

Sulleh Singh and Others

Vs

Sohan Lal and Another

Civil Appeal No. 496 of 1974

(CJI A.N. Ray, K.K. Mathew, V.V. Chandrachud JJ )

02.09.1975

JUDGMENT

RAY, C.J. –

1. This appeal is by special leave from the judgment dated May 2, 1973 of the Punjab and Haryana High Court.
2. The appellants are vendees of the land in suit. The vendors sold the land to the appellants for Rs. 43,000 on August 26, 1965. The transaction was by registered deed of sale.
3. The respondents filed this suit for possession by pre-emption of the land in payment of Rs. 30,000 on allegations that the respondents were on the date of sale tenants of the land under the vendors. The respondents alleged that their right of pre-emption was superior to that of the vendees. They also alleged that the sale took place for Rs. 30,000 only and the remaining amount was fictitiously mentioned in the deed of sale. The suit was dismissed on the ground that one suit on behalf of the four plaintiffs, who were tenants of different parts of the land, was not maintainable.
4. On appeal the suit was remanded for retrial.
5. At the trial on remand, two plaintiffs withdrew from the suit. The trial Court directed the remaining two plaintiff-respondents Sohan Lal and Nathi to deposit Rs. 6,300 and Rs. 5,670 respectively on or before April 1, 1969 less 1/5th of the pre-emption amount already deposited by them. The trial Court gave the respondent Sohan Lal a decree for possession by pre-emption in respect of Killa Nos. 14/1, 17 and 18/1 of Rectangle 37. The plaintiff-respondents aggrieved by the order filed an appeal alleging that the respondent Sohan Lal was a tenant of Killa No. 24 under the vendors and the decree should have been passed in their favour for the whole of the land and that decree should have been passed in favour of Sohan Lal in respect of Killa No. 24 of Rectangle 37. The other ground in the appeal was that the decree should have been passed in favour of the plaintiff-respondents for whole of the land.
6. The Additional District Judge on July 29, 1969 pass a decree for possession by pre-emption in favour of respondent Sohan Lal on payment of Rs. 9,100 and he was directed to deposit this amount in Court on or before August 20, 1969. The Additional District Judge pass decree for possession by pre-emption in favour of respondent Sohan Lal of Killa No. 24 of Rectangle 37. The decree in favour of respondent Nathi was maintained without change.
7. Thereafter, the appellants preferred on appeal in the High Court alleging that the decision that

plaintiff-respondent Sohan Lal was also a tenant of Killa No. 24 was incorrect and should be set aside and the that the decree in favour of the two plaintiff-respondents Sohan Lal and Nathi were liable to be set aside.

8. The appellants contended before the High Court that respondents Sphan Lal and Nathi did not deposit the decretal amount by April 1, 1969 as directed by the trial Court and therefore, the suit was liable to be dismissed under the provision contained in Order 20, Rule 14 of the Code of Civil Procedure.

9. The other contention of the appellants before the High Court was that the plaiting Sohan Lal should not have been granted pre-emption rights on respect of Killa, No. 24.

10. The High Court on May 2, 1973 accepted the appeal of the appellants against the plaintiff Nathi and dismissed the appeal against the appellate Court granted Sohan Lal decree for one more killa and directed that the amount would be Rs. 9,100, the respondent was to comply with the appellate decree of the trial Court.

11. The appellants contended that neither Sohan Lal nor Vathi direction deposited the amount in accordance with the decree of the trial Court on or before April 1, 1969 and the suit should have been dismissed on that ground alone and the appeal should have been allowed. The appellants contended that the lower appellate Court had to power and jurisdiction to give further time to Sohan Lal to deposit the pre-emption amount by an extended date.

12. This Court in *Naguba Appa v. Namdev* (AIR 1954 SC 50 : ILR 53 Hyd 455) held that the directions given by the trial court are mandatory under the provisions contained in Order 20, Rule 14 of the Code of Civil Procedure. This Court in *Naguba Appa's case* (supra) said that mere filing of an appeal does not suspend the decree of the trial Court and unless that decree is altered in any manner by the Court of appeal, the pre-emptor is bound to comply with that direction.

13. In *Dattaraya s/o. Keshav Tawalay v. Shaikh Mahboob Shaik Ali* ((1969) 2 SCR 514 : AIR 1970 SC 750) this Court said that a decree in terms of Order 20, Rule 14, imposes obligations on both sides and they are so conditioned that performance by one is conditional on performance by the other. To illustrate, if the defendants by obtaining the stay order from the High Court relieve themselves of the obligation to deliver possession of the properties the plaintiff decree-holder must also be deemed there to be relieved of the necessity of depositing the money so long as the stay order continues.

14. In the present case, the lower appellate Court did not grant any stay to the plaintiff-respondents. In view of the fact that the plaintiff respondents did not deposit the amount as directed by the trial Court on or before April 1, 1969, it became mandatory on the lower appellate Court by reason of the ruling of this Court in *Naguba Appa's case* that the pre-emptor is bound to comply with the directions of the trial Judge unless that decree is altered in any manner by a court of appeal do not mean that where the deposit is not made in not made in accordance with the directions of the trial Court, the appellate Court can extend the time for payment. Thereafter, the lower appellate Court was in extending the time for payment till August 20, 1969.

15. In *Naguba Appa's case* (supra) the pre-emption money was not deposited the time fixed in the decree. The pre-emptor made an application to the Court for making the deposit without disclosing that the time fixed by the decree had elapsed. The application was allowed. The defendant, when

apprised of the situation, made an application to the Court to the effect that the plaintiff's suit stood dismissed on account of his failure in making the deposit in time. The trial Judge held that the pre-emption money not having been paid within the time fixed in the decree the suit stood dismissed. On appeal the decision was set aside. On second appeal it was restored and it was held that the suit stood dismissed under Order 20, Rule 14 Civil Procedure Code. This Court held that the High Court was right in holding that the pre-emptor's suit stood dismissed by reason of his default in not depositing the pre-emption price within the time fixed in the trial Court's decree.

16. The contention of the appellants that the lower appellate Court was wrong in extending the time for payment is correct because the failure of the plaintiffs-respondents to deposit the amount in terms of the trial Court's decree would result in pre-emptors' suit standing dismissed by reason of their default in depositing the pre-emption price. The contention of the appellants that the High Court was wrong in not setting aside the order of extension of time passed by the lower appellate Court is correct. It is only if the plaintiff-respondents had paid the decretal amount within the time granted by the trial Court or if the plaintiff-respondents had obtained another order from the lower appellate Court granting any order of stay that lower appellate Court might have considered the passing of appropriate order in favour of pre-emptors. The High Court should have allowed the appellants' appeal and not made any distinction in dismissing plaintiff-respondent Nathi's suit and allowing plaintiff-respondent Sohan Lal any extension of time to make the payment. Further, it appears that the plaintiff-respondent Sohan Lal did not pay the amount.

17. For these reasons the appeal is accepted. Suit of the plaintiff respondents is dismissed. The appellants are entitled to costs.

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