

2016 Y L R 401

[Peshawar]

Before Malik Manzoor Hussain, J

IFTIKHAR AHMAD---Petitioner

Versus

Mst. SAIMA ZIA---Respondent

C.R. No.12 of 2012, decided on 2nd May, 2014.

Khyber Pakhtunkhwa Pre-emption Act (X of 1987)---

---S. 6---Suit for pre-emption---Co-ownership and contiguity---Principle and scope---Pre-emptor purchased a specific portion of the property in question from one of the legal heirs of the original owner who were retaining separate possession after family settlement---Boundaries mentioned in the sale deed in favor of plaintiff were admittedly different from boundaries given in the sale deed executed in favor of defendants---Where property was divided through private partition, such property would no more be joint property---Pre-emption of any (such) part of such property could not be allowed merely on the ground that such part originally formed part of the whole house (property)---Pre-emption was a right of substitution, once it was established that pre-emptor was no more co-owner and no contiguity existed, suit would not be maintainable---Judgments of courts below did not warrant interference---Revision was dismissed.

Genda Ram and another v. Ram Chand and another AIR 1924 Lah. 163 and Mumtaz Hussain and another v. Muhammad Achar and 2 others 1991 CLC 209 ref.

Iftikhar Ahmed v. Adnan Khan C.R. No.18 of 2012 rel.

Haji Ghulam Basit for Petitioner.

Khalid Rehman Qureshi for Respondent.

Date of hearing: 2nd May, 2014.

JUDGMENT

MALIK MANZOOR HUSSAIN, J.---Petitioner, Iftikhar Ahmed has filed the instant revision petition against the judgment and decree dated 13.10.2011, passed by learned Additional District Judge Ghazi Camp Court Haripur, whereby the appeal filed by the petitioner against the judgment and decree dated 15.01.2011, passed by Civil Judge-IV, Haripur has been dismissed.

2. The brief and essential facts leading to the instant revision petition are that petitioner/plaintiff instituted Suit No.319/1 on 28.04.2008 for possession through preemption in respect of the suit property, the detail of which is given in the heading of the plaint.

3. The suit was contested by respondents/defendants and after recording pro and contra evidence, the learned trial Court through the judgment dated 15.01.2011 dismissed the suit. Feeling aggrieved, the petitioner preferred appeal which also met the same fate, hence the instant revision petition.

4. Learned counsel for petitioner contended that the petitioner was non-suited on the ground that neither co-ownership in the suit 'Havaili', nor contiguity has been proved by petitioner, therefore, having not established rights to pre-empt property, suit was dismissed, whereas, it was established that the suit 'Havaili' was not partitioned and the petitioner through purchase of share in 'Havaili', prior to purchase by the respondents, had become co-owner and also contiguous owner in the property. Having got 'superior rights of preemption the petitioner's suit was liable to be decreed. He further contended that both the Courts below not only misread the evidence of the parties but also failed to apply correct law while dealing with the suit of the petitioner.

5. Conversely, learned counsel for respondents contended that the suit 'Havaili' was privately partitioned between the original owners and each owner having got his specific share and portion sold the property through different sale deeds and got possession at the spot, therefore, the co-ownership and contiguity rights no more exists on the spot. In this regard he relied on judgments reported in Genda Ram and another v. Ram Chand and another (AIR 1924 Lahore 163) and Mumtaz Hussain and another v. Muhammad Achar and 2 others (1991 CLC 209).

6. I have heard learned counsel for the parties and perused the available record with their assistance.

7. Perusal of record reveals that the original suit 'Havaili' was one unit and after the death of original owner, legacy was devolved on different legal heirs. After family settlement they retained separate possession of their share and the petitioner purchased a specific portion through registered deed No.274 dated 11.02.2008 and registered sale deed No.798 dated 14.04.2008. Similarly, respondents Mst. Saima Zahid purchased specific portion with different boundaries built of area through registered sale deed No.834. The boundaries mentioned in the deed executed in favour of petitioner are totally different from the boundaries given in the sale deed executed in favour of respondents/vendors. The private partition and the boundaries have been admitted by the petitioner's witnesses while deposing as PWs. Even the petitioner did not dispute the boundaries of deed executed in favour of respondents. It is well settled by now that if a property was divided, having separate entity through private partition, for all practical purpose, the same would no more be a joint property and for that purpose no preemption of any such part is allowed merely because originally it forms part of whole house. Similarly, the suit filed on the basis of contiguity alone was held not to be maintainable. Preemption is a right of substitution and once it is established that preemptor remains no co-owner and also no contiguity exists, the suit would not be maintainable. It is noticed by this Court in connected case C.R. No.18 of 2012 titled Iftikhar Ahmed v. Adnan Khan, wherein the suit was filed by petitioner against the

property purchased by respondent Adnan, a commission was appointed who inspected the spot and submitted report along with site plan wherein it was shown that the property purchased by the petitioner was not contiguous to the property, purchased by the vendee/defendant having different and specific boundaries to that of plaintiff/pre-emptor. On the spot, a path intervenes between property purchased by petitioner and that of defendants. In such eventuality the suit was not maintainable and liable to be dismissed. Both the courts below have thoroughly examined the material available on record and applied correct law while delivering the impugned judgments. In view of the available record no case for interference is made out.

8. In view of what has been discussed above, this petition is devoid of merits and is dismissed.

ARK/292/P

Revision dismissed.