Shanker Singh Vs. Nahar Singh and ors.

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Court : Rajasthan

Decided On : Aug-13-1985

Reported in : 1985WLN(UC)230

Judge : Dwarka Prasad Gupta, J.

Appeal No. : S.B. Civil Second Appeal No. 519 of 1973

Appellant : Shanker Singh

Respondent : Nahar Singh and ors.

Disposition : Appeal allowed

Judgement :

Dwarka Prasad Gupta, J.

1. The question which was raised by the learned counsel for the defendant-appellant in this second appeal is as to whether the suit for pre-emption could have been decreed in respect of sale of Khatedari rights in agricultural land, in accordance with the law which prevailed before the promulgation of the Rajasthan Pre-emption Act, 1956, in the areas comprised in the former State of Mewar.

2. The plaintiff claimed to be co-sharer with defendant No. 3 Bhupal Singh, as also a sharer in appendages in certain agricultural lands, of which they were Khatedar tenants. It was claimed by the plaintiff that the agricultural lands in dispute were formally owned and possessed by the plaintiff but subsequently he was recorded as Khatedar tenant in respect thereof, while in respect of some of the lands the plaintiff and defendant No. 3 were jointly entered as Khatedar tenants. The right of pre-emption was claimed on the basis of custom prevailing in Rajasthan and which was judicially recognised. It was alleged that the defendant No. 3 had sold his Khatedari rights in the lands in dispute to defendant No. 2 by a registered sale deed dated March 23, 1965 and it was in respect of the said sale that pre-emption right was claimed by the plaintiff, as a co-sharer and a participator in immunities and appendages. The defendant in his written statement, besides other pleas, denied the plaintiff's claim regarding the customary right of pre-emption prevailing in that area of Rajasthan.

3. It was asserted by the defendant in para 7 of the written statement that particularly in the former State of Mewar, the custom of pre-emption was not prevalent, nor there was any law judicially recognising the custom of pre-emption in respect of agricultural lands.

4. Issue No. 6 was framed by the trial court on this question as to whether the right of pre-emption was applicable to agricultural lands in the State of Rajasthan. The trial Court held that the law of pre-emption was applicable to areas comprising in the former State of Mewar by custom which was judicially recognised and the said custom of pre-emption was co-extensive with the principles of Mohammedan law. It was observed by the trial Court that neither party had produced any decision showing that the custom of pre-emption was not

applicable in respect of agricultural lands in the former State of Mewar and that as the law was co-extensive with Mohammedan Law, it was ordinarily applicable to sale of agricultural lands. The trial Court pointed out that the defendant had failed to cite even a single instance where the right of pre-emption on the basis of custom had been denied in respect of agricultural lands. On the basis of this finding, the plaintiff's suit for preemption was decreed by the Civil Judge. Chittorgarh on 9-9-1968.

5. On appeal, the learned District Judge, Pratapgarh, upheld the decree of pre-emption passed by the trial Court by his judgment and decree dated August 23, 1973. Both the parties filed, certain copies of decisions of Medhrajsabha, Mewar, which was the highest judicial Court in the former State of Mewar, in respect of recognition of custom of pre-emption relating to agricultural lands. The plaintiff-respondents filed a copy of the judgment dated 11-8-1924 which was relied upon by the learned District Judge, Pratapgarh for holding that the right of pre-emption was available in the erstwhile State of Mewar, even in respect of agricultural lands. In that case a suit for pre-emption in relation to sale of 1/2 share of agricultural land was filed by Bardha against Gokul on the ground that the plaintiff was co-sharer of the agricultural land sold by Gangaram to Gokul. The suit for pre-emption was decreed by the Sadar Dewani Adalat and the appeal was dismissed by the District Judge. Gokul filed a Civil appeal before the Medhraj Sabha but the appeal of Gokul was dismissed in default of prosecution by the order of Medhraj Sabha dated August 11,1924, and thus, there was no decision of Medhraj Sabha, which, as observed earlier, was the highest judicial Court in the former State of Mewar, on the question as to whether the law of pre-emption was applicable to agricultural lands in the then Mewar State. The dismissal of the appeal of Gokul in default of prosecution, cannot be held to be a recognition of the customary right of pre-emption in respect of agricultural lands by the highest Court of Mewar State. The learned District Judge was not justified in holding, on the basis of the aforesaid decision, that the right of pre-emption was recognised in respect of co-sharers and the suit was decreed by the highest Court in the Mewar State.

6. The defendants relied upon two judgments of Medhraj State. A copy of judgment dated August 2, 1930, was produced before the learned District Judge, in which it was clearly held that the law of pre-emption was not applicable to agricultural lands, and as such, the suit for pre-emption of the plaintiff was dismissed. The decision clearly shows that the right of preemption was not available in the former State of Mewar, in respect of sale of agricultural land. The learned District Judge to consider that the aforesaid judgment dated August 2, 1930, passed by the Medhraj Sabha was a clear declaration of the fact that in respect of agricultural lands the right of preemption could not be exercised in the former State of Mewar. The learned District Judge tried to distinguish the decision on the ground that it was not clear from judgment whether the suit was filed on the ground of vicinage or on any other ground. It may be pointed out that at the relevant time, or even thereafter, prior to the promulgation of the Constitution of India in 1950, the ground of vicinage was recognised as a good ground for claiming a right of pre-emption in accordance with the principles of the Mohammedan law, as the ground that the plaintiff was co-sharer or partner in appendages and no distinction could be drawn between the three classes by the Mohammedan Law, as they were entitled to claim pre-emption as a right based on ownership of property, whether as a co-sharer or as a partner in appendages or vicinage.

7. Another judgment which was relied upon by the defendant-appellants before the first appellate Court was that of Medhraj' Sabha dated December 1,1932. In that judgment also it was explicity laid down by the highest judicial Court in the former State of Mewar that in that State the right of pre-emption has not been recognised in respect of agricultural lands and that the suit for pre-emption could not be decreed on the alleged right of preemption. That decision was distinguished by the learned District Judge on the ground that the light of pre-emption was claimed on vicinage.

8. I have carefully gone through the order passed by the Medhraj Sabha dated 1-12-1932, a certified copy of which is on the record of the first appeal. Undoubtedly the suit was filed on the ground that the land of the plaintiff was adjoining with that of the seller but right of pre-emption was not negatived on the ground that the law of pre-emption was not recognised in the case of adjoining properties but the principle was clearly

laid down by the Medhraj Sabha that the plaintiff's suit could not be decreed because the law of pre-emption was not applicable to agricultural lands in the then Mewar State. Thus, in my view, the decision of the Medhraj Sabha dated December 1,1932 also clearly supported the case of the defendant appellant.

9. In the present appeal, learned counsel for the defendant-appellants, have also filed copy of another order passed by the Medhraj Sabha of the former State of Mewar on August 16, 1933. In that judgment the earlier decision in the case of Gokul v. Bardha in Appeal No. 757/1927 was distinguished by Medhraj Sabha on the ground that the appeal was dismissed in default of appearence and there was no decision on merits. The Medraj Sabha in its judgment dated August 16, 1933, reiterated the principle recognised in the earlier judgments of that Court that the right of pre-emption was not available in respect of agricultural lands in the former State of Mewar.

10. All the aforesaid decisions which have been placed on record, go to show that although the law of pre-emption was prevalent in the former State of Mewar and was co-extensive with Mohammedan Law, yet the right of pre-emption was not applicable to agricultural lands in the former State of Mewar and the custom was established repeatedly by the judgments of the highest judicial court in the former Mewar State, namely, Medhraj Sabha.

11. I may refer to one more aspect of the matter. The Rajasthan Pre-emption Act, 1966, came into force with effect from February 1, 1966. The sale, which is the subject mutter of dispute in the present case, was made by the defendant Bhopal Singh on April 23,1965, in favour of Man Singh and Shanker Singh of Khatedari rights in agricultural land. In the case of sale of Khatedari rights by a Khatedari tenant, the right of pre-emption could not be availed of because the Khatedar-tenant was not the owner of the agricultural land in his occupation.

12. In Sukhdev Singh v. Sukhdev Singh 1980 WLN 212 it was held by a Division Bench of this Court that the right of pre-emption cannot be availed of unless it is provided by a statute and that khatedari rights were pure and simple tenancy rights and the transfer of khatedari rights could not give rise to right of pre-emption, as in such a case it could not be said that there was transfer of ownership in immovable property.

13. Thus, on both the grounds, namely, that in the former State of Mewar the right of pre-emption was not available in the case of sale of agricultural land and further on the ground that the sale of khatedari rights did not entitle the plaintiff to claim a right of pre-emption. As it was a sale of tenancy right, the right of pre-emption was not available according to the law which prevailed in the areas which were formerly comprised in the Mewar State. In my view, issue No. 6 was wrongly decided by both the Courts below, and the plaintiff's suit could not have been decreed because the law of pre-emption was not available at that time to the plaintiff in respect of sale of khaledari rights in agricultural lands.

14. As a result of the aforesaid discussion, the appeal is allowed, the decrees passed by the two Courts below are set aside and the plaintiff's suit for pre-emption and possession is dismissed, but the parties are left to bear their own costs in all the Courts.