

Paras Ram Vs. Chander Dev and anr.

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Court : Himachal Pradesh

Decided On : Jul-21-1982

Judge : Vyom Prakash Gupta, J.

Acts : Punjab Pre-emption Acts, 1913 - Section 8

Appeal No. : Civil Revn. Petn. No. 156 of 1981

Appellant : Paras Ram

Respondent : Chander Dev and anr.

Advocate for Def. : G.D. Verma, Adv.

Advocate for Pet/Ap. : A.N. Bhoil, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Vyom Prakash Gupta, J.

1. Padam Dev, defendant No. 2 (respondent No. 2), sold land (as detailed in the plaint) to Paras Ram, defendant No. 1 (petitioner) for a consideration of Rs. 3,575/-vide sale deed dated 16-8-1976.

2. Chander Dev, plaintiff, (respondent 1) filed a suit for pre-emption in the Court of Senior Sub Judge, Simla, on 16-8-1977. The suit was assigned to the Court of the Sub-Judge, Simla, for disposal. Defendant No. 1 contested the suit. In the suit the plaintiffs affirmative evidence was closed on 13-11-1980 and the suit was adjourned for defendant's evidence for 20-12-1980.

3. On 20-12-1980 an application under Section 151 was filed by the defendant-petitioner praying that the suit of the plaintiff-respondent should be dismissed in view of the notification No. 16472 dated 2-7-1919. [It was alleged that by virtue of the aforesaid notification no right of pre-emption was available in the district of Simla.

4. This application was contested by the -plaintiff. The Sub Judge vide his order dated 8-6-1981 dismissed the application holding that the said notification could not apply to the land in suit which previously fell in the territories of Mahasu District.

5. The defendant No. 1 feeling aggrieved from this order of the learned Sub Judge, has filed this revision. Shri A.N. Bhoil, learned counsel for the petitioner (defendant No. 1) contended that the notification under Section 8 was issued in 1919 and as there was no inconsistency between the provisions of the Pre-emption Act and the notification, therefore, the plaintiff had no right of preemption.

6. Shri G.D. Verma, learned counsel for the respondents (plaintiff) contended that the notification of 1919 was not applicable in the present case as the land in dispute was previously in the Kinthal State. After the merger of the State, it fell within the territories of Mahasu District and thereafter it fell within the limits of Simla District. The contention of the learned counsel was that the limits of Simla District as were in 1919 were only excluded by the notification and the notification could not apply to areas which were subsequently included within the limits of Simla District.

7. I have considered the contention of the learned counsel for the parties.

8. Section 8 of the Punjab Pre-emption Act, reads as follows:--

'Section 8: State Government may exclude areas from pre-emption.-- (1) Except, as may otherwise be declared, in the case of any agricultural land in a notification by the State Government, no right of pre-emption shall exist within any Cantonment.

(2) The State Government may declare, by notification that in any local area or with respect to any sale or class of sales, no right of pre-emption or only such limited right, as the State Government may specify, shall exist.'

9. The relevant notification upon which reliance is placed by the learned counsel for the petitioner is as follows:--Notification No. 16472, dated 2nd July, 1919.

'No right of pre-emption exists within the limits of Simla District.'

10. It is admitted that the land in dispute previously fell within the territories of Kainth State.

11. The Himachal Pradesh (Administration) Order, 1948 was issued on 15th April, 1948 and by this order the territories of Kainth State came within the definition of Himachal Pradesh. It is also admitted that afterwards the land in dispute (which was in Kainth State) fell within the territories of Mahasu District of Himachal Pradesh. By virtue of the provisions of the Himachal Pradesh (Application of Laws) Orders, 1948 the Punjab Pre-emption Act is applicable to the whole of Himachal Pradesh.

12. The notification issued in 1919 with respect to the limits of Simla District could not apply to the territories of Kainth State or Mahasu District and its applicability was restricted to the limits of Simla District, as it then was in 1919.

13. In R. S. A. No- 108 of 1967 *Bihari Lal v. Lehnu Ram* decided on 6th March, 1972, ILR (1972) Him Pra 63: (AIR 1973 Him Pra 81), a Division Bench of this Court dealt with a similar case. In *Bihari Lal's* judgment (supra) a notification had been issued on 6th March, 1917, by which in the District of Kangra the right of pre-emption in respect of the agricultural land and village immovable property was limited to the persons mentioned in the notification. This notification of 1917 was also under Section 8 (2) of the Punjab Pre-emption Act.

14. Previously (in 1917) the territories of Kulu District formed a part of Kangra District and Kulu District had no separate name. The property involved was situated in Kulu District and the sale which was sought to be pre-empted was effected on 21st Dec., 1963. The Division Bench held that the notification of 1917, was operative and effective With respect to the territories of Kangra District. The question which arose before the Hon'ble Judges was as to whether the said notification could be made applicable to the land of Kulu District which was previously a part of Kangra District in 1917. The Hon'ble Judges of the Division Bench dealt with the situation in the following manner:--

'It was submitted by the learned counsel that the notification of 1917 related to Kangra District and hence should not be considered to relate to Kulu District. To us it appears, that the entire reasoning is misconceived. The area comprising Kulu District was certainly the area covered by Kangra District. If under Section 8 (2) of the Act of 1913, the local Government had declared that no right of pre-emption could be exercised by a co-shire with respect to the area comprising Kangra District, it logically follows that wherever portions of area belonging to Kangra District have gone so as to comprise the new District, the said disqualification shall apply to such portions as well, the exclusion is with respect to a local area and if a new name of District has been given to any local area, that will not make any difference. Therefore, in our opinion, the notification of 1917 as much relates to Kulu District as it related to Kangra District because on the date the notification was issued, Kulu District was part of Kangra District.'

15. In my view the dispute in the present case is fully governed by the judgment of the Division Bench in *Bihari Lal's case* (AIR 1973 Him Pra 81).

16. The learned counsel for the petitioner relied upon AIR 1936 Lahore 145 (*Hira Lal V. Mst. Jiwan*) and AIR 1922 Lahore 474(1) (*Jalal Din v. Nathu Ram*). In *Hira Lal's case*, the question related to the municipal limits of a Municipality. The facts in this case are distinguishable and furthermore even if it has some relevancy still it has to be ignored in view of the Division Bench judgment of *Bihari Lal* (supra). In *Jalal Din* (supra) the question was regarding the applicability of Section 22 of the Punjab General Clauses Act and that decision has no relevancy to the facts of the

present case. This judgment has also been referred to in the Division Bench judgment of *Bihari Lal* (AIR 1973 Him Pra 81) (*supra*).

17. In view of the above discussion the learned Sub Judge was justified in dismissing the application of the petitioner-defendant. This revision petition is accordingly dismissed. The parties are directed to appear in the Court of Sub Judge (III), Simla, on 2nd Aug., 1982.

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