

Rikhi Ram and Another

Vs

Ram Kumar and Others

Civil Appeal No. 1642 of 1974

(A. Alagiriswami, P. K. Goswami, N. L. Untawalia JJ)

21.07.1975

JUDGMENT

UNTWALIA, J. –

1. This appeal by special leave arises out of a suit for pre-emption filed by the appellants under Section 15 of the Punjab Pre-emption Act, 1913 - hereinafter called the Pre-emption Act. The suit land is situated in the State of Haryana to which the provisions of the Act aforesaid are still applicable. The land belonged to Smt. Shanti, respondent No. 3. The appellants were the tenants of the disputed land under her. She sold the land to respondents Nos. 1 and 2 on June 21, 1965. The land sold measured 176 kanals 4 marlas. The plaintiffs claimed the right of pre-emption in respect of the agricultural land in suit in accordance with clause 'Fourthly' of Section 15(1)(a) of the Pre-emption Act. The suit was resisted by the vendee-respondents on several grounds. It was decreed by the trial Court on June 20, 1967 in respect of a portion of the land, measuring 157 kanals 2 marlas. The vendees' appeal in the first appellate Court failed on April 20, 1968. They succeeded, however, in the High Court of Punjab and Haryana on the basis of the decision of this Court in Bhagwan Das (dead) by LRs v. Chet Ram ((1971) 2 SCR 640 : (1971) 1 SCC 12). A learned Single Judge of the High Court allowed the second appeal filed by respondents Nos. 1 and 2 and dismissed the plaintiffs' suit.

2. We may state a few more facts before noting down the points urged on behalf of the appellants. In the appellants' suit on order of injunction was made on July 11, 1966 restraining the defendants from dispossessing the plaintiffs from any portion of the suit land. But before the order of injunction was passed respondents Nos. 1 and 2 had filed an application before the revenue authorities under Section 9 of the Punjab Security of Land Tenures Act, 1953 - hereinafter called the Land Tenures Act - for ejection of the appellants. An order of eviction was passed by the first authority on May 22, 1967; that is to say, about a month prior to the passing of the decree by the trial Court. The appellants' appeal from that order of the Assistant Collector was dismissed by the Collector on September 14, 1967. The High Court took the view that since the appellants had ceased to be the Land Tenures Act, 1953 - hereinafter called the Land Tenures Act - tenants of the land prior to the passing of the decree of pre-emption by the trial Court, they were no longer qualified to get such a decree.

3. Mr. S. C. Agarwal, learned Counsel for the appellants made the following submissions :

(1) That the decision of this Court in Bhagwan Das's case (supra) is distinguishable or in any view of the matter requires reconsideration by a larger bench.

(2) That the High Court committed errors of record and law in relying upon the order of eviction without bringing the copy of the order on record.

(3) That the order of eviction was in respect of about 3 standard acres of land only and a decree for pre-emption in any event ought to have been made in respect of the land measuring about 9 standard acres.

4. Section 15(1) of the Pre-emption Act says :

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

(a) where the sale is by a sole owner

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Fourthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;

Under the general law of pre-emption it is firmly established that the decisive date as regards the right of pre-emption to pre-emption the sale was the date of the decree. In other words the pre-emptor who claims the right to pre-emption the sale on the date of the sale must continue to possess that right till the date of the decree. If he loses that right before the passing of the decree, decree for pre-emption cannot be granted even though he may have had such right on the date of the suit. In several cases coming up before the Punjab and Haryana High Court a question arose whether the same rule applies to a person who claims to pre-emption the sale under Section 15(1)(a) Fourthly of the Pre-emption Act. In quite a large number of cases the answer given by the High Court was that it does not, while in a few, a contrary view was expressed. One of such cases from the majority line, viz Kashmiri Lal v. Chuhar Ram (72 Punj LR 325) was expressly overruled by this Court in Bhagwan Das's case (supra). The facts of Bhagwan Das's case are somewhat different. Yet the ratio is aptly applicable to the facts of the instant case also. In the former case the pre-emptor had been evicted in pursuance of the decree of eviction prior to the institution of a suit for pre-emption. But the decision of this Court was not given treating this a decisive factor. The first rule of the general law of pre-emption was applied thus :

In the presence of the above principle which is firmly entrenched in the law of pre-emption it is difficult to conceive that the legislature intended to depart from it is Section 15(1)(a) Fourthly nor has any reason been suggested for doing so. The language employed is not very happy but the clear requirement is that the tenant must hold the land as such.

And finally it was said at page 643 :

It must be remembered that sale alone does not and cannot divest the tenant of his right to hold the land of which he is in possession by virtue of his tenancy under the vendor. But if his tenancy is determined by decree for eviction he loses his status of a tenant. He then does not satisfy the first requirement of Section 15(1) Fourthly that he is a tenant who holds the land. In that situation he cannot succeed in a pre-emption suit if the decree for eviction has been passed after the sale but before the institution of the suit or during its pendency and before the date of the decree. This would be so by applying the well established rule which, as stated earlier, has become a part of

the law relating to pre-emption.

5. Mr. Agarwal suggested a reason to depart from the general principle of the law of pre-emption in Section 15(1)(a) Fourthly. Counsel submitted that under the general law of pre-emption the qualification of the pre-emptor cannot be lost at the instance of the vendee whereas in the case of tenant claiming pre-emption under Section 15(1)(a) Fourthly of the Pre-emption Act the vendee and defeat the tenants, right of pre-emption by his own action. The reason suggested for making a distinction appears to be attractive but was not forceful enough to persuade us to take the view that the decision of this Court in Bhagwan Das's case (supra) requires reconsideration. The landlord could not determine the tenancy by his unilateral action under the Land Tenures Act. An order of eviction was necessary to be obtained under Section 9. The relationship of the landlord and the tenant ceases to exist between the parties after the passing of an order of ejection against the tenant. Dispossession in execution of the order is not necessary for determination of the tenancy. In the instant case the appellants did not obtain an order of injunction in their suit to restrain the defendants from proceeding with their application for eviction. The order of injunction was confined to a restraint on dispossession. In a given case the landlord may be prevented from obtaining an order of ejection against the tenant so that the latter's right to pre-empt the sale made in favour of the former may not be defeated. We think two views of the law may be reasonably possible on the point at issue. It is, therefore, not expedient or advisable to send this case to a larger bench for reconsideration of the view expressed in Bhagwan Das's case nor is that case distinguishable.

6. The second grievance of the appellant is to some extent justified but the submission does not stand final scrutiny. Respondents Nos. 1 and 2 had filed an application in the first appellate Court under Order 41 Rule 27 of the Code of Civil Procedure for admitting the order of eviction dated May 22, 1967 as an additional evidence in the case. That court rejected that application. The proper course for the High Court, therefore, was to admit the order as an additional evidence if it thought it fit in law to do so. But then, the fact that there was an eviction order was not disputed before the High Court as it appears from its judgment. Of course, the High Court was not right when it said that on the date when the land was sold a decree for ejection against the tenant had been passed and this decree had become final in appeal. The decree was not passed on the date of sale but surely it was passed before the decree for pre-emption was made by the first Court. In the circumstances of this case therefore we are not inclined to accept the second submission made on behalf of the appellants.

7. The third point urged on behalf of the appellants is also not fit to succeed. A copy of the order of eviction passed by the Assistant Collector was incorporated in the supplementary paper book and placed before us. The order shows that eviction was allowed from the entire land. The appellants were directed to be ejected forthwith from a portion and their actual eviction from the rest of the land was deferred till the allotment of the surplus land. We are, therefore, of the view that the appellants did not continue to be tenants of any portion of the land sold to respondents Nos. 1 and 2 on the date the decree for pre-emption was passed in their favour. Hence the decree was not sustainable in respect of any portion of the land.

8. For the reasons stated above, we dismiss this appeal but without costs.

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