

SUPREME COURT OF INDIA

Jai Singh

Vs.

Gurmej Singh

C.A.No.321 of 2009

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

20.01.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court dismissing Second appeal filed by the appellant in terms of Section 100 of the *Code of Civil Procedure, 1908* (in short the `CPC'). The basic question considered by the High Court was whether sale of a specific portion of a land described by particular Khasra numbers by a co-owner out of the joint khewat would be a sale of shares out of the joint land or whether the vendees become co- owners with other co-sharers in the joint land, in the event of their becoming co-owners, the sale is pre-emptible under Section 15(1)(b) of *Punjab Pre-emption Act, 1913* (in short the `Act').
3. Background facts essentially are as follows:

“Vendor (Bhartu) sold the land measuring 20 kanals, being 400/3723 share out of the total land measuring 186 kanals 3 marlas vide registered sale deed dated 11.4.1990 to the appellants for a consideration of Rs.1,80,000/-. Gurmej Singh-respondent filed a suit for possession by way of pre-emption, wherein it was pleaded that the vendor had sold the land measuring 20 kanals out of the joint Khewat. According to him being the co-sharer he has a right to pre-empt the sale under Section 15(1)(b) of the Act. The said suit was contested by the vendees stating that the pre-emptor had no superior right of pre-emption. Firstly, the Khewat containing the suit land had been partitioned between various co-sharers much prior to the sale through an oral partition, and secondly the sale was out of the defined share of the vendor. On the basis of the pleading of the parties various issues were framed. But only two issues were contested before the trial Court which are to the following effect:

(1) Whether plaintiff has superior right to pre-empt the land in dispute being co-sharer?

(2) Whether plaintiff is estopped from filing present suit by his own act and conduct?

On both the issues the trial Court returned its findings in favour of the pre-emptor holding that he had a superior right of pre-emption and that he was not guilty of any such act which could stop him for pre-empting the same. Appeal before learned District Judge, Kurukshetra, did not bring any relief.

Stand of the appellants before the High Court was that the sale deed Ext.P-4 clearly indicated that specific Khasra numbers had been sold by the vendor and defined portion of the joint land has been sold and the vendees have been put into possession of the specific khasra numbers. The appellants who are vendees argued that where a co-sharer sells his share as a specified part of joint land the vendees do not become co-sharers the sale being not a share out of the joint land. It was, therefore, submitted that the plaintiff respondent does not become a co-sharer in the property in dispute and as such has no preferential right of pre-emption with regard to sale of specific part of the vendor's share. Reliance was placed on a decision of Full Bench of the High Court in *Lachhman Singh v. Pritam Chand*¹.

On the other hand respondent relied on a later Full Bench judgment of the High Court in *Bhartu v. Ram Sarup*² to support the view of the lower courts.

The High Court noted that the latter decision had taken into consideration Lachhman Singh's case (supra) and observed that the question involved in Lachhman Singh's case was as to whether the purchaser of a specific portion of some Killa numbers in two rectangles would become a co-sharer in the Khewat consisting of several other rectangles and would be entitled to pre-empt the sale out of the rectangles other than in which he became owner by the said purchase and on these facts it was held that such a purchaser does not become a co-sharer in the Khewat and, therefore, has no right to pre-empt the sale.

The High Court observed that the principles laid down in Lachhman Singh's case (supra) had no direct bearing on the question whether the sale of a specific khasra number out of a khewat would be a sale of a share out of the joint land or not. According to the High Court, answer to the above question depends on inter-se rights of the co-sharers in the joint khewat and the nature of the sale of a specified portion of the joint holding. Accordingly, the High Court held that when a co-sharer sells his share in the joint holding or in part thereof and put the vendees into possession of the land in his possession what he transfers is his right as co-sharer in the said land and the right would remain in his exclusive possession till the joint holding is partitioned amongst all the co-sharers. The transferee gets the same right as that of a transferor to joint possession and has further right to enforce the partition of the same irrespective

of the fact whether the property sold is fractional share or specified portion exclusively in possession of the transferor. After referring to the sale deed the High Court noticed that the vendor had sold the land of his share of 400/3723 measuring 20 kanals out of the total land. It was mentioned in the sale deed that the possession of the land comprised in the specified khasra numbers was delivered to the vendees. However, it was nowhere mentioned in the sale deed that the land was ever partitioned or was out of the defined part of the land. On the contrary, it was clearly mentioned that the vendor was selling his 400/3723 share out of the total holding. The High Court turned down the plea based on repeal of the right of a co-sharer by the Amending Act of 1995. It was observed that right of co-sharers has been held to be prospective in operation and does not affect the right of the parties to the litigation on the date of adjudication of the pre-emption suit and the Appellate Court is not required to take into account or give effect to the substituted Section 15 introduced by the Amending Act. Accordingly, Second Appeal was dismissed.”

4. Learned counsel for the appellants re-iterated the stand taken before the High court and submitted that the ratio of the decision of the Full Bench in Lachhman Singh's case (supra) has full application to the facts of the case.

5. In response, learned counsel for the respondent supported the judgment of the High Court.

6. It is to be noted that the subsequent Full Bench judgment in Bhartu's case (supra) the earlier decision in Lachhman Singh's case (supra) was distinguished on facts.

7. The principles relating to the inter-se rights and liabilities of co- sharers are as follows:

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies, that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

8. It is thus evident that when a co-sharer is in exclusive possession of some portion of the joint holding he is in possession thereof as a co-sharer and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned. Vendor cannot sell any property with better rights than himself. As a necessary corollary when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession what he transfers is his right as a co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all co-sharers.

9. Sale of subsequent portion of the land out of the joint holding by one of the co-owners is nothing but a sale of a share out of the joint holding and is pre-emptible under Section 15(1)(b) of the Act. It is to be noted that the judgment in Bhartu's case (supra) had the seal of approval of this Court in Pokhar (dead) by Lrs. and Ors. v. Ram Singh (Civil Appeal No. 4418 of 1986 disposed of on August 14, 2001).

10. Above being the position, we find no merits in this appeal which is dismissed accordingly.

¹*AIR 1970 P & H 304*

²*1981 PLJ 204*