

RESHMU AND ORS.

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v.

RAJINDER SINGH AND ORS.

FEBRUARY 16, 2000

[S. SAGHIR AHMED AND Y.K. SABHARWAL, JJ.]

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*Civil Procedure Code, 1908—Order 20 Rule 14(1)—Pre-emption—Land in question sold by joint owner—Pre-emption suit filed by original plaintiff who was the son of other joint owner—Suit decreed in favour of original plaintiff and pre-emption amount deposited—Another suit filed by original plaintiff for declaration of ownership against the appellants who are successors of the vendees—Trial Court declared ownership of the original plaintiff although possession was with appellants—First Appellate Court granted ownership to the appellants on basis of adverse possession—High Court reversed the judgment as plea of adverse possession had never been taken before—On appeal, Held, the title of decree holder accrues from date of payment of pre-emption amount as per decree—No actual possession required to be obtained or delivered—Dismissal of execution petition inconsequential since original plaintiff was in joint possession.*

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The original joint owner of the land in question had sold it to three persons. The original plaintiff was the son of the other joint owner. He brought a suit for pre-emption of the sale against the vendees which was decreed in his favour and the pre-emption amount was also deposited. Another suit was filed by the original plaintiff against the appellants, who are successors in the interest of the vendees, for a declaration of his ownership and a permanent injunction restraining them from the enjoyment of the said property. Trial court held the plaintiff to the owner although possession was with the appellants. The judgment and decree was reversed in first appeal and ownership was presumed in favour of the appellants by adverse possession.

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The High Court in second appeal noticed that no plea of adverse possession had ever been taken before, and reversed the judgment of the First Appellate Court. Hence this appeal.

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The appellants contended before this court that pre-emption decree cannot be relied upon as possession had not been delivered to the plaintiff

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**A** in terms of that decree and that execution petition filed by the plaintiff had also been dismissed.

Dismissing the appeal, this Court

**B** HELD : 1. A plain reading of Order 20 Rule 14(1) CPC shows that the title of the decree holder accrues from the date of the payment required to be made under a pre-emption decree. [896-F]

**C** 2. In view of the deposit by the original plaintiff of the pre-emption amount in terms of the pre-emption decree, the dismissal of the execution petition was inconsequential since the plaintiff was in joint possession of the land, which was part of joint khata. [896-G]

**D** 3. The subject matter of the pre-emption suit, was not any particular part of the land of the joint khata but the undivided share of the original joint owner therein. This share had never been separated by way of partition before sale. The plaintiff was already in possession of the land along with other co-sharers. On the facts and circumstances of the case, no actual possession was required to be obtained or delivered. [895-H; 896-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5110 of 1997.

**E** From the Judgment and Order dated 8.1.97 of the Himachal Pradesh High Court in R.S.A. No. 372 of 1988.

K.G. Bhagat, Debasis Misra and Kamal Baid for the Appellants.

**F** A.V. Palli, Atul Sharma and Ms. Rekha Palli for the Respondents.

The Judgment of the Court was delivered by

**G** **SABHARWAL, J.** Respondents 1 to 4 are the legal heirs of the original plaintiff Suram Singh. The father of Suram Singh named Nand Lal was joint owner of the land in question along with one Bassia. In the year 1940, Bassia sold the land to Harnam Singh, Munshi Ram and Tilak Chand. In July 1941, Suram Singh brought a suit for pre-emption of this sale against Harnam Singh, Munshi and Tilak Chand. The said suit was decreed on 31st January, 1942, and directed payment of pre-emption amount on or before 1st April, 1942. The said amount was deposited by Suram Singh in Court

**H** as per the terms of the decree.

The suit out of which the present appeal has arisen was filed by Suram Singh against successors in the interest of Harnam Singh, Munshi and Tilak Chand *inter alia* seeking a decree of declaration that he is owner in possession of the land in question and also seeking relief of permanent injunction to restrain defendants from causing an interference in the enjoyment of the suit land by him.

In the suit, the deposit of the pre-emption amount by the plaintiff Suram Singh before first April, 1942, was duly proved. The trial court held that the plaintiff is the owner of the suit land though the possession is with the defendants without any title. The defendants had sought partition proceedings as their names continued in the revenue record. The trial court held that the partition proceedings are void since the defendants have not title to the land and the said proceedings were not binding upon the plaintiff. In the first appeal, the District Judge reversed the judgment and decree of the trial court. The District Judge allowing the appeal and dismissing the suit held that the defendants had continued in hostile possession since the time of the passing of the decree in pre-emption suit in favour of the plaintiff and thus they had become owner by adverse possession prior to the institution of the suit.

In the second appeal, the High Court, noticing that admittedly no plea with regard to adverse possession was raised by the defendants and the only plea taken by them was that they had come in possession as successors of the vendees, has reversed the aforesaid decision of the first appellate court. The High Court has held that the plaintiff is owner in possession of the land and the defendants have been restrained from interfering with the ownership and possession of the plaintiff. The defendants have filed this appeal challenging the decision of the High Court.

The High Court has noticed that the pre-emption amount stood deposited on 31st March, 1992 and, therefore, title to land in dispute passed on to the plaintiff w.e.f. that date. It has been further found by the High Court that though no possession was obtained by the plaintiff but on the facts of the case, no actual possession, in fact, was required to be obtained by him since the land formed part of a joint khata of which plaintiff was one of the co-sharers, and the share of vendor Bassia was never separated by way of partition before sale by him. He had sold his

**A** undivided share in the joint khata. The plaintiff, being a co- sharer, was in possession of the land in dispute along with other co-shares and he was never ousted from his joint possession. The title of the plaintiff came to be denied by defendants only when they moved the revenue authorities for partition of the joint khata and at that stage, the suit was filed.

**B** The only contention urged by the learned counsel of Appellants is that the possession having not been delivered to the plaintiff in terms of the pre-emption decree, the plaintiff cannot rely upon the said decree, particularly when the execution petition filed by the plaintiff was dismissed. Reliance has been placed on Rule 14(1) of Order 20, Code of Civil

**C** Procedure, which reads as under :

"Decree in pre-emption suit - (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase money has not been paid into Court, the decree shall -

**D** (a) specify a day on or before which the purchase-money shall be so paid, and

**E** (b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with cost."

**F** A plain reading of the aforesaid provision shows that the title to the decree-holder accrues from the date of the payment required to be made under a pre-emption decree. In view of the deposit by the original plaintiff of the pre-emption amount in terms of the pre-emption decree, the dismissal of the execution petition was inconsequential since the plaintiff was in joint possession of the land, which was part of joint khata. The land sold

**G** by Bassia, which was subject matter of the pre-emption suit, was not any particular part of the land of joint khata but was his undivided share therein. The share of Bassia had never been separated by way of partition before sale by him. The plaintiff was already in possession of the land along with other co-shares. There is neither any plea nor any finding of partition

**H** having been effected by Bassia. On the facts and circumstances of the case,

no actual possession was required to be obtained or delivered. When there was threat to the title of the plaintiff, the suit was filed by him. We find no infirmity in the decision of the High Court. A

The appeal is thus dismissed. Parties are, however, left to bear their own cost.

A.Q.

Appeal dismissed. B