

Rsa No.468 of 1997 Vs. Rsa No.468 of 1997

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Court : Punjab and Haryana

Decided On : Feb-19-2014

Appellant : Rsa No.468 of 1997

Respondent : Rsa No.468 of 1997

Judgement :

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH Date of Decision: 19.02.2014 Rs.No.468 of 1997 Imdad Appellant Versus Chahat Respondent CORAM: HONBLE Mr.JUSTICE HEMANT GUPTA Present: Mr.Lokesh Sinhal, Advocate for the appellant.

Mr.Birinder Rana, Advocate, for the respondents.

HEMANT GUPTA, J.

(ORAL) The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned fiRs.Appellate Court on 21.12.1996, whereby the defendants appeal was accepted and the suit claiming pre-emption of the land sold on the basis of tenancy was dismissed.

The defendant purchased land measuring 4 kanal 10 marlas for a sale consideration of Rs.8100/- vide registered sale deed dated 28.12.1989.

The plaintiff sought to pre-empt the said land claiming to be sitting tenant on the said land from the time of his predecessor-in-interest.

The said claim of the plaintiff was resisted by, inter alia, pleading that the sale was effected with the knowledge of the plaintiff and that the plaintiff has got no superior right of pre-emption.

Both the parties went to the trial on the following issues: 1.

Whether the plaintiff has got superior right of pre-emption in respect of the impugned sale?.

OPP2 Whether the plaintiff has got no locus standi to file the present suit?.

OPD3 Whether the suit is barred by limitation?.

OPD4 Whether the suit is bad for partial pre-emption?.

OPD Kumar Vimal 2014.02.25 13:47 I attest to the accuracy and integrity of this document Chandigarh Rs.No.468 of 1997 2 5.

Whether the answering defendant is entitled for stamp and registration charges in addition to sale price?.

OPD6 Relief.

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After considering the oral and documentary evidence on record, the learned trial Court returned a finding that the plaintiff was a tenant.

The learned Trial Court relied upon jamabandi for the year 1988-89 (Ex.P1) and khaSr.girdawari (Ex.P2).In the said documents, the plaintiff is recorded to be in possession of the suit land comprising in Rect.No.109 KhaSr.No.7/1 measuring 3 kanals 12 marlas and KhaSr.No.6/3 measuring 4 kanals 10 marlas as tenant though the sale was only in respect of land measuring 9 marlas of khaSr.number 6/3.

The learned trial Court found that the copies of jamabandi (Ex.P8) and khaSr.girdawari (Ex.P7) for the year 1988-99 were supplied to the plaintiff on 10.12.1990, wherein the plaintiff is recorded to be in cultivating possession of the suit land as tenant.

It is also noticed that the order of the Assistant Collector 2nd Grade, Nuh dated 31.08.1992 (Ex.D3) correcting khaSr.girdawari in respect of possession of 9 marlas of land comprising in Killa No.6/3 since Rabi 1991 was passed during the pendency of the suit, therefore, the defendant was not given any benefit of the said order.

However, in appeal on behalf of the defendant, the fiRs.Appellate Court returned a finding that the suit land comprises of KhaSr.No.7/1 (3-12) and 6/3 (0-9).The plaintiff-appellant relies upon Exs.P8 to P10 in support of its claim of tenancy over the suit property at the time of sale.

In jamabandi (Ex.P9) for the year 1973-74, the possession of Kamrudin, father of the plaintiff, is reflected over khaSr.No.6/3 measuring 4 kanals 10 marlas and not over khaSr.No.7/1.

Infact, KhaSr.No.7/1 is reflected to be in cultivating possession of the owner.

In view of the said Kumar Vimal 2014.02.25 13:47 I attest to the accuracy and integrity of this document Chandigarh Rs.No.468 of 1997 3 fact and the fact that after the purchase of suit land, the khaSr.girdawari entries have been corrected on an application filed by the defendant.

In the present second appeal, I have gone through the entire evidence on record with the assistance of the learned counsel for the parties.

The fiRs.jamabandi on record is for the year 1968-69 (Ex.P10).In the said jamabandi, khaSr.No.6/3 measuring 4 kanals 10 marlas alone is reflected to be in possession of Kamrudin, father of the appellant.

In the jamabandi for the year 1973-74, again the land comprises in khaSr.No.6/3 alone is reflected in the possession of Kamrudin.

However, it was in the jamabandi for the year 1988-89, the land comprised in KhaSr.No.7/1 was initially recorded to be in possession of the appellant, as tenant, but such entry was ordered to be corrected vide Ex.D3.

It is not the case of the appellant that he came in possession as a tenant over KhaSr.No.7/1 in recent past.

The case set up is that he is in possession since last 40 years. Therefore, in the absence of entry of tenancy in the jamabandi for the year 1968-69 and 1973-74, the claim of the appellant that he is tenant over the entire land sold to the defendant is clearly not made out.

Since the appellant is not reflected as tenant over the entire land sold, he cannot seek pre-emption of the suit land.

Consequently, I do not find any patent illegality or irregularity in the judgment and decree passed by the learned fiRs. Appellate Court, which may give rise to any substantial question of law in the second appeal.

Dismissed.

(HEMANT GUPTA) 19.02.2014 JUDGE Vimal Kumar Vimal 2014.02.25 13:47 I attest to the accuracy and integrity of this document Chandigarh

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