
(1973) 05 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 305 of 1969

Ram Chand Lal Chand

APPELLANT

Vs

Khem Chand Lal Chand and Others

RESPONDENT

Date of Decision : 17-05-1973

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : AIR 1974 P&H 91

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Judgement

1. Respondents Nos. 4 to 7 purchased land measuring 113 Kanals 11 Marlas for Rs. 13,000/- from Hari Chand, respondent No. 3, on January 19, 1965, vide sale-deed dated January 19, 1965. Prior to this, Hari Chand had leased out his land for 99 years to one Chuhar Ram defendant No. 5. On January 17, 1966. Ram Chand appellant, brother of Hari Chand, respondent No. 3 sought to pre-empt the said sale, by filing suit for possession, and alleging, inter alia, that the lease in favour of Chuhar Ram defendant No. 5, was fictitious and had been brought about simply to defeat his pre-emptive rights. On January 20, 1966, Khem Chand, respondent No. 1, the second brother of Hari Chand vendor respondent No. 3, also filed a similar suit seeking to pre-empt the abovesaid sale. On February 28, 1966, Ram Chand plaintiff-appellant moved an application. Exhibit P. 7 u/s 28 of the Preemption Act (hereinafter refereed to as Act) for getting both the suits concurrently decided. The trial Court, vide its order. Exhibit p. 8, issued notice to Khem Chand respondent No. 1, of the said application for March 24, 1966. However, prior to that date on March 18, 1966, respondents 4 to 7, the vendees, and Khem Chand respondent No.1. entered into a compromise. Exhibit p.10. and Khem Chand's suit was decreed in his favour in terms thereof. Khem Chand, respondent No. 1, was then joined as defendant No. 7 to the pending suit of Ram Chand appellant. It was Khem Chand respondent No. 1, who then contested the suit claim pleading that he having equal right of pre-emption to the suit land, the suit of Ram Chand appellant could not succeed. On the

pleadings of the parties, the trial Court framed the following issues:--

"1. Has the plaintiff better right of pre-emption as against the vendee and defendant No. 7 ? OP.

2. Whether the sale price was actually paid or bona fide paid ? OD

3. What is the market value of the land? O. Parties.

4. Is the lease in question in favour of Chuhar Ram defendant No. 5 fictitious and benami? OP.

5. Is the decree in question in favour of defendant No. 7 collusive and benami and for the benefit of the vendees? OP.

6. Is the suit properly valued for the purpose of court fee and jurisdiction? OP.

7. Is the suit time barred ? Onus on defendant Nos. 1 to 4.

8. Is the suit benami ? Onus on defendants Nos. 1 to 4.

9. Are the vendees entitled to the cost of sale ? OD

10. Has the plaintiff paid court fee properly? OP.

11. Is there a defect of misjoinder of causes of auction and defendants? OD. No. 5.

12. Relief."

2. For the purposes of this appeal, issues Nos. 1, 4 and 5 are material as regarding the validity of the finding of the first appellate Court; it is only under the said issues that learned counsel for the appellant has addressed this Court. The trial Court held under issue No. 4 that the lease in question in favour of Chuhar Ram defendant No. 5 was fictitious. Under issue No.5, it held that the decree was neither collusive nor for the benefit of the vendees. Under issue No. 1, it held that the decree obtained by Khem Chand respondent No. 1 in his favour on March 18, 1966 would not make any difference to the rights of Ram Chand plaintiff-appellant and that in view of Section 17 of the Act he would be considered entitled to succeed in his suit regarding half share in the suit land. In view of the abovesaid findings, the trial Court decreed the suit of the appellant to the extent of half share in the land-subject-matter of sale-sought to be pre-empted by him. As regards issue No. 4, the trial Court held that the lease in favour of Chuhar Ram was fictitious. Against the said judgment and decree. Ram Chand the present appellant, Khem Chand, respondent No. 1, as also Chuhar Ram lessee-defendant went up in appeal to the District Judge. The District Judge dismissed the appeal of Ram Chand appellant and allowed that of Khem Chand and of Chuhar Ram, lessee-defendant, by a common judgment dated November 22, 1968. Hence the present appeal to this Court by Ram Chand.

3. Mr. Sarin, learned counsel for the appellant, has urged the doctrine of lis

pendens being applicable to the pre-emption suits, the transfer by vendees of the suit property to Khem Chand, respondent No. 1 during the pendency of the appellant's suit was clearly hit by provisions of Section 52 of the Transfer of Property Act. In support of his submission he placed reliance on a Supreme Court decision in Bishan Singh and Others Vs. Khazan Singh and Another, . For the respondent, reliance was placed on a Full Bench decision of the Lahore High Court in Mool Chand v. Ganga Jal AIR 1930 Lah 356. In that case it was held that if the sale is by vendees of the suit property during the pendency of the pre-emption suit to a person who has a right of pre-emption suit to person who has a right of pre-emption equal to that of the pre-emptor, then such a sale would not be considered as transfer and thus, doctrine of lis pendens would not be attracted. That doctrine would be attracted only if the vendees effected the sale in favour of a stranger during the pendency of the pre-emption suit.

4. So far as the decision relied upon by the learned counsel for the appellant is concerned, suffice it to mention, that the facts involve therein were entirely different. In that case, the sale was to strangers and not to a person who enjoyed equal right of pre-emption. Mr. Sarin sought to distinguish the ratio of Full Bench decision of Lahore High Court in Mool Chand's case AIR 1930 Lah 356(supra) by saying that in that case there was a voluntary sale effected by the vendees in favour of a person who enjoyed equal right of pre-emption, but, in the present case, the transfer was got effected by getting a collusive decree passed in favour of such a person. It was stressed that such a step militated against the provisions of Sections 17 and 28 of the Act.

5. I am afraid, there is no merit in the contention advanced by the learned counsel. On principle no distinction exists because either the doctrine of lis pendens is attracted to a transfer effected in favour of a person having equal right of pre-emption or it does not. If it not attracted, it makes no difference whether such a person becomes owner of the suit property during the pendency of the pre-emption suit either as a result of an outright sale in his favour or by succeeding in his suit and thus getting a decree in his favour, because if the provisions of Sections 17 and 28 of the Act were held to constitute an obstacle in his way, then nothing was more easier than to circumvent them by withdrawing his suit and thereafter, as permitted by the ratio of Full Bench decision of Lahore High Court in Mool Chand case AIR 1930 Lah 356(supra), to purchase the land in a sale transaction from the vendees. I am, therefore, of the view that ratio of Mool Chand v. Ganga Jal. AIR 1930 Lah 356 clearly covers the present case.

6. In view of the above. I consider it unnecessary to deal with the arguments of the learned counsel for the appellant on issue No. 4.

7. For the reasons stated, the appeal fails but I make no order as to costs.

8. Appeal dismissed.