

A

SH. JANGLI AND ORS.

v.

SMT. BHAGWATI AND ORS.

SEPTEMBER 12, 1995

B

[K. RAMASWAMY, B.P. JEEVAN REDDY
AND B.L. HANSARIA, JJ.]

Punjab Security of Land Tenures Act, 1953/Punjab Pre-emption Act, 1913 :

C

Agricultural land—Sold in execution of a decree—Another sale deed in respect of same land registered in execution of decree in a suit for specific performance—Appellant—Tenant obtained decree in a suit for pre-emption—Appellant's suit for declaration of title dismissed—Held, appellant neither because of nor independently of pre-emption decree can have any declaration of title.

D

Respondent No. 9 was the owner of the land in dispute. She suffered a money decree in suit No. 377/66 filed by respondents No. 1 to 3. The land was sold to respondent No. 11 in execution of the decree. The sale was confirmed on March 21, 1978. Meanwhile 'X' entered into an agreement of sale of the said land with respondent No. 9 and he filed a suit for specific performance, which was decreed on October 18, 1968 and in execution of the decree 'X' got the sale deed registered in his favour.

E

The appellant filed a suit for pre-emption under the Punjab Pre-emption Act, 1913 against respondent No. 9 and 'X' claiming preferential right as a tenant. The said suit was decreed on 26.5.1970. During the execution proceedings of Suit No. 377/66 the appellant filed objections under s.47 of the Code of Civil Procedure, 1908 seeking to set aside the sale, which was dismissed. Thereafter, the appellant filed suit No. 77/76 for declaration of his title and for permanent injunction. The trial Court dismissed the suit. The appeals were also dismissed by the first appellate court and the High Court. Aggrieved, the appellant filed the present appeal.

G

H On the question whether the appellant was entitled to a declaration of his title to the properties against respondent No. 11 and whether he

could challenge the money decree because of, or independently of pre-emption decree, A

Dismissing the appeal, this Court

HELD : The appellant can neither because of nor independently of pre-emption decree have any declaration of title. Though initially he had his right as a tenant, his tenancy rights stood merged in his title after the pre-emption decree and he became the owner. He derived his title from respondent No. 9, who was a judgment-debtor in money decree. He sought to set aside the decree by filing objections under s.47 of the Code Civil Procedure, 1908 and the same was dismissed. Since the property was subject to attachment pending suit, the decree-holder in Suit No. 377/66 became entitled to proceed against the property which was rightly sold in execution. Therein, the 11th respondent had become the auction-purchaser and the sale was confirmed in his favour. Thus he acquired the title to the property through the decree-holder. The title of respondent No. 9 thus stood transferred to the 11th respondent through court decree. The appellant being a derivative title-holder is bound by the decree as judgment-debtor. [580-H, G, 581-A-C] B
C
D

Vennarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan & Anr., JT (1990) 1 SC 390, cited. E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2110 of 1979

From the Judgment and Order dated 11.4.79 of the Punjab & Haryana High Court in R.S.A. No. 532 of 1979. F

S.N. Mehta, Mahendra Singh, Ajit Kr. Pandey and Ashok Tiwari for the Appellants.

Ranbir Yadav for the Respondent No. 11.

Manoj Swarup, Adv. (NP) for the Respondent. G

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment and decree dated April 11, 1979 of the High Court of Punjab & Haryana passed in H

A R.S.A. No. 532/79, dismissing the second appeal *in limine*. The controversy relates to land, measuring 48 kanals 7 marlas situated in Khewat Nos. 31 and 32 in Faridpur Village. The land originally belonging to Smt. Ajudhia, the 9th respondent. The appellant claimed to be a tenant under her. She admittedly suffered money decree in Suit No. 377/66 filed by respondent Nos.1 to 3 against her. Pending suit, the plaintiff, got an order of attachment before judgment under Order 38 Rule 5, CPC by which the lands were encumbered for the realisation of the decree, if ultimately passed.

B
C The suit was decreed on March 20, 1968. In execution of the decree, the said properties were brought to sale in which Kuldip Singh, the 11th respondent became the auction-purchaser on February 15, 1976 for a sum of Rs. 26,500. The sale was confirmed on March 21, 1978.

D In the meanwhile, one Prabhu Dayal entered into an agreement of sale of the said land with Smt. Ajudhia on January 30, 1966 and he laid the suit for specific performance and the suit was decreed on October, 18, 1968 and in execution thereof he had a sale deed in his favour which was registered on October 18, 1968. The appellant filed a suit against Prabhu Dayal and Smt. Ajudhia for pre-emption under the Punjab pre-emption Act, 1918 claiming preferential right as a tenant and had a decree on May 26, 1970.

E During the execution proceedings of the recovery of the money decree in suit No. 377/66, the appellant filed objections under Section 47 CPC seeking to set aside the sale, which was dismissed and became final. Thereafter, the appellant filed Suit No. 77/1976 for declaration of his title and for permanent injunction. The trial Court dismissed the suit and on appeal it was confirmed. The second appeal was also dismissed *in limine* by the High Court under the order referred to hereinbefore.

F
G The only question is whether the appellant is entitled to a declaration of his title to the properties as against Kuldip Singh, the 11th respondent. It is seen that the appellant though initially had his right as a tenant, by virtue of his purchase under the pre-emption decree, his tenancy rights stood merged into his title as an owner deriving right, title and interest from Smt. Ajudhia, the judgment-debtor in Suit No. 377/66. The question is whether he can challenge the money decree, because of or independently of, pre-emption decree. In our considered view, in either case, he cannot
H have any declaration of title. As stated earlier, his tenancy rights stood

merged in his title after the pre-emption decree and he became the owner. He derived his title from Smt. Ajudhia, who was a judgment-debtor in money decree. He sought to set aside the decree by filing objections under Section 47 and the same was dismissed. Since this property was subject of attachment pending suit, the decree-holders in Suit No. 377/66 became entitled to proceed against the property which was rightly sold in execution. Therein, the 11th respondent had become the auction-purchaser and the sale was confirmed in his favour. Thus he acquired the title to the property through the decree-holder. The title of Smt. Ajudhia thus stood transferred to the 11th respondent through court decree. The appellant being a derivative title-holder is bound by the decree as judgment-debtor. He cannot seek any declaration of his independent title thereof. He can no longer avail of his tenancy rights which stood merged in his title held under pre-emption decree.

In this view, it is not necessary for us to go into the controversy whether some observations made in *Vennarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan & Anr.*, JT (1990) 1 SC 390 need to be clarified and correct legal position stated, which would be considered in an appropriate case.

The appeal is accordingly dismissed but, in the circumstances, without costs.

R.P.

Appeal dismissed.