

Dismissed. Vs. Mangal (Since Deceased Through Legal Representatives)

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Court : Punjab and Haryana

Decided On : Jul-04-2013

Appellant : Dismissed.

Respondent : Mangal (Since Deceased Through Legal Representatives)

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
Rs.NO.3466 OF 198.DATE OF DECISION :

4. h JULY 201 Abdul Waheed & others .

Appellants Versus Mangal (since deceased through legal representatives) .

Respondent CORAM : HONBLE Mr.JUSTICE L.N.MITTAL **** Present : Mr.H.S.

Gill, Senior Advocate with Mr.K.B.S.Mann, Advocate for the appellants.

Mr.Lokesh Sinhal, Advocate and Mr.J.S.

Hooda, Advocate for LR's of respondent.

**** L.N.MITTAL, J.

(ORAL) Defendants Abdul Waheed etc.having lost in both the Courts below are in second appeal.

Respondent-plaintiff Mangal (since deceased and represented by legal representatives) filed suit for possession of suit land by way of pre-emption.

It is undisputed that Mahti sold the suit land to defendants vide sale deed dated 30.07.1984.

The suit land is 29 kanals 15 marlas land i.e.25 kanals being half share of 50 kanals 1 marla, and 4 kanals 15 marlas land being 1/4th share of 18 kanals 19 marlas land.

Plaintiff claimed superior - 2- Rs.No.3466 of 1986 right of preemption on the ground of being cosharer in the aforesaid joint land.

The defendants resisted the suit and pleaded that the joint land already stood partitioned.

Both the Courts below have decreed the plaintiffs suit for preemption.

Feeling aggrieved, defendants have filed this second appeal.

I have heard learned counsel for the parties and perused the case file including files of the Courts below with their assistance.

Jamabandis for 1980-81 Exhibits P-1 and P-2 reveal that plaintiff is cosharer in both pieces of the joint land of which share has been sold to defendants by another cosharer Mahti.

Even perusal of copy of impugned sale deed Exhibit P-3 reveals that the defendants purchased share in the aforesaid joint land.

It is thus apparent that the land continued to be joint and had not been partitioned.

The plaintiff is proved to be cosharer in the land in question and therefore, his preemption suit has been rightly decreed.

Counsel for the appellants vehemently contended that the plaintiff in his cross-examination admitted that by mutual arrangement, parties were cultivating the land separately since the time of their ancest ORS.However, mere mutual arrangement

for separate cultivation of joint land does not amount to partition of the joint land not the joint land ceases to be joint.

On the other hand, the defendants themselves filed application for partition of the aforesaid joint land in the revenue Court on 04.09.1985 i.e.during pendency of the preemption suit filed by the respondent-plaintiff.

- 3- Rs.No.3466 of 1986 The said partition application was filed against other cosharers including plaintiff Mangal.

Learned Assistant Collector FiRs.Grade vide order dated 11.04.1990 has partitioned the joint land in question during pendency of the instant second appeal.

Copy of sanad takseem has been placed on record of this second appeal by appellants by moving application.

This document of defendants/appellants themselves clinches the matter against them.

It depicts that the suit land continued to be joint till it was partitioned during pendency of the instant second appeal.

It also shows that plaintiff Mangal was cosharer in the land in question.

Thus requirement of law that pre- emptor should retain his superior right of pre-emption till decision of trial Court is fully satisfied by the plaintiff who retained the said right not only till decision of suit by trial Court on 05.09.1986, but also till decision of fiRs.appeal on 18.11.1986.

In view of the aforesaid, I find no infirmity much less perversity, illegality or any other error in impugned judgments of the Courts below in decreeing the suit of the plaintiff.

Concurrent finding recorded by the Courts below in favour of the plaintiff is not shown to be perveRs.or illegal or based on misreading or misappreciation of the evidence on record.

No question of law, much less substantial question of law, arises for adjudication in this second appeal.

Accordingly the instant second appeal is dismissed.

Legal representatives of respondent-plaintiff are permitted to deposit the preemption money in the trial Court within two months from today if the same had been withdrawn pursuant to order dated 19.01.1987 passed by this Court.

- 4- Rs.No.3466 o

4. h July, 2013 (L.N.MITTAL) raj JUDGE

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