



2023 INSC 926

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2023
(arising out of SLP (C) No. 30335 of 2018)

RAM KISHAN & ANOTHER APPELLANT(S)

VERSUS

DAYA NAND(D)THR. LRS & OTHERS RESPONDENT(S)

WITH

CIVIL APPEAL NO. _____ OF 2023
(arising out of SLP (C) No. 31904 of 2018)

O R D E R

Leave granted.

The present appeals take exception to the common judgment dated 31.08.2018 passed by the High Court of Punjab & Haryana at Chandigarh in R.S.A. No. 2241 of 1991 titled "*Ram Kishan and another v. Daya Nand and others*" and R.S.A. No. 2242 of 1991 titled "*Siri Bhagwan and others v. Daya Nand and others*".

The High Court by the impugned judgment has upheld the judgment of the first appellate court, decreeing the suit for pre-emption filed by the plaintiffs, Daya Nand (deceased) and others. Aggrieved, the defendant - purchasers, Ram Kishan and another; and Siri Bhagwan and others have preferred the present appeals. Trial court *vide* judgment dated 31.10.1990 had dismissed the suits.

The impugned judgment is predicated on the legal position that status of co-sharers ceases to exist only after the final partition is affected on the execution of the instrument of partition under Section 121 of the Punjab Land Revenue Act, 1887¹, an enactment also applicable to the State of Haryana. This view and legal position are erroneous.

In the recent decision in "*Jhabbar Singh (Deceased) Through Legal Heirs and Others v. Jagtar Singh*"², this Court has laid down two legal propositions:-

First, the Constitution Bench of this Court in case of "*Shyam Sunder and Others v. Ram Kumar and Another*"³ has held that for exercise of right of pre-emption, the pre-emptor should possess the right to pre-empt on the date of sale, and also on the date of the decree by the court of the first instance.

Secondly, joint status ceases when an order for division of the property under Section 118 of the Revenue Act is passed. Analogy is drawn from the provisions of Order XX, Rule 18, Sub Rule 1 of the Code of Civil Procedure, 1908, as the preliminary decree of the partition decides the share and entitlement to division and separate possession. Consequential division by metes and bounds, are ministerial or administrative acts requiring physical inspection, measurements, calculations and consideration of various permutations, combinations or alternatives of division. The date on which the order under Section 118 of the Revenue Act is passed or the *Naksha Bey* is directed, is the date of partition. The rights

1 For short "the Revenue Act"

2 (2023) SCC OnLine SC 431

3 (2001) 8 SCC 24

and status of the parties stands decided. The joint status is severed on the date of the decision. The date on which an order under Section 121 of the Revenue Act is passed or *Naksha Zeem* is prepared and deed of partition is registered, is the follow up action, and not the date of actual partition.

According to the admitted facts of the present case: -

- (i) Sale deed by respondent no. 5 - Rajinder, the co-owner, in favour of appellant no. 1 - Ram Kishan and appellant no.2 - Jit Singh, the appellants in SLP (C) 30335/2018, was executed on 26.10.1988;
- (ii) Sale deed by Rajinder, the co-owner, in favour of appellant no. 1 - Siri Bhagwan, appellant no.2 - Sunil and appellant no.3 - Anil, the appellants in SLP (C) 31904/2018 was executed on 29.11.1988;
- (iii) An order under Section 118 of the Revenue Act, *Naksha Bey*, was passed on 16.01.1989;
- (iv) The suit for decree of pre-emption, in fact, was dismissed by the trial court *vide* judgment dated 31.10.1990.
- (v) The first appellate court decreed the suit for pre-emption *vide* judgment dated 03.10.1991.
- (vi) The judgment of the first appellate court has been upheld by the impugned judgment of the High Court dated 31.08.2018.

As on the date, when the suits were dismissed by the trial court on 31.10.1990, the order dated 16.01.1989 under Section 118 of the Revenue Act, *Naksha Bey* had been passed and prepared. Prayer for pre-emption was decreed by the first appellate court on

03.10.1991.

For the purpose of the record, we will mention that subsequently *Naksha Zeem*, that is, an order under Section 121 of the Revenue Act was passed, and the deed of partition was registered on 27.03.1992.

For the aforesaid reasons, the impugned judgment and decree is set aside. Suit No. 7/1989 titled "*Daya Nand and Others v. Siri Bhagwan and Others*" and Suit No. 8/1989 titled "*Daya Nand and Others v. Ram Krishan and Others*", which were filed before the Court of Sub-Judge, Bahadurgarh, District Rohtak, Haryana, will be treated as dismissed. Any amount deposited by the respondent(s), can be withdrawn by them along with interest, if any, accrued thereon. No order as to costs. The appeals are allowed in the above terms.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
OCTOBER 10, 2023.