
(2016) 02 RAJ CK 0086
In the Rajasthan High Court
Case No : Civil First Appeal No. 356 of 1998.

Mohd. Khalil Khan and Others	Vs	APPELLANT
Madan Lal @ Madan Singh and another.		RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Rajasthan Pre-emption Act, 1966 — Section 6(ii)

Citation : (2016) AIR(Raj) 73 : (2016) 2 DNJ 576

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : A.K. Bhandari Sr. Counsel with Prashant Sanghi, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J. - Whether an entrance to the Enclave which provides separate passage will fall within the definition of Section 6(ii) of The Rajasthan Pre-Emption Act, 1966 (hereinafter called "the Act of 1966"), is a sole question raised before this Court.

2. Section 6(ii) of the Act of 1966, defines right of pre-emption on account of common entrance or stair-case and the same reads as under:-

"6(ii). Owners of other immovable property with a stair-case or an entrance or other right or amenity common to such other property and the property transferred, and"

3. Mr. A.K. Bhandari the learned Senior Counsel appearing for the appellant-plaintiff contended that the trial court has gravely erred in dismissing the suit filed by the appellant-plaintiff. It is submitted that by virtue of Section 6(ii), the appellant-plaintiff had a prior right to purchase the property from defendant-respondent Madan Lal @ Madan Singh.

4. Briefly stated plaintiffs Mohd. Khalil Khan, Mohd. Sadiq Khan and Mohd.

Manjur Khan filed a suit against Madan Lal and Mohd. Khalil for pre-emption and possession. The plaintiffs pleaded in the suit that they had purchased the portion of Nimbodia House situated in Thakur Geejgarh Road by different sale deeds dated 3.10.1985, 23.7.1985 and 25.7.1985. It was pleaded in the suit that in front of haveli there is an open land measuring 521.92 sq. yards which is common to all the co-owners of the haveli. It was further pleaded that after entering main gate of haveli, there is an open land and the said land was shown in yellow colour in the site plan attached with the plaint. This land was used by all the co-owners and the only passage available to all the houses is through open land. It was further pleaded that towards southern eastern side of the haveli there is an open land with garage belonging to Madan Lal. The portion belonging to Madan Lal was marked in the site plan as A,B,C,D and in the red colour. It was pleaded that the defendant No.1 Madan Lal sold this portion of property on 29.9.1987 to Jamil Ahmed, the defendant No.2 to the suit. Immediately on coming to know regarding the sale-deed, the plaintiffs filed a suit for pre-emption and also gave registered notice. In the suit it was prayed that the suit for pre-emption and possession be decreed and property described in Para-3 of the plaint and shown in the map as A,B,C,D be sold to plaintiff for Rs. 25,000/- and possession be given to them.

5. The defendants filed the written statement to the suit and denied the averments made in the plaint. The trial court after completion of pleadings had formulated the issues. After reading all the evidences, the trial court dismissed the suit. Hence, the present appeal is being filed.

6. The trial court has formulated core issue as Issue No.1 and the said issue reads as under:-

"vk;k oknhx.k dks fooknxzLr lEifRr ij gd" kqQk dk vf/kdkj gS\\"

7. The trial court in discussion qua issue no.1, noted the contention of the learned counsel for the appellant-plaintiff, that there is a common passage and main entrance is also common. Therefore, the case of the appellant-plaintiff will fall within Section 6(ii) of the Act of 1966 as there is common entrance to the house of the plaintiff-appellant and defendant-respondent.

8. The court noted the statement of D.W.2 Abdul Hakim who stated that if you enter deep into Nimbodiya house, house of Mohd. Salim and Mohd. Jamil are situated. There is a chowk in between and there is a common area and the common passage and for going to chowk there is a common entrance.

9. The trial court dealt with the evidence led by plaintiff and defendant threadbare. The trial court also noted that in the pleadings, there is nothing specified regarding common entrance. The court further held that meaning assigned to "common entrance" is to be construed in a restricted manner. The "common entrance" cannot be given a wide meaning to include entrance to an enclave or cluster or locality of houses. The Legislature in its wisdom has rightly not used the word "easement" and had confined right of pre-emption to the

common staircase or an entrance or right of amenity common to "such property" (Emphasis supplied). In the present case, common entrance is not a part of the same property. Therefore, emphasis is to be given on word "such property". Both the houses of the plaintiff and defendant are situated at a great distance. Neither walls of the houses are joint nor they in any way are connected. Merely because a colony has a common entrance, each and every property situated will not be qualified by the word "common entrance" used in Section 6(ii) of the Act of 1966. Hence, the arguments advanced by the learned Senior Counsel before this Court are misconceived.

10. I have also seen the site plan (Exhibit-4). There is a 23" 9" feet entrance. Then there is an open land and garden having length of 88" 3" feet. Its breadth is 78 feet. The house of the plaintiff is situated on one corner whereas the house of the defendant is situated on the another corner. So far length is concerned, there is a distance of 53" 9" feet between both the houses. Nothing is common between two houses.

11. Word stair-case in the section is followed by common entrance, therefore, same is to be used in cases where one property for enjoyment require one entrance and both have share in one property. Merely because any colony/cluster or locality or number of houses are situated having one common entrance for security purposes, will not vest right of pre-emption in the appellant-plaintiff. Even otherwise, right of pre-emption is weak kind of right and by invoking all technicalities the court is justifiable to defeat such right of pre-emption.

12. Consequently, the present appeal being devoid of any merit is hereby dismissed.