

**Chandgi Ram and anr. Vs. Rabi Datt**

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**Court :** Punjab and Haryana

**Decided On :** Jul-06-1951

**Reported in :** AIR1952P& H281

**Judge :** Harnam Singh, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

**Appeal No. :** Second Appeal No. 613 of 1948

**Appellant :** Chandgi Ram and anr.

**Respondent :** Rabi Datt

**Advocate for Def. :** D.N. Aggarwal, Adv.

**Advocate for Pet/Ap. :** Shamair Chand, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Harnam Singh, J.

1. On the 13th of February, 1947, Lakhi Ram and Chandgi Ram instituted Civil Suit No: 55 of 1947 for possession by pre-emption of one half share of 12 'bighas' 7 'biswas' of agricultural land situate at village Chhara, district Rohtak, 'Khewat' No: 544, Khasra Nos. 4522, 4496, 4497, 4516, 4523, 4524 and 4495 alleging that they being 'biswedars' in village Chhara had a preferential right of purchase as compared with Rabi Datt vendee. No other ground for claiming the right of pre-emption was pleaded in the plaint.

2. Rabi Datt defendant resisted the suit pleading that after the purchase but before the institution of Civil Suit No: 55 of 1947 he had become a 'biswedar' in village Chhara.

3. On the pleadings of the parties the following issues were fixed:

1. Have the plaintiffs a superior right to pre-empt the sale of the land in dispute to that of the vendee?

2. Is the price paid or fixed in good faith?

3. If issue No: 2 is not proved, what is the market value?

#### 4. Relief.

4. Plaintiffs conceded at the trial that they were ready to pay Rs. 3,500/- the sale price. That being so, no decision was given by the trial Court on issues Nos. 2 and 3. Indeed, the sole point that was agitated at the trial was that the plaintiffs had a superior right to purchase the land in suit as compared with the defendant-vendee on the ground stated in the plaint. The case of the defendant vendee was that he became a 'bisweddar' in the village by means of a registered deed of gift made on the 5th of February, 1947, Exhibit D. 1.

5. Now, the suit out of which this appeal has arisen was instituted on the 13th of February, 1947 and the defendant became a 'bisweddar' in village Chhara on the 5th of February, 1947. In this connection the deed of gift, Exhibit D. 1 may be seen.

6. Section 21-A was added to the Punjab Pre-emption Act, 1913, by the Punjab Pre-emption (Amendment) Act, 1844. Section 21-A reads:

'21-A. Any improvement, otherwise than through inheritance or succession, made in the status of a vendee-defendant after the institution of a suit for pre-emption shall not affect the right of the pre-emptor-plaintiff in such suit.'

Clearly the defendant-vendee improved his status before the institution of the suit by the plaintiffs for possession of the land in suit by pre-emption. That being so, the trial Court was right in dismissing the plaintiffs' suit, leaving the parties to bear their own costs.

7. From the decree passed by the trial Court on the 7th of April, 1948, plaintiffs appealed in the Court of the Senior Subordinate Judge, Rohtak. The appeal was filed on the 27th of April, 1948. In the memorandum of appeal the genuineness of the deed of gift, Exhibit D. 1, was challenged. On the 28th of June, 1948, plaintiffs-appellants applied under Rule 17 of Order VI of the Code of Civil Procedure that they may be permitted to plead that there was sub-division, in village Chhara; that the plaintiffs were 'biswedars' in the sub-division in which the land in suit was situate and that the defendant vendee was not a 'bisweddar' in that sub-division. The application for amendment was rejected by the lower Appellate Court for the reason that the amendment, if allowed after the expiry of the period' of limitation for a suit for possession by pre-emption the rights of the defendant vendee will be seriously prejudiced. The appeal failed and was dismissed with costs. Defendant-vendee had also preferred an appeal objecting to the decree under appeal in the matter of costs. That appeal also failed.

8. From the decree passed by the Senior Subordinate Judge on the 28th of June, 1948, plaintiffs have come up in further appeal to this Court.

9. Mr. Shamair Chand, learned counsel for the appellants, urges that the Lower Appellate Court was wrong in not allowing the application for the amendment of the plaint. Under Order VI, Rule 2, Civil Procedure Code, the pleading must contain the material facts on which a party relies for his claim. It is not enough, therefore, to plead a right without stating the basis of the right. Then Order VI, Rule 7, Civil Procedure Code, lays down that no new ground of claim can be raised except by way of amendment. Order VI, Rule 17, Civil Procedure Code, gives the Court a discretion to allow amendment in cases where it may be just and proper to do so.

10. Now, there are many rulings laying down that amendment should not be allowed except in very special cases where the effect of the amendment is to take away from the defendant a legal right which has accrued to him by lapse of time. As stated above, the litigation was fought on the ground stated in the plaint. Plaintiffs failed in the trial Court on that ground. Plaintiffs preferred an appeal and no application was made with the memorandum of appeal asking for amendment. The application for amendment was made on the 28th of June, 1948. The sale sought to be pre-empted was made on the 7th October, 1946. That being so, I think that the lower appellate Court has rightly exercised the discretion under Rule 17 of Order VI of the Code of Civil Procedure. For an authority on this point 'Rulia Ram v. Ram Channar', 14 Lah 807, may be seen.

11. No other point arises in these proceedings.

12. For the foregoing reasons I dismiss Regular Second Appeal No. 613 of 1948 with costs.

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