

Prem Singh and Others

Vs

Joginder Singh and Others

Civil Appeals Nos. 1182-83 of 1987

(G. N. Ray, G. T. Nanavati JJ)

04.02.1997

ORDER

1. These appeals are directed against the order dated 11-2-1986 passed on the review petition preferred by the appellant for setting aside the decree dated 28-4-1986 passed by the High Court of Punjab and Haryana in RSA No. 1255 of 1981. Such review petition was filed by the appellant inter alia on the allegation that during the pendency of the said RSA No. 1255 of 1981, they had purchased the suit properties on valuable consideration from Respondent 4 and accordingly they had acquired a valid title to the suit properties and the appeal being RSA No. 1255 of 1981 should have been dismissed by the High Court. By the impugned order passed on the review petition, the High Court has dismissed the said review petition. These appeals have been preferred challenging the decree passed in RSA No. 1255 of 1981 and also the order passed on the review petition.

2. Initially, the admitted owners of the disputed property, namely, the parents of Respondent 4 had transferred the disputed property owned by them to two sets of respondents, namely, Respondents 1 to 3 and Shri Hardayal Singh and others. Subsequently, Respondent 4 Jaspal made an application for exercising the right of pre-emption under the Punjab Pre-emption Act, 1913 in respect of both the said transfers by the said admitted owners, namely, Mahinder Singh and his wife Smt. Swaran Kaur. Such application for pre-emption was allowed and the appeal preferred against the a decree passed by the trial court was also affirmed by the lower appellate court. Against such judgment and decree of the lower appellate court, the said Regular Second Appeal No. 1255 of 1981 was preferred by Respondents 1 to 3. While such appeal was pending before the High Court, the said Punjab Pre-emption Act, 1913 was challenged before this Court. By the decision of this Court in *Atom Prakash v. State of Haryana* ((1986) 2 SCC 249), the said Act was declared ultra vires. This Court also observed in the said decision in *Atom Prakash* case ((1986) 2 SCC 249) to the following effect : (SCC p. 263, para 14)

"We are told that in some cases suits are pending in various courts and, where decrees have been passed, appeals are pending in appellate courts. Such suits and appeals will now be disposed of in accordance with the declaration granted by us. We are told that there are a few cases where suits have been decreed and the decrees have become final, no appeals having been filed against those decrees. The decrees will be binding inter partes and the declaration granted by us will be of no avail to the parties thereto."

3. Pursuant to such decision of this Court declaring the said Act ultra vires, the High Court disposed of the said Second Appeal No. 1255 of 1981 by allowing the same and setting aside the impugned decree by which the right of pre-emption was allowed in favour of Respondent 4. Such decree was

sought to be assailed by filing the review petition by the appellants but as aforesaid the review petition was dismissed.

4. Mr. Singh, the learned counsel appearing for the appellants, has submitted before us that as Respondents 1 to 3 the appellants before the High Court in RSA No. 1255 of 1981 had compromised with Respondent 4 the vendor of the appellants herein and the said respondents had also withdrawn the money deposited in court by Respondent 4 as required under the Pre-emption Act. The said Respondents 1 to 3 were thus precluded from proceeding with the said second appeal and the decree passed by the High Court in their favour was, therefore, not maintainable in law and the review petition should have, therefore, been allowed.

5. We are unable to accept such contention of Mr. Singh. The Act on the basis of which the vendor of the appellant, namely, Respondent 4 had claimed the right of pre-emption and obtained decree was declared ultra vires by this Court. Accordingly, Respondent 4 was not entitled to a decree for pre-emption. Consequently, Respondent 4 did not acquire any title to the suit property. The predecessors-in-interest of Respondent 4 had admittedly transferred the property in favour of Respondents 1 to 3 long before subsequent transfer by Respondent 4 in favour of the appellants herein. Hence, on the date when Respondent 4 purported to transfer the disputed property in favour of the appellants, he had no title whatsoever to the said property. Accordingly, no title has been conveyed to the appellants on the basis of which the appellants may claim the said property. We, therefore, find no reason to interfere with the impugned decisions of the High Court and these appeals, therefore, fail and are dismissed with no order as to costs.