

Ajmer Singh and ors. Vs. Mukhtiar Singh and ors.

Ajmer Singh and ors. Vs. Mukhtiar Singh and ors.

SooperKanoon Citation : sooperkanoon.com/616186

Court : Punjab and Haryana

Decided On : Aug-23-1972

Reported in : AIR1973P& H266

Judge : Gurdev Singh, J.

Acts : [Pepsu Tenancy and Agricultural Lands Act, 1955](#) - Sections 31; Punjab Pre-emption Act, 1913 - Sections 23 and 24; Punjab Co-operative Land Mortgage Banks Act, 1957; Punjab Alienation of Land Act, 1900

Appeal No. : Second Appeal No. 817 of 1971

Appellant : Ajmer Singh and ors.

Respondent : Mukhtiar Singh and ors.

Judgement :

1. The sole question that arises in this appeal is whether a sale of agricultural property which is void being in contravention of Section 31 of the [Pepsu Tenancy and Agricultural Lands Act, 1955](#) (hereinafter referred to as the Act), can be pre-empted under the Punjab Pre-emption Act, 1913. The trial Court answered it in the negative and dismissed the plaintiff's suit with costs. In appeal, however, the Additional District Judge reversed the finding of the trial Court on this point and decreed the claim of the plaintiff-respondent Mukhtiar Singh on payment of Rs. 15,062/-.

2. The vendee, Ajmer Singh, Pritam Singh, Amar Singh and Gurdev Singh, purchased the land in dispute measuring 58 Kanals 10 Marlas, situate in Dharamgarh, by means of registered sale-deed dated 18th March, 1967. It is not disputed that the vendor Dhanna Singh had acquired the proprietary rights under Section 23(2) of the Act and sale certificate was issued in his favour under Section 23(3) of the Act on 16th April, 1964. Section 31 of that Act provides:--

'31. Bar of transfer of ownership rights.

(1) No land in respect of which proprietary rights have been acquired under this Chapter shall be transferred by sale, mortgage, gift or otherwise during a period of six years from the date of a certificate issued under Sub-section (3) of Section 23:

Provided that nothing in this sub-section shall apply to the land mortgaged with the State Government or the Punjab State Co-operative Land Mortgage Bank. Limited established under the Punjab Co-operative Land Mortgage Banks Act, 1957.

(2) Any transfer of land made in contravention of sub-section (1) shall be void and no registering authority shall register any document evidencing such transfer under the Indian Registration Act, 1908 (XVI of 1908).'

3. The sale by Dhanna Singh having been made on the 18th March, 1967, was clearly in violation of this provision was the sale certificate in favour of Dhanna Singh was issued on 16th April, 1964 and the period of six years had thus not expired at the time Dhanna Singh entered into sale in dispute. Relying on this provision, the vendees urged that at that time the suit for pre-emption brought by Mukhtiar Singh was not competent. The learned trial Judge accepting this plea of Dhanna Singh, dismissed the suit, but on appeal a different view was taken and reversing the finding of the trial Court. the Additional District Judge, Sangrur, decreed the pre-emptors suit as stated earlier.

4. On behalf of the vendees, it is submitted that what is pre-emptible under Section 4 of the Punjab Pre-emption Act, 1913, is a sale which means a complete and a valid sale and any transaction if it purports to be a sale that is void cannot be subject-matter of claim for pre-emption. In view of this, it is argued that since

Section 31(2) of the Act declares that any sale made in contravention of sub-section (1) of Section 31, shall be void, the sale sought to be pre-empted has no legal existence or effect and must be ignored. It is further urged that a void sale does not pass any title to the vendees and accordingly in a suit for pre-emption, which is a right of substitution in place of the vendees, there is nothing that the vendee can pass on to the pre-emptor.

5. On behalf of the respondents it was, however, urged that a sale made in violation of a provision of law cannot be considered to be non-existence and it does not lose its character. In this view of the matter, it is argued that such sale is not immune from pre-emption as different view of the matter would enable the parties to a sale to defeat the right of pre-emption by entering into an illegal transaction.

6. Support for this argument is sought from the provisions of Section 23 and 24 of the Punjab Pre-emption Act, 1913, which relate to the pre-emption of sales made in contravention of the Punjab Alienation of Land Act, 1900 that is repealed by the Adaptation of Laws (Third Amendment) Order, 1951. These two provisions read as follows:

'Section 23. No decree shall be granted in a suit for pre-emption in respect of the sale of agricultural land until the plaintiff has satisfied the court:--

(a) that the sale in respect of which pre-emption is claimed is not in contravention of the Punjab Alienation of Land Act: No XIII of 1900: and

(b) that he is not debarred by the provisions of Section 14 of the Act from exercising the right of pre-emption.

'Section 24. In a suit for pre-emption in respect of a sale of agricultural land, if the court finds that the sale is in contravention of the Punjab Alienation of Land Act, 1900, the court shall dismiss the suit.'

7. It is argued that he had the Legislature intended that the sale of the type with which we are concerned in this case, namely one in contravention of Section 31 of the Act, be not pre-emptible, then it could have easily amended Section 24 so as to

provide that a suit for pre-emption in respect of such a sale shall be dismissed. This argument, in my opinion, is not tenable as it ignores the distinction between the sales made in contravention of the Punjab Alienation of Land Act and those that are in contravention of the [Pepsu Tenancy and Agricultural Lands Act, 1955](#). Whereas Section 31(1) of the latter Act specifically lays down that no land in respect of which proprietary rights have been acquired shall be transferred by sale etc., during a period of six years from the date of a certificate issued under sub-section (3) of the Section 23, except in the cases specified in the proviso thereto. and any transfer of land made in contravention of this provision shall be void, Section 3(2) of the Punjab Alienation of Land Act lays down that a permanent alienation except in the cases provided for in sub-section (1) shall not take effect as such unless and until sanction is given thereto by the Deputy Commissioner. It further provides that such sanction may be given after the act of alienation is otherwise completed. It is thus obvious that an alienation made in contravention of the Punjab Pre-emption Act is not void ab initio. It was for that reason that provision had to be made in Sections 23 and 24 of the Punjab Pre-emption Act. especially in view of the fact the defect in alienation could be subsequently cured by obtaining the sanction of the Deputy Commissioner subsequently.

The alienation made in contravention of Section 31 of the Act is specifically declared to be void under sub-section (2) thereof. In fact, sub-section (2) further prohibits the registration of such a sale-deed. This clearly indicates that such a sale is not to pass any interest to the purchaser. Since such a sale is void ab initio, there was no occasion for making any amendment in Section 23 or Section 24 of the Punjab Pre-emption Act. so as to provide that the sale would not be pre-emptible or that no decree in a suit for Pre-emption of sale can be awarded. It is well settled that where a statute declares a transaction to be void, the Court will not give effect to it. If a decree is awarded to pre-empt such a sale, it would not only be tantamount to recognising that transaction as valid but by permitting the pre-emptor to be substituted for the vendee the Court will also be treating the sale as good and capable of passing title to the vendee by directing that the pre-emption money be paid to the vendee.

8. Reference has been made by the learned counsel for the respondents to the Full Bench decision of the Allahabad High Court in *Janki v. Girjadat* (1885) ILR 7 All 482(FB) wherein it was held that where a co-sharer entered into a transaction by which he transferred his share to a stranger for Rs. 300/- but in order to override the right of pre-emption the parties have omitted to execute or register the sale-deed in respect of that transfer, the transaction gave rise to the right of pre-emption within the meaning of the *Wajib-ul-Arz*. That was a case where the right of pre-emption was given by the *Wajib-ul-Arz*. In coming to this conclusion Petheram, C. J. observed that the terms of the *Wajib-ul-Arz* meant that if any co-sharer transferred his right wholly or partly, the right of pre-emption should arise; that, although the legal interest in the share was never transferred, the effect of the transaction in question was to transfer absolutely the whole right of possession from the vendor to the vendee, and that therefore, such a transfer was pre-emptible. That case is clearly distinguishable. It may be noted here that Mahmood, J. who wrote a dissenting judgment held that a valid and perfected sale was a condition precedent to the exercise of the pre-emptive right.

9. In *Buta Singh v. Jawand Singh* AIR 1930 Lah 140, which was cited before the Courts below. Shadi Lal C. J., rules that a suit for pre-emption in respect of a sale which was in contravention of the Alienation of Land Act was liable to dismissal under Section 24 of the Punjab Pre-emption Act. That authority is not of much assistance as it is based upon the specific provision contained in Section 24 of the Punjab Pre-emption Act.

10. I am firmly of the opinion that a sale which is declared to be void by the statute and, as such, incapable of passing any interest to the purchaser cannot be made the basis for a suit for pre-emption and the fact that the vendee was a party to such a sale will not disentitle him to set up the invalidity of the sale.

11. In this view of the matter, the plaintiff was not entitled to a decree. I, accordingly, accept the appeal and dismiss the suit. In view of the fact that the decision turns on a question of law on which there is no precedent. I leave the parties to bear their own costs.

12. Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com