

PETITIONER:
SHRI JANGLI & ORS.

Vs.

RESPONDENT:
SMT. BHAGWATI & ORS.

DATE OF JUDGMENT 12/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
JEEVAN REDDY, B.P. (J)
HANSARIA B.L. (J)

CITATION:
1995 SCC (6) 140 JT 1995 (6) 679
1995 SCALE (5) 469

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

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

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.

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 Preemption Act, 1918 claiming preferential right as a tenant and had a decree on May 26, 1970.

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.

The only question is whether the appellant is entitled to a declaration of his title to the properties as against Kuldeep 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 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 Vannarakkal Kallalathil Sreedharan vs. 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.