

Arjan Singh Dedar Singh Vs. Mohan Singh Bur Singh and anr.

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Court : Punjab and Haryana

Decided On : Oct-05-1960

Reported in : AIR1961P& H287

Judge : Tek Chand and; P.C. Pandit, JJ.

Acts : Punjab Pre-emption (Amendment) Act, 1960; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rules 22 and 33

Appeal No. : First Appeal No. 173 of 1958

Appellant : Arjan Singh Dedar Singh

Respondent : Mohan Singh Bur Singh and anr.

Advocate for Def. : K.C. Puri, Adv.

Advocate for Pet/Ap. : J.N. Seth, Adv.

Disposition : Appeal dismissed

Judgement :

P.C. Pandit, J.

1. Mohan Singh defendant No. 1 sold the land in dispute to Munshi Singh defendant No. 2 for Rs. 23,000/-. This sale led to a suit for pre-emption by Arjan Singh On the ground that he was a collateral of the vendor. He also pleaded that

the entire amount mentioned in the sale deed had not been paid. The suit was contested by the, vendee on a number of pleas which gave rise to the following issues :

1. Whether the plaintiff has a preferential right of purchase of the land in dispute on the ground that he is an heir of the vendor Mohan Singh?
2. Whether the sale consideration of Rs. 23,000/- has been paid or fixed in good faith?
3. In case of non-proof of issue No. 2, what is the market-value of the land in dispute?
4. Whether the suit of the plaintiff is barred on grounds of waiver?
5. To what relief, if any, is the plaintiff entitled?

2. The trial Judge (Subordinate Judge Second Class Faridkot), after recording some evidence, held that the plaintiff had a right of pre-emption which had not been waived. He, however, did not decide issues Nos. 2 and 3 because he had not the requisite jurisdiction to pass a decree in the case. Consequently he forwarded the case to the learned District Judge who sent it to the Additional District Judge for disposal.

The learned Additional District Judge, after recording the remaining evidence, found issue No. 2 in favour of the vendee and held that, in view of his finding on issue No. 2, the question of deciding issue No. 3 did not arise. Consequently, he passed a decree for possession by pre-emption in favour of the plaintiff on his depositing the amount of Rs. 19,550/- in Court on or before the 5th August, 1958, failing which his suit would stand dismissed with costs. It was further ordered that a sum of Rs. 4,000/- would be paid by the plaintiff to one Hamir Singh mortgagee, when he would seek possession of the land from the latter.

3. The plaintiff has filed the present appeal in this Court claiming that the amount, on the payment of which he had been given a decree for possession, should be reduced by Rs. 3,700/- and has paid ad valorem court-fee on this amount.

4. The vendee, on the other hand, has filed cross-objections praying that the decree passed by the trial Court may be set aside and the plaintiff's suit be dismissed. His main grounds are that the trial Judge had no jurisdiction to decide issues Nos. 1 and 4 and consequently these findings are void and of no legal effect, and that the decree passed by the learned Additional District Judge cannot be sustained because he had given no independent findings of his own On issues Nos. 1 and 14 in favour of the plaintiff and had given his findings on issues Nos. 2 and 3 only.

5. During the pendency of the regular first appeal in this Court, the Punjab Pre-emption (Amendment) Act No. 10 of 1960 came into force, and the learned counsel for the respondent has submitted that the plaintiff's suit for pre-emption should be dismissed, because he is claiming a right of preemption on the ground that he is a fourth degree collateral of the vendor, and the right of pre-emption on this basis has now been taken away by this amending Act.

6. Learned counsel for the appellant, on the other hand, prays that he wishes to withdraw his appeal and consequently, there being no appeal before this Court, the question of applying this amending Act will not arise. All that Section 31 (which is added by this amending Act) says is :

'No Court shall pass a decree in a suit for pre-emption whether instituted before or after the commencement of the Punjab Pre-emption (Amendment) Act, 1959, which is inconsistent with the provisions of the said Act.'

When the appeal is withdrawn, this Court would not be passing any decree which is inconsistent with the provisions of the amending Act. Learned counsel for the respondent submits that even if the appeal is withdrawn, the cross-objections filed by the respondent are still there and they have to be disposed of Order 41, Rule 22 (4), Civil Procedure Code, is in the following words:

'Where, In any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit' and it is conceded by the

learned counsel for the appellant that even if the appeal is withdrawn, the cross-objections filed by the respondent are still entertainable by this Court.

7. Now the question arises that when the cross-objections are being disposed of by this Court, can the respondent rely upon this amending Act and say that the suit should be dismissed, because if the suit is decreed this Court would be passing a decree which would be inconsistent with the provisions of the amending Act, the plaintiff's right of pre-emption, on the basis of being the fourth degree collateral of the vendor, having been taken away by this Act.

8. In my opinion, the respondent can take advantage of this amending Act. Whether we accept the cross-objections or reject them, the decree passed by the trial Court in either case would either be varied or confirmed by this Court and then the decree of this Court would be the final decree and capable of execution. If the cross-objector is a person who has no right of preemption under the amending Act, then this Court, according to the provisions of Section 31, shall not pass a decree for preemption in his favour, because it would be inconsistent with the provisions of the amending Act.

9. The matter can be looked at from another point of view as well. So long as these cross-objections are not decided one way or the other, the suit filed by the pre-emptor has not been finally disposed of. The moment the cross-objections were filed by the respondent, the matter became sub judice and thereafter this Court was seized of the whole case. Like an appeal, the cross-objections are also a continuation of the proceedings in the trial Court and amount to a rehearing of the matter.

9a. In *Ram Lal v. Raja Ram*, 62 Pun LR 291, G. D. Khosla, C. J., and Dulat J., held as under :

'That, quite apart from the fact that a change in law after the decision of the trial Court must be given effect to by the appellate Court, with regard to pre-emption cases the law has always been that the right of pre-emption must subsist not only on the date of the sale but also on the date when the suit is brought and finally on the date when the decree is passed.

That an appeal is a continuation of the original proceedings and a re-hearing of the matter.

That the Punjab Pre-emption (Amendment) Act, 1960, must be given effect to not only in fresh suits filed or suits pending but also in those cases in which appeals are pending and have not been decided.'

10. The reasoning given in this authority also applies to a case where the cross-objections have been filed by the respondent, because cross-objections are also a continuation of the suit. Order 41, Rule 22 (1), Civil Procedure Code, provides that the respondent can take any cross-objection to the decree which the cross-objector could have taken by way of appeal. It is also not disputed that an appeal, which has been filed after the period of limitation, can be treated as cross-objections under certain circumstances. Therefore, there appears to be no material difference between cross-objections and a cross-appeal,

11. Finding as I do, that in cross-objections the respondent can take advantage of this amending Act, there is no necessity of deciding the cross-objections on merits, because even if there is no force in these cross-objections the provisions of the new Section 31 of the Punjab Pre-emption Act will come into play and this Court will not pass a decree for pre-emption in favour of a fourth degree collateral of the vendor.

12. In view of what I have said above, the appeal is dismissed as having been withdrawn, but the cross-objections are accepted and the plaintiffs suit is dismissed. In the circumstances of this case, however, the parties are left to bear their own costs throughout,

Tek Chand, J.

13. I agree.