

**Bara Singh and ors. Vs. Chaln Singh and ors.**

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**Court :** Punjab and Haryana

**Decided On :** Dec-09-1981

**Reported in :** AIR1982P& H198

**Judge :** G.C. Mital, J.

**Appeal No. :** Second Appeal No. 310 of 1971

**Appellant :** Bara Singh and ors.

**Respondent :** Chaln Singh and ors.

**Advocate for Pet/Ap. :** Shri. Ajit Singh Sarhadi

**Judgement :**

1. The point of substance which arises in this appeal is the effect of a pre-emption decree obtained by a co-sharer in a civil suit filed by another co-sharer to pre-empt the same sale which had not been decided by the time the earlier pre-emption decree was passed.

2. On 13th June, 1966 Harnam Singh sold certain agricultural land to Chain Singh and his sons for Rs.20,000/-. On 12th June, 1967, Bara Singh and others filed a suit to pre-empt the aforesaid sale as a co-sharer. On the following day, namely, 13th June, 1967, Charan Singh and others yet filed another suit to pre-empt the same sale as co-sharers. In the suit filed by Charan Singh and others the vendees conceded the claim with the result that on 2nd of December, 1967 the suit for pre-

emption filed by Charan Singh and others was decreed. In pursuance of the decree, the pre-emption amount was deposited and possession was obtained on 17th June, 1968. When Bara Singh and others (plaintiffs in the other pre-emption case) came to know of the aforesaid decree and taking over of possession by the rival pre-emptors, they amended the suit and impleaded Charan Singh and others as defendants and challenged the pre-emption decree obtained by them. Both the Courts below came to the conclusion that Charan Singh and others had the right of pre-emption as co-sharers and were substituted in place of the vendees. Since the rival pre-emptors were substituted in the place of vendees, Bara Singh and others who are plaintiffs in the other pre-emption suit, having equal right of pre-emption, could not succeed against them. On this basis the suit was dismissed. Thus, the plaintiffs have come up in second appeal to this Court.

3. Learned counsel, Shri Ajit Singh Sarhadi, appearing for the plaintiffs, has urged that if Charan Singh and others, the rival pre-emptors, had either purchased the land in dispute from the vendees or had deposited the decretal amount in pursuance of the pre-emption decree within one year of the date of sale, only then they could be held to have been substituted in place of the vendees and in that event alone the suit of his clients could be dismissed and not otherwise. For this submission reliance was placed on *Bishan Singh v. Khazan Singh*, AIR 1958 SC 838. It was further urged that the Courts below were in error in recording a finding that the appellants were not proved to be co-sharers in that land in dispute. Both the points have been controverted by the counsel for the rival pre-emptors and it is urged that *Bishan Singh's* case (*Supra*) rather supports the decisions of the Courts below. Reliance is also placed on *Mst. Dhapan v. Shri Ram*, (1959) 61 Pun LR 774.

4. After hearing the learned counsel for the parties, I am of the view that the second point raised by the counsel for the appellants deserves to be decided in favour of the appellants and the Courts below erred in law in concluding that the appellants failed to prove that they were co-sharers with the vendor. The appellants purchased share in the land in dispute vide registered sale deed dated 8th June, 1959 (Exhibit P-1) which sale was depicted in Jamabandi Exhibit P-5 and concluded that it does not show that the appellants continued to be co-sharers

till the date when the impugned sale was made on 13th June, 1966. Even the defendants produced Jamabandi of the year 1962-73 as Exhibit D-3 which clearly recites the purchase of share made by the plaintiffs vide sale deed Exhibit P-1 on the basis of which mutation No. 50 was sanctioned. The plaintiffs have also produced a copy of mutation as Exhibit P-6. There is mention of mutation No. 50 even in the jamabandi Ext. P-5 although other details are not mentioned therein. Once it is found that the plaintiffs had purchased a share in 1959 vide Ext. P-1, they will continue to be co-sharers till they part with the same. No evidence has been brought on record by the defendants to show if the appellants parted with their share any time before the sale was made on 13th June, 1966 or by the time the trial Court decided the suit or even till today. Under the circumstances, I am of the view that they continued to be co-sharers in the land in dispute and the finding to the contrary recorded by the Courts below is clearly erroneous and is hereby reversed.

5. Coming to the first legal proposition, a reading of the judgment in case Bishan Singh v. Khazan Singh (Supra) does go to show that some of the paragraphs support the appellants contention while some other paragraphs and ultimate conclusion of the decision support the respondents' contention. The real crux of the decision in Bishan Singh's case (supra) is that if a person having a right of pre-emption of the same decree purchased the land from the vendee within one year of the sale or gets a pre-emption decree after filing a suit within limitation earlier to the rival pre-emptor then he stands substituted in place of the vendee and once a co-sharer is substituted in place of the vendee, a suit by another co-sharer to pre-empt the same sale cannot be decreed because of the fact of substitution. The suit in law would be against a co-sharer vendee and suit for pre-emption cannot be decreed unless the right of pre-emptor is superior to that of the vendee. It is also clearly held that if a pre-emptor of the equal degree does not purchase from the vendee within the period of limitation nor files a suit for pre-emption within limitation but purchases the land from the vendee beyond limitation then he does not get substituted for the vendee but only gets right to defend in place of the vendee on the pleas open to the vendee and not to him. The facts of Bishan Singh's case (Supra) were that the sale was made on August 26, 1949 and was registered on February 15, 1950. The first suit for pre-emption as a co-sharer was

filed on August 26, 1950 in which a compromise pre-emption decree was passed on January 23, 1951 and the pre-emption amount was deposited on April 23, 1951 and possession was obtained on May 17, 1951. Within the limitation another suit for pre-emption was filed by another set of co-sharers, although after the compromise decree, but before the amount was deposited and possession obtained. On the aforesaid facts, the final conclusion contained in paragraph 23 of the report was as follows:--

'This judgment is, therefore, a clear authority for the position that the pre-emptor is not substituted in the place of the original vendee till conditions laid down in the decree are fulfilled. We cannot, therefore, agree with the learned counsel that the compromise decree itself perfected his clients' right in derogation to that of the plaintiffs. But as we have held that the appellants complied with the conditions laid down in the compromise decree, they were substituted in the place of the vendee before the present suit was disposed of.'

6. The aforesaid quotation clearly shows that the learned Judges of the Supreme Court were not considering a pre-emptor to have been substituted for the vendee in case substitution took place within one year of the sale but also allowed substitution in a case which took place beyond one year because admittedly the amount was deposited on 23-4-1951, which was beyond one year of registration of sale and yet the pre-emptor in the first suit was held to have been substituted on the date of deposit which was a condition of the decree because if the deposit had not been within the prescribed time then the suit for pre-emption would have stood dismissed. It is also clear from the facts of Bishan Singh's case (AIR 1958 SC 838) (supra) that on the date of deposit by the first set of rival pre-emptors, the second suit was pending and that is why they have said that where substitution takes place before the second suit was disposed of, the plaintiffs of the second suit cannot get decree. Precisely are the facts before me.

7. The main strain of the argument of Shri Ajit Singh Sarhadi was that the substitution of a rival pre-emptor to bar second pre-emption suit must take place within one year of the sale, i.e., within the period of one year's limitation whether by private sale from vendee to the pre-emptor or by decree of a Court and if the

rival pre-emptor purchases from the vendee beyond one year or gets a decree beyond one year and deposits the amount in time, in that event he would not be deemed to have been substituted in place of the vendee and would only have a right to defend the second suit in place of the vendee and on the grounds on which vendee alone could defend the second suit and not on the ground that he stood substituted in place of the vendees. This argument may be tested from an illustration. Suppose one suit for pre-emption was filed by 'A' on the ground of being a son of the vendor and another suit for pre-emption was filed by 'B' to pre-empt the same sale on the ground of being co-sharer with the vendee and if both the suits are decided together then the usual form of the decree is that 'A' gets a decree for pre-emption and he is given a date for deposit and in case he deposits by the due date, the suit filed by 'B' is deemed to be dismissed because 'A' had a right preferential to 'B'. It is further provided in the decree that in case 'A' does not deposit by the due date then his suit would be deemed to be dismissed and 'B' is given further time to deposit. In case he deposits by that time, his suit stands decreed and in case he does not deposit by the due date, his suit also stands dismissed. However, if both the suits are tried separately and if A's suit is decreed first although beyond one year from the date of sale and the deposit is also made beyond one year of the date of sale but within the time allowed then according to the argument of Mr. Sarhadi if he wants to defend the suit filed by 'B', he would only represent the interests of the vendee and would be entitled to continue the suit on the objections available to the vendee and not to him. If this would be the situation then B's suit would be decreed against 'A' as well in spite of the fact that 'A' had a superior right of pre-emption over 'B'. This anomaly can be avoided only if it is considered that 'A' pre-emptor is substituted in place of the vendee either by purchase within one year of the sale or in a suit by him within time, though decreed beyond one year. Once 'A' would be deemed to have been substituted for the vendee then 'A' would have a right to defend B's suit and plead that he had a right superior to 'B' and, therefore, B's suit cannot be decreed. This is the only correct way of reading the Supreme Court decision in Bishan Singh case (AIR 1958 SC 838) (supra). Otherwise 'A' in spite of having a superior right over 'B' and also having obtained a decree prior to 'B' would lose his right of pre-emption or in any case a difficult situation would arise because both of them will have a pre-

emption decree and it would be a matter of serious consideration as to what would be the effect of the two decrees. This clearly demonstrates that the ultimate analysis of Bishan Singh's case (supra) is what I have stated above and does not support the stand taken by Mr. Sarhadi. This view is confirmed by the decision of I. D. Dua, J., in Mst. Dhapan's case (supra).

8. For the reasons recorded above, I do not find any merit in this appeal because the rival pre-emptor had been substituted for the vendee during the pendency of the suit filed by the plaintiff in the present suit and since both had equal right of pre-emption, the suit by the plaintiff against a person with equal right of pre-emption cannot succeed. Consequently, the appeal fails and is hereby dismissed. No costs.

9. Appeal dismissed.

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