
(1992) 02 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2331 of 1990

Smt. Suhan Bai @ Sohu Bai

APPELLANT

Vs

Surjan Singh

RESPONDENT

Date of Decision : 10-02-1992

Acts Referred:

Citation : (1992) 101 PLR 454

Hon'ble Judges : A.S. Nehra, J

Bench : Single Bench

Advocate : P.C. Mehta and S.N. Saini, for the Appellant; M.L. Sarin and Jai Shree Thakur, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Nehra, J.—This appeal is directed against the judgment and decree dated 7-12-1990 passed by the Additional District Judge, Hissar, by which the appeal of the defendant-appellant was dismissed and the judgment and decree dated 26-10-1989 passed by the trial Court (decreeing the suit of the plaintiff-respondent) was upheld.

2. Briefly stated, the case of the plaintiff-respondent is that Radhey Sham sold the suit land, bearing khasra Nos. 63/7/2(3-7), 8/1(1-7) and 14(8-0), total measuring 12 Kanals- 14 Marlas, in favour of the defendant-appellant, vide registered sale deed dated 13-1-1986, without any notice to the plaintiff-respondent or the other co-sharers. The plaintiff-respondent, being a co-sharer in the joint khewat, claimed superior right of pre-emption and has stated that the suit land has not been partitioned so far ; that the actual sale price is Rs. 40,000/- ; and that the consideration amount of Rs. 42,000/-, as shown in the sale-deed, is fictitious.

3. The suit was contested by the defendant-appellant who denied the superior right of pre-emption of the plaintiff-respondent. The defendant-appellant claimed that she belongs to a Mahtama community and a sale in favour of Mahtamas

cannot be pre-empted.

4. On the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiff has superior right of pre-emption ?
2. Whether the sale transaction has actually taken place for Rs. 42,000/- and this was the amount which was actually paid and fixed in good faith ?
3. If issue No. 2 is not proved, what is the actual market price of the suit land ?
4. Whether the plaintiff has no locus standi to file the present suit ?
5. Whether the defendant belongs to Mahtamas community ?. If so, to what effect ?
6. Whether the defendant is entitled to stamp and registration charges in case the suit is decreed ? If so, to what amount ?
- 6-A. Whether the defendant is entitled to improvement expenses and to what extent ?
- 6-B. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ?
- 6-C. Whether the defendant has taken the loan and of what amount and to what effect ?
7. Relief.

Issue No. 1 has been decided in favour of the plaintiff-respondent and it was held that he is a co-sharer in the suit land. Issue No. 2 has been decided in favour of the defendant-appellant. Issue No. 3 was decided accordingly in view of the finding on issue No. 2. Issues Nos. 4 and 5 were decided in favour of the plaintiff-respondent. Consequently, the suit filed by the plaintiff-respondent was decreed by the trial Court on 26-10-1989.

5. The learned counsel for the defendant-appellant has contended that the defendant appellant is a Rai Sikh and, therefore, in view of the notification issued by the Government in the year 1963, a sale made in favour of the appellant is not pre-emptible. There is no force in this contention, because the appellant is not Mahtamas. Mahtamas and Rai Sikhs are not one and the same community. A sale made in favour of a Mahtamas is not pre-emptible in view of the notification issued by the Government in the year 1963, whereas a sale made in favour of a Rai Sikh is pre-emptible. Therefore, there is no merit in this appeal and the same is dismissed.