

CASE NO.:
Appeal (civil) 417 of 1997

PETITIONER:
Ram Kanwar

RESPONDENT:
Kewal Singh & Others

DATE OF JUDGMENT: 30/08/2005

BENCH:
CJI R.C. LAHOTI, Y.K. SABHARWAL G.P. MATHUR S.H. KAPADIA & P.K. BALASUBRAMANYAN

JUDGMENT:
JUDGMENT
O R D E R
I.A. No.5 OF 2004.
IN
I.A. No.3 OF 2001.
IN
CIVIL APPEAL No.417 OF 1997.

WITH

I.A. Nos.8 to 11 OF 2005.
IN
I.A. Nos. 2& 6 OF 2002.
IN
CIVIL APPEAL No.4948 OF 2001.

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Appellant

Versus

Satbir & Others

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Respondents/
Applicants

In the maze of IAs, we are concerned with facts briefly stated in Civil Appeal No.417 of 1997 and Civil Appeal No.4948 of 2001 disposed of by this Court vide its judgment dated 31.7.2001, with a number of connected matters.

I.A. No.5 OF 2004 IN I.A. No.3 OF 2001 IN CIVIL APPEAL No.417 OF 1997:

On 6.9.1988, Savitri Devi (vendor) sold lands measuring 76 kanals 9 marlas of distinct killa numbers. Ram Kanwar (plaintiff-appellant) filed a suit for possession of the above lands on the plea that he was co-sharer at all material times and as such he had a preferential right to acquire it. The said suit was contested by the vendees (defendants \026 respondents). On 15.1.1993, the suit was dismissed by the trial court holding that the plaintiff-appellant was not a co-sharer in the suit land. On appeal from the judgment and decree of dismissal of the suit, the first appellate court, by order dated 22.2.1995, reversed the findings of the trial court holding that the plaintiff-appellant (Ram Kanwar) was a co-sharer at all material times. Consequently, the suit was decreed in favour of the plaintiff and the judgment of the trial court was set-aside.

Being aggrieved, the defendants-vendees (respondents in civil appeal) preferred second appeal to the High Court under section 100 CPC. At this stage, it is important to note that between the judgment of the first appellate court dated 22.2.1995 and the filing of the second appeal in the High Court by the defendants-vendees (respondents), the Haryana Assembly enacted Haryana Amending Act No.10 of 1995 taking away the right of co-sharer to pre-empt sale by the co-owner. In view of the said Amending Act No.10 of 1995, the High Court, in second appeal, passed the following order: "As per the decision of the apex court in Ramjilal & Ors. etc. Vs. Ghisa Ram etc. JT 1996 (2) SC 649, a co-sharer has no right to claim a superior right of pre-emption. Since the lower appellate Court decreed the suit of the plaintiff only on the ground that the plaintiff is co-sharer and so has a superior right of pre-emption which right in view of the amendment made by the Haryana Government has already been taken away, appeal consequently deserves acceptance. Accordingly, I accept the appeal, set aside the judgment and decree of the lower appellate Court and dismiss the suit filed by the plaintiff."

Being aggrieved by the dismissal of the suit on the preliminary point, the plaintiff-appellant (Ram Kanwar) came to this Court by way of Civil Appeal No.417 of 1997. By judgment dated 31.7.2001, a five-Judge Bench of this Court held that the Amending Act No.10 of 1995, which came into force on 7.7.1995, was prospective in operation and, therefore, it did not effect the decree passed by the first appellate court before 6.7.1995. Consequently, the said civil appeal no.417 of 1997 stood allowed. At this stage, we may point out that there was an error in the operative part of the judgment of this Court dated 31.7.2001. Although, the plaintiff-appellant succeeded in the appeal, on account of error in the operative part, the word "dismissed" came to be incorporated. Therefore, I.A. No.3 of 2001 was allowed and the necessary correction was ordered to be made in the operative part of the judgment dated 31.7.2001.

In the said I.A. No.3 of 2001, defendants-respondents no.1 to 3 have moved IA No.5 of 2004. Briefly, the plea taken by the defendants-respondents is that the suit filed by the plaintiff-appellant (Ram Kanwar) stood dismissed by the judgment of the High Court dated 16.5.1996 only on the preliminary point concerning applicability of Amending Act No.10 of 1995; that the High Court in the second appeal did not frame substantial question of law although, according to the defendants-respondents, there were substantial questions of law involved in the second appeal and, therefore, by way of I.A. No.5 of 2004, the defendants-respondents seek remand of the case to the High Court, in accordance with the provisions of Order XLI Rule 23 CPC.

On 17.8.2005, the plaintiff-appellant (Ram Kanwar) has filed a detailed reply to the said I.A. No.5 of 2004, in which it is pleaded that in the second appeal before the High Court, the defendants-respondents did not challenge the findings of fact arrived at by the first appellate court and, therefore, the High Court had no occasion to go into the findings of fact recorded by the first appellate court. On behalf of the plaintiff-appellant, it is submitted that the first appellate court is a final court of fact and according to the settled law, the High Court is bound by the findings of fact arrived at by the first appellate court and, therefore, the said I.A. No.5 of 2004 is wholly un-called for,

particularly when section 100 CPC did not confer jurisdiction on the High Court to re-appreciate the evidence and interfere with the findings of fact recorded by the first appellate court.

We do not find merit in the contention of the plaintiff-appellant that I.A. No.5 of 2004 was wholly uncalled-for, for the following reasons. Firstly, as can be seen from the judgment of the High Court dated 16.5.1996 in RSA No.2198 of 1995 quoted above, the appeal was accepted and the judgment and decree of the first appellate court was set aside only on the preliminary point based on the applicability of the Amending Act No.10 of 1995. Secondly, we have perused the memo of appeal filed by the defendants-respondents in RSA No.2198 of 1995. We reproduce the grounds of RSA No.2198 of 1995 as under:

- "1. That the learned lower appellate court has erred in accepting the appeal and reversing the well-considered judgment and decree of the learned trial court.
2. That the law of pre-emption, as it stands today, in the State of Haryana, does not vest the pre-emptory rights in the co-sharers. Hence, the suit must be dismissed.
3. That the plaintiff had ceased to be co-sharer in the suit land. He, thus, could not plead any right of pre-emption. The learned trial court has rightly dismissed the suit.
4. That the learned lower appellate court has reversed the findings, given by the learned trial court, merely on the ground, that during the first appeal, the application of partition was set aside by the Financial Commissioner and the case had been remanded.
5. That the very fact that defendants had purchased specific khasra nos. showed that the land had already been partitioned, and the parties were in possession of their respective shares. Therefore, the question of pre-emption could not arise.

It is, therefore, prayed that the appeal be accepted, judgment and decree of the lower appellate court be set aside and that of learned trial court be restored and the suit be dismissed with costs, throughout."

We do not wish to make any observation on the merits of the matter. Suffice it to state that in view of the above facts, we are of the view that the matter needs to be remanded to the High Court with a direction to decide the said RSA No.2198 of 1995 in accordance with law. We may clarify that our present order shall not be construed to mean that substantial questions of law arise in this case. That question will have to be decided by the High Court in terms of section 100(4) CPC after hearing the concerned parties.

I.A. Nos.8 & 10 OF 2005 IN I.A. Nos.2 & 6 OF 2002 IN
CIVIL APPEAL No.4948 OF 2001:

Respondent no.3, Raj Singh, in Civil Appeal No.4948 of

2001, disposed-of by this Court with Civil Appeal No.417 of 1997 along with a number of connected matters, vide judgment dated 31.7.2001, has filed I.A. No.8 of 2005 inter alia seeking remand of the case on the ground that the High Court had, by the impugned order dated 11.9.2000, allowed RSA No.2467 of 1993 only on the preliminary point concerning co-sharer's right of pre-emption having been abolished by Haryana Amending Act No.10 of 1995.

A similar I.A. No.10 of 2005 has also been filed by the LRs of respondent no.2, Ram Phal, in the said Civil Appeal No.4948 of 2001.

For the reasons mentioned hereinabove, we remand this case also to the High Court with a direction to dispose-of RSA No.2467 of 1993 in accordance with law.

I.A. Nos.9 & 11 OF 2005 IN I.A. Nos.2 & 6 OF 2002 IN CIVIL APPEAL No.4948 OF 2001:

These IAs have been preferred by the defendants-respondents in Civil Appeal No.4948 of 2001 for stay of execution proceedings adopted by the plaintiff-appellant pursuant to the decision of the first appellate court decreeing the suit. Since we have remanded the matter to the High Court, liberty is given to the defendants-respondents to move the High Court for interim reliefs in RSA No.2467 of 1993.

For the above reasons, I.A. No.5 of 2004 along with I.A. Nos.8 to 11 of 2005 herein stand disposed of.