Gurnam Singh and Others

Vs.

Surjit Singh and Others

Civil Appeal No. 1923 of 1967

05.08.1974

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This appeal is by certificate against the judgment of the Punjab High Court dismissing the pre-emption suit of the appellant by reversing the concurrent judgments of the trial Court and the first appellate Court.

2. The plaintiffs alleged that they had purchased on May 10, 1955 the share of Khetu and Chandu Ram in khewat 2, khata 26 to 24 and 6 bighas and 7 biswas in khewat 3, khatas 49 to 54 comprising in all an area of 213 bighas and 14 biswas. On April 16, 1957 respondents Nos. 1 to 6 purchased 926 bighas in khewats 2 and 3 for Rs. 43,600. Nearly a year thereafter the deed of sale was registered on March 19, 1958. The plaintiffs filed a pre-emption suit against respondents Nos. 1-6 on the ground that they were biswadars and co-sharers in the land in dispute. For the purpose of this appeal, it is not necessary to consider their claim of biswadari rights because the claim on which the plaintiffs rely mainly is of their being co-sharers along with the vendors in the lands sold to respondents Nos. 1-6. The suit was decreed on January 4, 1960 and on appeal the District court confirmed the decree on March 6, 1961. The High Court, however, in second appeal reversed the decree on the ground that the appellants had not established that they had on the date of the decree any lands in which they were co-sharers with the vendors in the lands sold to respondents Nos. 1-6. At this stage, we may mention that before the decree was passed by the trial Court, the appellants had sold their co-sharers right in khewat 2, khatas 26-44 and khewat 3, khatas 49-54. It was their case that after the sale they still had co-ownership rights in 6 bighas and 7 biswas and consequently they were entitled to a decree for pre-emption. The trial Court on oral evidence and other documentary evidence held that 6 bighas and 7 biswas that were said to have been retained by the appellants pertained to the co-ownership in the suit lands and consequently they had the right to pre-empt. As we said earlier, the first appellate Court also took the same view.

3. The main question is whether the appellants had superior rights of pre-emption. What the appellants have to establish under Section 15(b) fourthly of the Punjab Pre-emption Act, is that the sale was out of joint land or property which had not been made by the co-sharers jointly and that they were the other co-sharers jointly and that they were the other co-sharers who had not joined in the sale. It is well settled that this right had to subsist in the plaintiffs not only at the time when the sale sought to be pre-empted was effective but up to the date of the decree. Though it was not disputed that the plaintiffs were co-sharers in the aforesaid khatas of khewats 2 and 3, what was contested was that after the transfer of practically the entire area on that date of the plaintiffs ceased to be co-sharers who could pre-empt the sale relating to 926 bighas in khewats 2 and 3 because it was nowhere proved in which khata or khewat the area had been left and in what manner the plaintiffs remained co-sharers so far as the suit lands were concerned. The High Court pointed out

that the appellants had not produced the sale deed dated May 19, 1969 by and under which they had sold their co-ownership rights in khewat 2, khatas 26-44 and khewat 3, khatas 49-54. In view of the omission to file the most important document, it was not possible to ascertain whether 6 bighas and 7 biswas which were said to have been left to them did in fact pertain to khewat 2, khatas 26-44 and khewat 3, khatas 49-54. The omission to file a document which was in the power and possession of the appellants entitled the High Court to draw an adverse inference against the appellants and in that view they had allowed the appeal and dismissed the suit. Some argument seems to have been advanced in the High Court based on the definition of holdings in Section 3(3) as meaning a share or portion of an estate held by one owner or jointly by two or more land owners. On this basis it was contended that the appellants being owners of the land which held the estate they must be regarded as co-sharers in the land in dispute, The High Court pointed out that by no stretch of reasoning each and every land owner in the village which is an estate can be regarded as a co-sharer of every parcel of land situated in that village no matter whether he has any share in that particular land or not. It appears to us that the issue is a narrow one, namely, whether the appellants had established that even if they had a co-ownership as alleged by them, in khatas 2 and 3, when they sold those rights, 6 bighas and 7 biswas, which they alleged were retained by them, were retained in khewats 2 and 3. No amount of oral evidence can establish this fact when an fact they could have established by a registered document. As pointed out by the High Court, even the patwari was not asked about it. For some reason, which the appellants must know best, they have not produced the sale deed either in the High Court or even at this stage. The sale deed is a public document and could have been easily looked into if they would have asked for it to be admitted at the appellate stage. The supersessions of the document justified the drawing of an adverse inference that if it was produced, it would have established that the appellants had no lands left after they sold them on May 19, 1969. As the appellants have not established that they are co-owners in the lands sold on the date of the decree, they are not entitled to a decree of pre-emption. In this view, the appeal is dismissed with costs.

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