

(1959) 10 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 542 of 1959

Mohinder Singh Harnam Singh and Others	APPELLANT
Vs	
Jagjit Singh S. Sher Singh and Another	RESPONDENT

Date of Decision : 23-10-1959

Acts Referred:

Punjab Courts Act, 1918 — Section 26, 3(4), 39

Citation : AIR 1960 P&H 434

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Judgement

(1) By a registered document dated 18-5-1956 Pal Singh sold the land now in dispute to Mohinder Singh etc., for Rs. 6,000/-. Jagjit Singh filed a suit for possession of this land by pre-emption on the ground that he was vendor's collateral and the vendees were strangers. Another suit for pre-emption was filed on behalf of Sukhbir Singh minor on the ground that he was vendor's grandson. The two suits were tried together. Jagjit Singh produced evidence but no evidence was produced on behalf of the minor.

The trial Court rejected the request of the counsel appearing for the minor for adjournment of the case for production of evidence and then dismissed both the suits as both the plaintiff's had failed to prove their relationship with the vendor. Both the plaintiff's filed separate appeals which were heard by the Senior Sub-Judge, Karnal. The learned Judge allowed the minor to produce additional evidence on payment of Rs. 75/- as costs. The statement of Vir Kaur (the minor's next friend and his grandmother) was recorded and a copy of the pedigree-table was allowed to be produced.

The vendees did not produce any evidence in rebuttal in spite of the fact that they got the case adjourned for that purpose. The lower appellate Court on the basis of this additional evidence upheld the relationship alleged by both the plaintiff's. He accordingly held that Sukhbir Singh was entitled as a grandson of the vendor to exercise his right of pre-emption first on payment of Rs. 6,000/-

and that if he failed to deposit the required amount within time, then Jagjit Singh will be entitled to exercise his right of pre-emption on payment of the same amount. The vendees dissatisfied with this decree have filed these separate appeals (Regular Second Appeal No. 542 of 1959 and Regular Second Appeal No. 543 of 1959) in this Court and it will be convenient to decide both these appeals by this judgment.

(2) Two points were urged before me on behalf of the vendees: (1) that the learned Senior Sub-Judge had no jurisdiction to pass a decree for payment of Rs. 6,000/- as that amount was beyond his pecuniary jurisdiction and (2) that the lower appellate Court was not justified in recording additional evidence at the appellate stage.

(3) The second point can be easily disposed of. The lower appellate Court came to the conclusion that the trial Court should have granted an additional opportunity to the minor to produce his evidence because his next friend Vir Kaur did not attend Court on the day fixed for evidence on account of death of a relation. I see no ground for interfering with the exercise of this discretion by the lower appellate Court. It is true that the recording of additional evidence has enabled Jagjit Singh to take advantage of the evidence produced on behalf of the minor, but as the two suits were heard together he is entitled to such benefit.

He may well have not produced the pedigree-table and got Vir Kaur examined as his witness because she was in any case to make her statement and had to produce the pedigree-table in the minor's suit. This contention raised on behalf of the appellants, therefore, fails and is rejected.

(4) This brings me to the first point. It is contended by the learned counsel for the appellants that he appeals were validly filed before the learned Senior Sub-Judge but that when the Court found that a decree for payment of Rs. 6,000/- has to be passed, then it should have sent the case to the High Court as it had no pecuniary jurisdiction to pass a decree for that amount. The learned counsel contended that it was open to the Senior Sub-Judge to dismiss the appeal but he had no jurisdiction to decree it.

This contention is controverted by the learned counsel for the pre-emptors, and it is urged that the value of the subject-matter of the suit in the present case is the value of the land computed on the basis of land revenue and has nothing to do with the amount of money which the pre-emptors have been directed to pay as price of the land in dispute. It is necessary to determine which of these two rival contentions is in accordance with law.

(5) The CPC lays down in S. 6 that no Court has jurisdiction over suits in which the amount or value of the subject-matter exceeds its pecuniary jurisdiction. Section 15 of the CPC lays down that every suit shall be instituted in the Court of lowest grade. The CPC does not, however, prescribe the pecuniary limits of several grades of Courts. This is done by the Civil Courts Acts of various States.

Section 26 of the Punjab Courts Act, 1918, lays down that the High Court shall determine the pecuniary jurisdiction to be exercised by a Subordinate Judge. Accordingly the High Court has by notification made four classes of Subordinate Judges and has prescribed various amounts up to which particular class of Subordinate Judge can exercise jurisdiction. Section 39 of the Punjab Courts Act lays down the rules for determining the forum of appeal and it reads:

"Section 39 (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie--

a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed five thousand rupees; and

b) to the High Court in any other cases

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3. The High Court may by notification direct that appeals lying to the District Court from all or any of the decrees or orders passed in an original suit by any Subordinate Judge shall be preferred to such other Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly and the Court of such other Subordinate Judge shall be deemed to be a District Court for the purpose of all appeals so preferred."

The word "value" with reference to a suit is defined in S. 3(4) of the Punjab Courts Act as meaning the amount or value of the subject-matter of the suit. The High Court has issued a notification u/s 39 (3) of the Punjab Courts Act directing that the appeals from decrees passed by any Subordinate Judge in and unclassified suit of a value not exceeding Rs. 250/- shall be preferred to the Senior Subordinate Judge. It is conceded on behalf of the appellants that if the appeal in the present case could be decided by the District Judge then it was validly decided by the Senior Subordinate Judge.

(6) In the present case the plaintiff's seek to enforce their right of pre-emption in respect of lands. The plaintiff's fixed value of the suit for purposes of Court-fee on the basis of ten times the land revenue payable on the land in suit and for purposes of jurisdiction on the basis of thirty times the land revenue so payable. This value comes to Rs. 40/1/8 and Rs. 120/5/- respectively. The fixation of these values and the basis used for that purposes are accepted to be correct by both sides. On the value fixed for purposes of jurisdiction the appeals obviously were correctly filed before the learned Senior Sub-Judge. This is not disputed.

(7) The contention raised on behalf of the vendees, however, is this. The appeals were correctly filed in the Court of the Senior Sub-Judge, Karnal, and he had jurisdiction to entertain them. The Senior Sub-Judge could hear the appeals and dismiss them. If, however, the Senior Sub-Judge after hearing the arguments came to the conclusion that the pre-emption suits should be decreed then he could decree the same provided the amount to be paid by the pre-emptors to the vendees was within his pecuniary jurisdiction.

If this amount exceeded his pecuniary jurisdiction then it was incumbent on him to send the appeals to the Court that would have pecuniary jurisdiction to pass a decree for that amount. As in the present case the Senior Sub-Judge had come to the conclusion that the pre-emptors should pay Rs. 6,000/- to the vendees, he should have sent this Court and he acted beyond his jurisdiction in passing the pre-emption decree on payment of Rs. 6,000/-.

The learned counsel urged that the condition of payment of an amount by the pre-emptor in a pre-emption suit is as much part of the decree as the decree for possession of the property involved and that this amount cannot be ignored for the purposes of determining the pecuniary jurisdiction of the Court. He also argued that the mode of dealing with this matter should be the same as in suits for accounts when the amount found due to a party on taking of accounts is in excess of the pecuniary jurisdiction of the Court concerned.

(8) Now as already stated the pecuniary jurisdiction of a Court depends on the amount or value of the subject-matter of the suit in the trial Court. This amount or value depends on the value of the right claimed in the litigation. This value has nothing to do with the amount decreed or with the form of decree that is ultimately passed in the case unless there is any statutory provision which makes the jurisdictional value of the suit depend on the amount decreed or on the form of the decree.

Ordinary the value of the suit remains constant and does not change whether the plaintiff's suit is dismissed or is accepted partly or wholly or is accepted subject to a condition. It is well established that the jurisdictional value of a suit does not change with the form of the decree and the forum of appeal is to be determined by the value of the suit and not by the value of the decree.

(9) In a pre-emption suit the subject-matter of the suit is the property sold. The market value of the property sold is, therefore, the value of such a suit. According to S. 7, para (vi) of the Court-fees Act the value of the suit is the value of the land, house or garden in respect of which pre-emption is sought to be enforced but this value is to be computed in accordance with paragraph (v) of S. 7 of the Court-fees Act. This provision lays down that where the subject of a pre-emption suit is a house or a garden then the value of the subject-matter shall be the market value thereof.

When, however, the pre-emption right in respect of land is sought to be enforced then in the paragraph (v) in most cases the value of the subject-matter of the suit for purposes of Court-fee is to be computed on the basis of land revenue payable on the land in suit. This is only a notional value and by specific legislation the value of the land for purposes of Court-fee is fixed at a nominal figure and far below its market value. The disparity between the market of the land in suit and its value computed on the basis of land revenue has become much more pronounced since the Court-fee Act was enacted in 1870. This is clear from the fact that in the present case the land in suit under the Court-fee

Act is valued at Rs. 40/1/8 while its market value has been held to be Rs. 6,000/-.

(10) In my opinion the value of suit fixed in accordance with the provisions of the Court-fees Act should ordinarily be considered to be the value of the suit when considering the jurisdiction of the trial Court or the appellate Court to entertain and decided the same unless by a statute a different mode for computing its value is laid down. The Suits Valuation Act, 1887, prescribes the mode of valuing certain suits for the purposes of determining the jurisdiction of Courts with respect thereto.

This Act does not deal specifically with suits wherein right of pre-emption is sought to be enforced in respect of houses and gardens. The Act, however, in S. 3 empowers the State Government to make rules for determining the value of land in suits inter alia to enforce the right of pre-emption in respect of land. The Punjab Government has made rules under this section and according to these rules the value for the purpose of jurisdiction in the present case is Rs. 120/5/-.

It follows that in such suits the value under the Court-fees Act must be ignored and the value fixed in accordance with S. 3, Suits, Valuation Act, must be considered to be the jurisdictional value of the suit. Further the market value of the land in suit must also be ignored for this purpose. When in a pre-emption case the Court directs the pre-emptor to pay a certain amount to the vendee, it is only calling upon him to pay the market value of the land in suit. This value though part of the decree has to be ignored for the purposes of determining jurisdictional value of the suit as otherwise the provisions of S. 3 of the Suits Valuation Act and the rules made thereunder become redundant and ineffective. In this context it must be remembered that a suit for possession by enforcement of the right of pre-emption necessarily involves passing of a conditional decree. Whenever such a right is recognised the Court must direct the vendee to deliver possession of the property in suit to the preemptor on the condition that the preemptor pays its market value within the time specified in the decree to the vendee. If payment of this amount is held to determine the jurisdictional value of the suit then in every case that amount would be the jurisdictional value of the suit. Such a conclusion as I have already said would be in conflict with S. 3 of the Suits Valuation Act and the rules made thereunder. Moreover if the contention of the learned counsel for the vendees is accepted then there is always a possibility that a pre-emptor's appeal could never succeed without two hearings in two different Courts. Such a conclusion obviously should not be accepted unless some statutory provision compels one to do so.

(11) The learned counsel for the vendees then relied on the decision in *Ganga Ram v. Hakim Raj* ILR Lah 512: 1934 1Lah 545 (FB), in support of his contention that as soon as the Senior Sub-Judge found that the pre-emption suit is to be decreed on payment of Rs. 6,000/- then he should have sent the appeal to the High Court for decision. *Ganga Ram's* case ILR Lah 512: (AIR 1934 Lah 545 (2)

(FB), related to a suit of accounts in which a tentative and approximate value is fixed by the plaintiff and when the Court after going into the accounts determines the amount due to a party and if this amount is in excess of the amount fixed tentatively by the plaintiff, then, according to Ganga Ram's case ILR Lah 512: (AIR 1934 Lah 545), this amount so determined becomes the value of the suit and under S. 8 of the Suits Valuation Act this amount also becomes the jurisdictional value of the suit.

The result is that by virtue of S. 8 the jurisdictional value of the suit in an accounts' case is altered by the decision of the Court determining the amount due to a party after going through the accounts and this alteration affects the jurisdiction of the Court dealing with the matter. Section 8 of the Suits Valuation Act, however, has no application to a pre-emption suit and, therefore, its jurisdictional value does not alter with the amount fixed in the decree for payment by the pre-emptor to the vendee as a condition for delivery of possession of the property to the pre-emptor (vide *Sham Singh v. Jagat Singh* AIR 1938 Lah 765).

(12) In reality the contention of the learned counsel for the appellants is based on the decision of *Muhammad Afzal Khan v. Nand Lal* 16 Pun Re 1908 (FB). In that case the Full Bench of the Punjab Chief Court held that although the value for purposes of jurisdiction of the suit was within the pecuniary jurisdiction of the Munsif, he could not pass a decree for payment of any amount which exceeded his pecuniary jurisdiction. The learned Judges held that when such a situation arises the Munsif should return the plaint for presentation to a Court having jurisdiction to pass such a decree. It was also observed in that case that a decree for possession of land in a pre-emption suit is admittedly a decree for possession of land subject to, or conditional upon, the payment of the amount found to be the actual value of the land and that if this actual value is found to exceed the Court's pecuniary jurisdiction, then the Court must return the plaint.

While coming to this conclusion the learned Judges relied upon cases relating to settlement of accounts and dissolution of partnerships. In the present case the point involved is the jurisdiction of the appellate Court and that point did not directly arise in the Full Bench case although there are observations in the judgment which distinctly go in favour of the appellants' contentions. This Full Bench judgment was considered in *Iftikhar Ali v. Thakar Singh* 83 Pun Re 1912.

In that case the question that has arisen in the present case directly arose and their Lordships held that the Divisional Court had jurisdiction to pass a decree for payment of an amount which exceeded its pecuniary jurisdiction. Their Lordships held that certain observations relating to the jurisdiction and appeal in the Full Bench case must be treated as obiter dicta. The same question as involved in the present case arose in *Teja Singh v. Sunder Singh* 23 Ind Cas 89: (AIR 1914 Lah 432), where a Division Bench followed the case reported in 83 Pun Re 1912, and held that the value of the subject-matter of the suit means 30 times the land revenue and not the amount of the money which the pre-emptors had been

directed to pay into Court as price of the land.

Iftikhar Ali's case 83 Pun Re 1912, was again followed in preference to the Full Bench decision of the Punjab Chief Court by a Division Bench in Jagdish Ram v. Mst. Chinto AIR 1936 Lah 133, and the same view was taken by another Division Bench of the Lahore High Court in AIR 1938 Lah 765. All these cases subsequent to 1908 are against the appellants' contention. It appears to me that these subsequent decisions are in conflict with the Full Bench case but surprisingly enough neither the Chief Court nor the High Court Judges categorically dissented from it.

The Full Bench decision is not binding on me and I, therefore, adopt the same course as has been followed by the learned Judges after 1908 and hold that the learned Senior Sub-Judge in the present case was competent to decree the pre-emptors' suit on payment of Rs. 6,000/-.

(13) For these reasons I hold that the Senior Sub-Judge not only had jurisdiction to entertain the appeals filed before him but also to decide them by decreeing the pre-emptors' suit.

(14) The result is that these appeals fail and are dismissed with costs.

(15) Appeals dismissed.