

Ram Singh and ors. Vs. Jit Ram and ors.

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Court : Himachal Pradesh

Decided On : Jun-09-1953

Reported in : AIR1954HP20

Judge : Chowdhry, J.C.

Acts : [Evidence Act, 1872](#) - Section 48; ;Punjab Pre-emption Act, 1913

Appeal No. : Second Appeal No. 19 of 1952

Appellant : Ram Singh and ors.

Respondent : Jit Ram and ors.

Advocate for Def. : Thakur Dass, Adv.

Advocate for Pet/Ap. : D.N. Aggarwala, Adv.

Disposition : Appeal dismissed

Judgement :

Chowdhry J.C.

1. This is a plaintiffs' second appeal arising out of a suit to pre-empt the sale of land situate in the former State of Baghal. In the alternative, the plaintiffs prayed for a declaration as reversioners that the sale will not be binding on them after the death of the vendor. Their suit was dismissed by the trial Court and their appeal by

the District Judge.

2. The plaintiffs did not press their claim on the basis of their reversionary right in the lower appellate Court. The learned counsel for the plaintiffs-appellants however pressed it in this Court. He contended that if due to an erroneous conception of the law the counsel appearing for the plaintiffs-appellants in the lower appellate Court failed to press the plea there, that is no bar in law to that point being pressed in second appeal before this Court. This position was not controverted by the learned counsel for the defendants-respondents. But the alternative case of the plaintiffs on the basis of their reversionary rights is really hopeless. In fact, the counsel appearing for them in the lower appellate Court was right in not pressing the point there. It has been found by the trial Court, and the finding was not challenged by the learned counsel for the appellants here, that the common ancestor Radda had only a lessee's rights in the land in suit, and that proprietary rights in it were acquired by Kadaru, father of the vendor defendant. That being so, it cannot be said that the condition of the land being held by a common ancestor was satisfied in the present case.' On the contrary, the land will be deemed to be self-acquisition of Kadaru. --'Sangat Singh v. Ishar Singh', AIR 1927 Lah. 536 (1) (A); -- 'Hurji v. Chanan Mal' AIR 1921 Lah. 63 (2) (B); & -- 'Sewa Singh v. Mst. Bholi', AIR 1916 Lah. 100 (C).

3. The plaintiffs' case for pre-emption is equally unfounded. The Punjab Pre-emption Act is not applicable since it came into force subsequent to the sale in suit. The plaintiffs based their claim on the allegation that the custom of pre-emption prevailed in the former State of Baghal. In proof of this custom they produced two judgments of the manager of Baghal State, one dated 17-9-1968 B., and the other dated 21-11-1982 B., and seventeen witnesses. So far as the witnesses are concerned, it was conceded by the learned counsel for the appellants that they cited no instances. Their testimony was therefore relevant under Section 48, Evidence Act, as constituting opinions in regard to the existence of the custom. But mere expression of opinion in regard to a custom is of no value unless, as laid down in Section 48, the persons expressing the opinion are persons who would be likely to know of its existence if it existed. Nothing was pointed out in the statements of the appellants' witnesses which might show that

they satisfied this condition. In fact, as they cite no instances of the exercise of the right of pre-emption, it is patent on the face of it that they were not likely to know of the existence of any custom of pre-emption. Theoral evidence, as remarked by both the Courts below, is therefore worthless.

4. As regards the aforesaid two judgments, the latter of which cited and relied upon a previous judgment, they are off-set by a subsequent judgment of the Court of the Subordinate Judge of Baghal State dated 28-7-2001 B., wherein it was specifically held that no custom of pre-emption existed in the State. They are also off-set by the fact that in para 24 of the State Wajib-ul-arz setting forth the custom relating to sales and mortgages of land there is no mention of the existence of the right of preemption in the State.

5. The learned counsel for the appellantsreferred to the oral evidence produced on behalf of the defendants- respondents in which witnesses have spoken of instances of sale which werenot pre-empted, and he argued on the basis of-- 'Maula Bakhsh v. Deviditta', 6 Pun. Re. 1907(D), and 'Buta Singh v. Tara Singh', 122 Pun.Re. 1907 (E), that want of claim of pre-emptiondid not necessarily negative the existence ofthe custom since the failure to pre-empt thesales may be due to other causes. That maybe true, but it is hardly necessary to refer tothe evidence produced on behalf of the defendants-respondents when, as already held, theplaintiffs-appellants themselves have failed toestablish the existence of the allowed custom ofpre-emption in the former Baghal State. Thisappeal accordingly fails and it is hereby dismissed with costs and the judgment and decreeof the lower appellate Court are affirmed.