PUNJAB AND HARYANA HIGH COURT

Ashmiri Lal

Vs

Chuhar Ram

(Bal Raj Tuli, J.)

19.11.1969

JUDGEMENT

Bal Raj Tuli, J.

(1.) SMT . Jiwani, widow of Gopala, gifted the house in suit by a registered deed, dated December 13, 1943, in favor of Kashmiri Lal son of Gopi Ram. Appellant. She died in September, 1948 and after her death. Chhajju, son of Kirpa Ram, Kashmiri, son of Munshi and Niranjan, son of Matu (hereinafter called the Vendors), succeeded to the 5/6th portion of the house while Purkhi, son of Munshi. succeeded to the remaining l/6th share. The gift in favor of the Appellant Kashmiri Lal, son of Gopi Ram, had been set aside with regard to 5/6th portion of the house to which the vendors succeeded. Purkhi did not challenge the gift by Smt. Jiwani in favour of Kashmiri Lal, Appellant, and, therefore, the Appellant continued to be the owner of l/6th share of the house. The vendors filed a suit against the Appellant and Purkhi for possession by partition of 5/6th share of the house on 2/14th July, 1949. The final decree in that suit was passed by Shri Jowala Das, Sub -Judge 1st Class, Ambala on August 11. 1950. The relevant portion of the decree reads as under: It is ordered that a final decree be and the same is hereby passed in favour of the Plaintiffs as follows: According to the Commissioner's report the value of the entire suit house is Rs. 1,800 and thus the value of the Defdt Kashmiri's l/6th share is Rs. 300. The entire house is allowed to the Plaintiffs and the Defendant Kashmiri Lal is awarded a decree for Rs. 300 against the Plaintiffs. The amount decreed against the Plaintiffs will be a first charge on the house allotted to the Plaintiffs. A copy of this decree is Exhibit PB on the record. In compliance with that decree, the sum of Rs. 300 was deposited in the Court of the Sub -Judge, 1st Class, Ambala, on August 30, 1950, - -vide Exhibit PA. Form this decree it is clear that the ownership rights of the Appellant in the house in dispute were extinguished by this decree and re was only held entitled to receive Rs. 300 which was to be the first charge on the property till payment. By Exhibit PA it is proved that the amount of Rs. 300 was deposited in the Court and, therefore, the extinction of the rights of the Appellant in the house was complete.

(2.) THE vendors sold the house to Kashmiri Lal, Appellant, by a registered deed, dated

November 9, 1966. To pre -empt this sale, Chuhar Ram Plaintiff -Respondent, filed a suit on the ground that he was entitled to pre -empt the sale of the house under Sections 15(1) Fourthly and 15(l)(c) Fourthly, of the Punjab Pre -emption Act. According to the sale -deed, only 5/6th of the house had been sold by the vendors in favour of the Appellant for a sum of Rs. 5,000. In the sale -deed it is also mentioned that the Appellant was the owner of the remaining l/6th share of the house. To this suit that vendors and the Appellant were made Defendants. The suit was defended only by the Appellant, who denied the preferential claim of Chuhar Ram. Plaintiff, to pre -empt the sale on the ground that the Appellant himself being a co -sharer, had a preferential right to that of the Plaintiff. The Plaintiff also challenged the amount of the price paid and stated that the market value of the house was not more than Rs. 3,000. On the pleadings of the parties, the learned trial Court framed the following issues: (1) Whether the Plaintiff has a preferential right of preemption (2) Whether the sale price was fixed in good faith ? If not what is the market value at which the same is preemptible ? (3) Whether the Defendant vendee is already owner of l/6th share in the house and its effect ? The learned trial Court held on the first issue that the vendee, being a co -sharer, had a superior right of pre -emption as against the Plaintiff, who was, no doubt, a tenant of the house at the time of the sale. On the second issue it was held that the market price of the house was Rs. 3,000 and that was the amount which was actually paid. On the third issue, it was held that the Defendant -vendee was the owner of l/6th share of the house in dispute. On these findings, the suit of the Plaintiff was dismissed on April 30 1963. Against that decree, the Plaintiff filed an appeal which was dismissed by the Second Additional District Judge, Ambala, on February 12, 1964. The Plaintiff' then filed an appeal in this Court (RSA 425 of 1964), which was allowed by the learned Single Judge on December 21, 1964. The learned Judge decreed the Plaintiff's suit on payment of Rs. 3,000 and gave one month's time to the Plaintiff to deposit that amount failing which the appeal was to stand dismissed. On the oral request made by the learned Counsel for the vendee, the learned Judge certified that the case was fit for further appeal under Clause 10 of the Letters Patent. The present appeal was thus filed and was admitted on March 19. 1965.

(3.) THE first point that has been vehemently pressed by the learned Counsel for the Appellant is that the learned Single Judge erred in law in upsetting the finding of fact concurrently arrived at by the learned trial Court and the first appellate Court on the point of the Appellant being a co -sharer in the house in dispute to the extent of l/6th share at the time of sale. It was, no doubt. a finding of fact, but the learned Single Judge did not accept it on the ground that there was evidence on the record to prove that the vendors were in possession of the entire house as owners, whereas the Courts below had come to a contrary conclusion because they misread the notice Exhibit P. 1 and the statement of Chhajju Ram, who appeared as P.W. 1. Thus an error crept in the decision of the Courts below. The learned first appellate Court had just referred to the notice Exhibit P. 1, which had been given by the vendors to the Plaintiff somewhere in July or August, 1960, asking him to pay the arrears of rent for the past 10 months or to vacate the house by the 11th of August, 1960. This notice does not bear any date. But it is evident that it was given before the 11th of August, 1960. In this notice the vendors pointed out that if the Plaintiff did not

pay the rent due from him, they would have to file a suit against him and that his threat that in the case of the sale of the house by the vendors, he would pre -empt the sale, was without substance, as the pre -emptor has to pay the price which is stated to have been paid before the Registrar and which is stated in the sale deed. The Plaintiff was warned not to hold out the threat of pre -empting the sale unless he had sufficient amount to pay the price. In this notice, the vendors stated that they were the owners of the entire house. Chhajju Ram, one of the vendors appeared as a witness and stated that the notice was correct. The evidence was not given the proper weight it deserved and the learned lower appellate Court went to find out whether there was any evidence on the record in support of the assertion of the vendors being the owners of the entire house. He brushed aside the copy of the final decree in the partition suit, dated August 11, 1950, Exhibit PB, on the ground that it had become a dead letter because it had not been proved to have been executed. In my opinion, the decree did not need to be executed to perfect the title of the vendors to the house because it recited the ownership of the vendors with regard to the entire house and the Appellant was held entitled only to Rs. 300 on account of the price of l/6th share of the house which amount was made a first charge on the house. That charge vanished when the amount of Rs. 300 was deposited by the vendors in Court on August 30, 1950, - -vide Exhibit PA. The Appellant thus ceased to be one of the co -sharers in the house. In the written statement, the Appellant had asserted that he had become the owner of l/6th share of the house by purchase from Purkhi 7 or 8 years prior to the filing of the written statement. From this averment in the written statement it is clear that the Appellant did not piece reliance on the final decree, dated August, 11, 1950, not having been executed and his right as co -sharer of the house to the extent of l/6th having become absolute and indefeasible thereby. His positive assertion was that he had purchased l/6th share of the house from Purkhi after the said decree, which fact was not proved on the record. He was in possession of the house at the time the suit for partition was filed, but after the decree he gave up its possession in what manner it is not known on this record, and it was only after he vacated the house that the Plaintiff was put in possession thereof as a tenant. The learned Additional District Judge went beyond the pleadings to find out whether the whole house had been leased out to the Plaintiff by the vendors alone or by the vendors on behalf of themselves and the Appellant. This plea was never raised and could not be gone into by the learned lower appellate Court. After the purchase, the Appellant issued two notices to the Plaintiff -Respondent asking him to vacate the house. The first notice, dated July 10, 1961 was sent through Shri M.K. Bansal, pleader, in which it was stated that the Appellant had purchased l/6th portion of the house from Smt. Purkhi and had purchased the remaining 5/6th portion from its owner, the vendors, by a sale deed, dated November 9, 1960, which was registered on November 10, 1960. Thus the Appellant had become the full owner of the house since November 9, 1960 and symbolical possession was also handed over to him by the vendors. It was further stated that the Plaintiff was the tenant in the house under the previous owner. meaning the vendors, and had become tenant of the Appellant since November 10, 1960 on a monthly rent of Rs. 10. He was requested to vacate the house and hand over its possession to the Appellant by August 1. 1961, and to pay the arrears of rent, failing which the Appellant would go to the Civil Court holding the Plaintiff liable for all costs and damages, legal as well as others.

The second notice was given through the same pleader on August 7, 1961 in which it was stated that the Appellant had got l/6th portion of the house from Sknmati Purkhi and purchased the remaining 5/6th portion from its owners, the vendors, for a cash price of Rs. 5,000, by means of a sale deed, dated October 9, 1960, which was registered on October 10, 1960. and symbolical possession was also handed over to the Appellant. It was further stated that the Plaintiff was a tenant under the previous owner in the house which meant the vendors alone and not the vendors and the Appellant. It was then stated that the Plaintiff had become a tenant of the Appellant on the same conditions. The Plaintiff was requested to vacate the house by August 31, 1961 and to pay the arrears of rent failing which legal action against him would be taken holding him liable for all the legal costs and the expenses of the Appellant. Copies of these notices are Exhibits P. 6 and P. 7 respectively. These notices clearly show that the Appellant had admitted that the vendors were the owners of the house to the extent of 5/6th and had given the entire house on lease to the Plaintiff. The Appellant nowhere stated that the lease had been given to the Plaintiff with his consent. These notices were not taken into consideration by the learned lower appellate Court while finding that there was no evidence on the record to show that the vendors gave the entire house on rent to the Plaintiff. The finding on this point by the learned Courts below was, therefore, contrary to the evidence on the record and against the pleadings contained in the written statement of the Appellant. ;