his qualifications upto the passing of the decree by the trial Court as held by the Full Bench of this Court in *Ramji Lal v. The State of Punjab*, 1966 Punjab Law Reporter 345. It has been held therein that the pre-emptor in whose favour a pre-emption decree has been given in the first Court need not retain his superior right of pre-emption till the hearing of the appeal by the vendee. In this view of the matter, any order of ejection passed against the plaintiff pre-emptor subsequently, was of no consequence as regards his superior right of pre-emption.”

However, the same learned Judge in *Santokh Singh's case* (*supra*) appears to have deviated from the aforesaid settled rule and held as follows:—

“...It may be added that if the Court at the appellate stage is entitled to take into consideration the subsequent events, then in that situation, if during the pendency of the appeal, the plaintiff-pre-emptor has lost his right to pre-empt the sale being a co-sharer by his own act and conduct, then, he is not to blame anybody else and in that situation, he is not entitled to the pre-emption decree being a co-sharer in the suit land.”

The aforesaid quotation shows that the learned Judge distinguished the case on facts because the pre-emptor by his own act and conduct lost the right of pre-emption. The learned Judge did not recall or

(8) A.I.R. 1975 S.C. 1869.

over-rule his earlier decision in *Didar Singh's case (supra)* which means both of his judgments stand. Since the present case is not at par on facts with *Santokh Singh's case (supra)*, I feel the rule laid down by J. V. Gupta, J. in *Didar Singh's case (supra)* which is in consonance with all earlier decisions of this Court, Lahore High Court, Privy Council and Supreme Court stand. In the case in hand the pre-emptors did not seek partition and it was the vendees who obtained partition. The pre-emptors possessed superior right of pre-emption on the date of sale and on the date of suit, which they retained till the decree of the trial Court. Hence, I follow *Didar Singh's case (supra)* and distinguish *Santokh Singh's case (supra)*.

(9) I have my reservations about the correctness of the decision in *Santokh Singh's case (supra)* and whenever case on identical facts would come before me the matter would be dealt with and if I say anything now it would be *obiter dicta*.

(10) For the reasons recorded above, the appeal is devoid of merit and is dismissed leaving the parties to bear their own costs. The Misc. applications stand disposed of.

(11) Since the pre-emptors were allowed to withdraw the pre-emption amount in view of the stay order granted to the vendees, the pre-emptors are allowed two months time from today to deposit the pre-emption amount failing which the suit for pre-emption would stand dismissed.

R.N.R.

Before H. N. Seth, C.J. & M. S. Liberhan, J.

MATU RAM and others,—Appellants.

versus

UNION TERRITORY OF CHANDIGARH,—Respondent.

Civil Misc. No. 97 of 1987

in Letters Patent Appeal No. 1123 of 1984.

October 12, 1987.

Land Acquisition Act (I of 1894) as amended by Act 68 of 1984—Sections 23(1A), 23(2), 28 & 30—Code of Civil Procedure (V of 1908)—Section 152 and O. 47 R. 1—Modification of order—Application for grant of benefits of amended Sections 23(1A), 23(2) and 28 made