

**imamuddin Vs. Chao Khan (Deceased) Through Lrs and Others**

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**Court :** Punjab and Haryana

**Decided On :** Jul-11-2013

**Appellant :** imamuddin

**Respondent :** Chao Khan (Deceased) Through Lrs and Others

**Judgement :**

RSA No.285 of 1987 (O & M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH RSA No.285 of 1987 (O & M) Date of Decision: July 11th, 2013 Imamuddin ....appellant versus Chao Khan (deceased) through LRs and others ...Respondents CORAM: HON'BLE MR.JUSTICE FATEH DEEP SINGH 1 Whether Reporters of local papers may be allowed to see the judgement?.

2. To be referred to the Reporters or not?.

3. Whether the judgment should be reported in the Digest?. Present: Mr.Amit Jain, Advocate for the appellant Ms.Alka Sarin, Advocate for the respondents \*\*\*\*\* Fateh Deep Singh J.The present appellant-Imamuddin, who also happens to be the plaintiff before the trial Court, having been unsuccessful throughout the two courts below, has come up in this regular second appeal. The claim of the plaintiff in precise is based on the contentions that his father Abdulla was co-sharer of the property, which is an agricultural land situated in village Khandawali, Tehsil Hathin, District Faridabad and after whose death he is one of the inheritors to this estate. The plaintiff has alleged that Chameli- respondent No.2 had inherited a part of this

joint property from her Verma Neenu 2013.07.12 17:31 I attest to the accuracy and integrity of this document Chandigarh RSA No.285 of 1987 (O & M) 2 deceased husband Nath Singh by way of Rect.No.15 Killa No.26 (5- 12), which she alienated in favour of respondent No.1 Chao Khan her tenant not being represented by his legal representatives through registered sale deed dated 30.05.1983 for a sum of ` 4000/- and has come up in the suit for possession by way of pre-emption having preferential right to this property. Defendant No.1, not respondent No.1 had only filed written reply taking the stand in preliminary objections that 1/5th of the amount has not been deposited within the time allowed by the court and the sale has been made by the female and does not vests in the plaintiff any right to pre-emption and on merits it is the stand that the suit property was under the tenancy of Chao Khan and who has purchased the same from Chameli for a sum of ` 4000/- over which he has spent almost ` 600/- by way of stamp and registration fee and denied that the plaintiff was a co-sharer or has not preferential right of pre-emption. The plaintiff filed replication and after framing of issues and recording of evidence, the Court of Sh.A.Maitri, Sub-Judge IIIrd Class, Palwal dismissed the suit of the plaintiff vide judgement and decree dated 28.01.1986. The unsuccessful plaintiff challenged these findings before the first appellate Court of Mr. D.D.Yadav, Additional District Judge-II, Faridabad, which too dismissed the appeal of the plaintiff through judgement dated 13.10.1986. Before this Court, the following substantial questions of law were framed: Verma Neenu 1. Whether in the facts and circumstances of the instant 2013.07.12 17:31 I attest to the accuracy and integrity of this document Chandigarh RSA No.285 of 1987 (O & M) 3 case, once it was proved on record that the appellant was a co-sharer in the land in dispute on the date of sale, on the date of filing of the suit and on the date of final adjudication by the learned trial Court, the suit filed by the appellant, on the basis of superior right of pre-emption could be dismissed?.

2. Whether in the facts and circumstances of the instant case the approach of the learned courts below in holding the respondent to be a tenant on mere conjectures and surmises is not illegal and sustainable in law?.

3. Whether a sale by a female can be held to be protected and not pre-emptible in view of the law laid by the Hon'ble Supreme Court in the case of Atam Parkash vs.

State of Haryana, reported as 1986 PLJ 191?.

4. Whether in the facts and circumstances of the instant case the impugned judgement and decree of the learned courts below are not perverse being based on misreading and misinterpretation of the material oral as well as documentary evidence on record?. I have heard learned counsel for the parties and perused the paper book. The first and foremost point assailed by counsel for the appellant is to the effect that since the suit was filed on 16.07.1983 and the decree of the first Court was passed on 28.01.1986, prior to Verma Neenu 2013.07.12 17:31 I attest to the accuracy and integrity of this document Chandigarh RSA No.285 of 1987 (O & M) 4 the coming in force of the amendment to Punjab Pre-emption (Haryana Amendment) Act, 1995 and therefore respondent No.1 cannot claim preferential right to pre-empt. Learned counsel has placed reliance upon the judgement of Hon'ble the Supreme Court in the case of Shyam Sunder vs. Ram Kumar 2001(3) RCR (Civil) 754, to which arguments have been stoutly opposed by learned counsel for the respondents on the submissions that by this amendment the Court was supposed to take judicial notice of the law as prevailing on the date of the final order or judgement. Learned counsel also placed reliance upon judgement of the Hon'ble Supreme Court in the case of Mansu vs. Shadi Ram 1996(3) RCR (Civil) 438. Appreciating these submissions that it is by no means a question of dissent that initially the suit was filed on 16.07.1983 and the first judgement and decree was passed on 28.01.1986 and thus the moot question that arises is if the Haryana Amendment Act, 1995 has a retrospective effect or a prospective effect. A Five Bench view of the Hon'ble Supreme Court in Shyam Sunder' s case (Supra) have determined the dichotomy that has earlier propped up in the observations made in Didar Singh etc.etc. vs. Ishar Singh (dead) by LRs. Etc. 1995 (1) Scale 1 and Ramjilal and others vs. Ghisa Ram etc. 1996(2) RCR (Civil) 456 (SC) and have clearly elaborated that Section 15 of the Punjab Pre-emption Act as substituted by Haryana Amendment Act, 1995, either expressly or by necessary implication intends to supply an omission or to clear up a doubt as to the amendment of previous Section 15 of the parent Act and have Verma Neenu held that the previous Section 15 of the parent Act was precise, plain 2013.07.12 17:31 I attest to the accuracy and integrity of this document Chandigarh RSA No.285 of 1987 (O & M) 5 and simple and there was no ambiguity in it and thus

the words used therein were never in doubt or any omission in phraseology had occurred which needed to be supplied by amending Act and there is nothing in the amending Act either expressly or by necessary implication that it intended to be retrospective and has held that it has no retrospective operation and therefore arguments of learned counsel for the respondents needs to be brushed aside and thus it is necessary to hold that the right to pre-empt crystallises only at the time of filing of the suit and on passing of the first judgement. There is specific averment of Chao Khan in his deposition before the trial Court that prior to the sale, he was a tenant in the property subject matter of pre-emption and which has not been controverted by the plaintiff and therefore it is well proved that Chao Khan was holding a status of tenant in this land prior to the sale. However, Chao Khan, not through his legal representatives cannot claim superior right of pre-emption by virtue of this amendment. Therefore the finding on issue No.4 by the courts below needs to be upheld. It is the case of counsel of the two contesting parties that Khasra No.15/26(5-12) is a ghair mumkin cha. which is also reflected in the revenue record as per jamabandi for the year 1996- 97 placed on the record by the plaintiff as well as the revenue documents of the defendant and thus does not fall within the definition of agricultural land as such laid down by Hon'ble the Supreme Court in the case of Surjan Singh vs. The East Punjab Government AIR 195.Punjab 265 and even by the interpretation of the Land Revenue Assessment Rules, 1929, where pieces of land Verma Neenu 2013.07.12 17:31 I attest to the accuracy and integrity of this document Chandigarh RSA No.285 of 1987 (O & M) 6 are entered as ghair mumkin are indicative of the area being used as part of roads, paths, water channels etc. of permanent nature and therefore this land bearing khasra No.15/26 does not fall purely within the term of agricultural land and therefore by virtue of intent and object of the Punjab Pre-emption Act, 1913, Section 6 provides that right of pre-emption shall only exist in respect of village immovable property in respect of agricultural land and by that analogy even partial pre-emption is not permissible which further de hors the claim of the plaintiff. It is the own case of the plaintiff that the subject matter of dispute has been inherited by Chameli-respondent No.2 from her husband and thus the Hindu Succession Act, 1956 by way of Section 14 bestows on the widow an absolute right over this property and therefore does not bars her to alienate this property as the very

provisions of Section 14 of the Hindu Succession Act, 1956, come within the ambit of Entry 5 in List III of 7th Schedule of the Constitution of India and to the mind of this Court even an agricultural land cannot be excluded from its purview of being an absolute property of the hindu widow. More so, in the light of the submissions made by learned counsel for the respondents by virtue of un- amended provisions of the Section 15(1) of Punjab Pre-emption Act, the right of pre-emption in respect of agricultural land and village immovable property shall vest where the sale of land or property is by female to which she has succeeded through her husband or through her son. In case the son has inherited the land or property sold from his father, the right of pre-emption shall vest firstly in the son or Verma Neenu 2013.07.12 17:31 I attest to the accuracy and integrity of this document Chandigarh RSA No.285 of 1987 (O & M) 7 daughter of such husband of the female and secondly in the husband, brother or husband's brother, brother's son of such female and therefore right of Imamuddin to seek pre-emption of this property seems to be illusory. No benefit can be derived out of the ratios and therefore the sale by Chameli-respondent No.2 is certainly protected and not pre-emptible. In view of the aforesaid discussions, findings of the courts below is the correct appreciation and need not be interfered with. The appeal as such stands dismissed being without merits. No costs. (Fateh Deep Singh) Judge July 11th, 2013 neenu Verma Neenu 2013.07.12 17:31 I attest to the accuracy and integrity of this document Chandigarh