

Jagmohan vs Badri Nath Kohli (Dead) Thr. Lrs. on 6 February, 2024

Author: Rajesh Bindal

Bench: Rajesh Bindal, C.T.Ravikumar

2024 INSC 86

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(Arising out of SLP(C)No.18612 of 2015)

JAGMOHAN AND ANOTHER

... Appellant(s)

VERSUS

BADRI NATH AND OTHERS

... Respondent(s)

JUDGMENT

RAJESH BINDAL, J.

Leave granted.

2. The defendants are before this Court challenging the concurrent findings of fact recorded by all the courts below.

3. It is a case in which the respondents had filed a suit 1 on 25.01.1984 for possession by pre-emption of the plot measuring 719 square yards, situated at Light Railway Bazar, Jagadhri (hereinafter referred to as ‘the property in dispute’). The Trial Court² decreed the suit. The judgment and decree 3 of the Trial Court was upheld upto the High Court 4.

4. The facts in brief are that the respondents (plaintiffs in the suit) claimed themselves to be the tenants in the property in dispute since 1949. The property in dispute was owned by Anarkali and others. The same was sold by the owners thereof to the appellants (defendants in the suit) by way of a registered sale-deed dated 25.01.1983. The respondents filed the suit exercising their right of pre-emption of the sale claiming that in terms of the provisions of the 1913 Act⁵, they had preferential right to purchase the property. They offered to pay same sale consideration of

43,000/-. The Trial Court decreed the suit subject to payment of 50,238/- to the vendee after deducting 1/5th of the pre-emption amount deposited in the Court at the time of filing of the suit. The amount so directed by the Trial Court was including stamp duty, registration fee and miscellaneous expenses incurred on registration of the sale-deed⁶.

2 Additional Senior Sub Judge, Jagadhri 3 Judgment and decree dated 27.05.1989 4 High Court of Punjab and Haryana at Chandigarh 5 The Punjab Pre-emption Act, 1913 6 Sale-deed dated 25.01.1983

5. Challenging the judgment of the High Court, learned counsel for the appellants submitted that in view of the notification 08.10.1985, issued by the State in exercise of powers under section 8(2) of the 1913 Act, the suit filed by the respondents deserved to be dismissed as the right of pre-emption did not exist for sale of land falling in the areas of any municipality in Haryana. It is not a matter of dispute that the sale in question was pertaining to the property located within the municipal limits of Jagadhri (State of Haryana). In terms of the Constitution Bench judgment of this Court in *Shyam Sunder and others v. Ram Kumar and another* ⁷, the right of pre-emption has to exist on the date of registration of the sale-deed, on the date of filing of suit and also on the date the same is decreed by the first Court. In the case in hand, no doubt, the suit was pending when the aforesaid notification was issued, however, the Trial Court had decided the same on 27.05.1989, hence the decree could not have been passed. The courts below have failed to appreciate that aspect of the matter.

6. He further submitted that the sale deed was registered in favour of the appellants on 25.01.1983, the suit ⁷ (2001) 8 SCC 24 having been filed on 25.01.1984 was time-barred as the limitation thereof is one year, which expired on 24.01.1984. It was further argued that the courts below have wrongly appreciated the issue regarding the custom of pre-emption prevailing in the area. It was not a matter of dispute that the area in which the property is situated, falls within the extended area of municipal limits of Jagadhri. Though some evidence was led pertaining to the custom prevailing in the urban area of municipal limits of Jagadhri, however, for the extended area, no evidence was produced. In terms of the judgment of the High Court in *Sandeep Bansal v. M. L. Hans and others* ⁸, decided on 24.08.2009, the same custom cannot be relied upon for any transaction of sale in the extended area.

7. On the other hand, learned counsel for the respondents submitted that though issue of limitation was raised by the appellants before the Trial Court, however, the same was not seriously contested for the reason that the suit filed by the respondents was within limitation. The Schedule attached to the 1963 Act ⁹ provides for a period of one year for filing of suit for pre-emption. If the same is read along with ⁹ The Limitation Act, 1963 Section 12 of the aforesaid Act, in terms of which the date of registration of sale deed is to be excluded, the suit filed by the respondents was within limitation. It was for this reason that the appellants did not press the aforesaid issue before the lower Appellate Court¹⁰ or the High Court.

8. It was further submitted that the notification dated 08.10.1985, as is sought to be relied upon by the appellants, will not be applicable in the case in hand. From a perusal thereof, it is evident that the exemption is only with reference to sale of land within the municipal area. In the case in hand, it is not the sale of land, rather immovable property in the form of a rolling mill, which cannot be

termed to be land. The aforesaid notification has been issued in exercise of powers under Section 8(2) of the 1913 Act which enables the State Government to exclude any transaction of sale of any land or property or class of land or property for exercise of right of pre-emption. The right to the respondents flows from Section 16 of the 1913 Act which provides that right of pre-emption in respect of urban immovable property vests in the tenant. The term 'urban immovable property' has been defined in Section 3(3) of the 1913 Act to mean immovable property within the limits of town, 10 Additional District Judge, Yamuna Nagar at Jagadhri other than agricultural land. Section 3(1) thereof defines any agricultural land to mean land as defined in 1900 Act 11. Section 3(2) defines 'village immovable property' to mean immovable property within the limits of a village, other than agricultural land.

9. The expression 'land' is defined in 1900 Act to mean the land which is not occupied by site of any building in a town or village and is occupied or let out for agricultural purposes or for purposes subservient to agriculture. He also referred to the definition of 'immovable property', as provided for in Section 3(26) of the 1897 Act¹². As the sale in the case in hand was pertaining to not the land situated within the municipal limits but of a constructed area which was being used a rolling mill, the exemption as granted vide notification dated 08.10.1985 will not be applicable in the case of the appellants. Very fairly, he did not dispute the proposition of law as laid down by the Constitution Bench of this Court in Shyam Sunder and others' case (supra). However, he submitted that the same will not be applicable in the facts and circumstances of the case 11 Punjab Alienation of Land Act, 1900 12 The General Clauses Act, 1897 as the notification does not come to the rescue of the appellants.

10. Heard learned counsel for the parties and perused the relevant referred record.

11. The relevant provisions of the 1900 Act and 1913 Act are extracted below:

“Sections 3(1) (2) and (3), 8, 15 and 16 of the Punjab Pre-emption 1913 Act

3. Definitions. - In this Act, unless a different intention appears from the subject or context, -

(1) 'agricultural land' shall mean land as defined in Punjab Alienation of Land Act, 1900 (XIII of 1900) (as amended by act, 1 of 1907), but shall not include the rights of a mortgage, whether usufructuary or not in such land:

(2) 'village immovable property' shall mean immovable property within the limits of a village, other than agricultural land:

(3) 'urban immovable property' shall mean immovable property within the limits of town, other than agricultural land. For the purposes of this Act a specified place shall be deemed to be a town (a) If so declared by the State Government by notification in the Official Gazette or (b) if so found by the Courts:

8. State Government may exclude areas
from pre-emption- (1) Except as may otherwise

be declared in the case of any agricultural land in a notification by the State Government, no right of pre-emption shall exist within any cantonment.

(2) The State Government may declare by notification that in any local area or with respect to any land or property or class of land or property or with respect to any sale or class of sales, no right of pre-emption or only such limited right as that the State Government may specify, shall exist.

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15. Persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property. (1) The right of pre-emption in respect of agricultural land and village immovable property shall vest-

(a) where the sale is by sole owner-

First, in the son or daughter or son's son or daughter's son of the vendor;

Secondly, in the brother or brother's son of the vendor;

Thirdly, in the father's brother or father's brother's son of the vendor;

Fourthly, in the tenant who holds under tenancy of vendor the land or property sold or apart thereof.

(b) Where the sale is of a share out of joint land or property made by all the co-sharers jointly- First in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors; Secondly, in the brothers or brother's sons of the vendor or vendors;

Thirdly, in the father's brother or father's brother's sons of the vendor or vendors;

Fourthly, in the other co-sharer's;

Fifthly, in the tenants who hold under tenancy of the vendor or vendor the land or property sold or a part thereof;

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly- First, in the sons or daughters or son's sons or daughter's sons of the vendors;

Secondly, in the brothers or brother's sons of the vendors;

Thirdly, in the father's brother's or father's brother's sons of vendors;

Fourthly, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(2) Notwithstanding anything contained in sub-

section (1):-

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son daughter of such female after inheritance, the right of pre-emption shall vest:-

(i) if the sale is by such female in her brother or brother's son:

(ii) if the sale is by the son or daughter of such female in the mother's brother or the mother's brother's son of the vendor or vendors;

b. where the sale is by a female of land or property to which she has succeeded through her husband, or through her son in case the son has inherited the land or property sold from his father, the right of pre-emption shall vest-

First, in the son or daughter of such husband of the female;

Secondly, in the husband's brother or husband's brother's son of such female.

16. Person in whom right of pre-emption vests in an urban immovable property- The right of pre-emption in respect of urban immovable property shall vest in the tenant who holds under tenancy of the vendor the property sold or apart thereof." Section 2(3) of the 1900 of Punjab Alienation of Land Act, 1900

2. In this Act, unless there is anything repugnant in the subject or context, --

xx xx xx (3) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes—

(a) the sites of buildings and other structures on such land;

(b) a share in the profits of an estate or holding;

(c) any dues or any fixed percentage of the land-revenue payable by an inferior land-owner to a superior land-owner;

(d) a right to receive rent; and

(e) any right to water enjoyed by the owner or occupier of land as such:

12. The right of the respondents/tenants in the property flows from Section 16 of the 1913 Act. It is not a matter of dispute that the respondents were tenants in the property from the year 1949 onwards where the rolling mill had been set up.

The term 'urban immovable property' has been defined in Section 3(3) of the 1913 Act to mean immovable property within the limits of town, other than agricultural land. Section 3(1) defines any agricultural land to mean land as defined in 1900 Act. The term 'land' as defined in Section 2(3) of the 1900 Act excludes any site of any building in a town or village. Meaning thereby that the immovable property would be more than the land only or the land on which the construction has already been made. The fact that the property in dispute is located in a municipal area of Jagadhri is not in dispute.

13. After coming to the conclusion that the property in dispute on which right of pre-emption was sought to be exercised by the respondents was an urban immovable property, the only issue which requires consideration by this Court is as to whether the exemption of pre-emption as granted vide notification dated 08.10.1985 would be available to the property in dispute.

14. A perusal of the notification shows that it has been issued in exercise of powers conferred under Section 8(2) of the 1913 Act, which enables the State Government to declare by notification either no right of pre-emption or only limited right will exist in any local area or with respect to any land or property or class of land or property. The notification provides that right of pre-emption shall not exist in respect of sale of land falling in the areas of municipalities in Haryana.

15. As we have already noticed above, the term 'land' as such has not been defined in the 1913 Act as it is only the agricultural land which is defined. If the aforesaid notification is read with reference to the powers available with the State Government to grant exemption from pre-emption, it is evident that the same has been granted with reference to land only and not the immovable property. The fact that Section 8(2) of the 1913 Act uses two terms independently, clearly suggests that the land and the immovable property have different meanings. It is evident even from the language of Section 15 of the 1913 Act, which also provides right of pre-emption in respect of agricultural land and village immovable property. 'Village immovable property' has been defined to mean immovable property within the limits of a village other than the agricultural land.

16. From the aforesaid provisions of the 1913 Act, if read Scheme of the Act, it is abundantly clear that the land and the immovable property are two different terms. The immovable property is more than the land on which certain construction has been made. Guidance can also be taken from the definition of immovable property, as provided in Section 3(26) of the 1897 Act, which includes land,

means something more than the land.

17. As the notification dated 08.10.1985 limits its application for taking away the right of pre-emption only with reference to sale of land falling in the areas of any municipality, the same will not come to the rescue of the appellants. In the case in hand, admittedly it is sale of immovable property, which is more than the land as a rolling mill had already been set up on the land, which was in occupation of the respondents as tenants.

18. The issue regarding limitation for filing of the suit is also misconceived if considered in the light of the facts of the case, the provisions of the 1961 Act and also that the same was not raised by the appellants before the lower Appellate Court or the High Court.

19. For the reasons mentioned above, we do not find any merit in the present appeal. The same is, accordingly, dismissed.

.....J. (C.T.RAVIKUMAR)J. (RAJESH BINDAL) New Delhi
February 06, 2024.