

AYUB KHAN
v.
DEEP KUMAR CHAWLA AND ORS. ETC.

JANUARY 10, 1995

[K. RAMASWAMY AND SUJATA V. MANOHAR, JJ.]

Punjab Pre-emption Act, 1913—Property purchased from the Karta of Joint Family—Daughter of Karta and tenants of Karta claim pre-emption—Daughters as members of joint family bound by sale—Tenants entitled to pre-emption.

SD, father of GKS agreed to sell property to the appellant under an agreement of sale. Appellant's suit for specific performance was decreed. GKS executed sale deed in favour of appellant in satisfaction of the decree. Children of GKS, including his daughter as well as the tenants in the property filed suit for pre-emption against appellant. Trial Court dismissed the suit against the sons but decreed the same in favour of the daughters and tenants. On appeal it was confirmed and second appeal was dismissed.

In appeal by Special Leave, this Court

HELD : 1 By operation of Section 10 of the Punjab Pre-Emption Act, 1913, in case of a sale by joint owners, no party to such sale can claim right of pre-emption. Daughters may not be co-parceners but being members of the joint family they are bound by the sale made by the Karta for family necessity. Decree in favour of daughter is set aside and they are permitted to withdraw the pre-emption money from the trial Court together with 10% interest which was to be paid by the tenants. [178-F-G]

2. By virtue Sec. 15(1-B)(Fifthly) the tenants were entitled to pre-emption. Tenants are directed to deposit the pre-emption amount pro-rata within 2 months and pay interest to the Karta's daughter at the rate of 10% from the date of deposit till the date of withdrawal. [179-D]

Atam Parkash v. State of Haryana, [1986] 2 SCC 249; referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2548-2556 of 1986.

A From the Judgment and Order dated 14.12.85 of the Punjab & Haryana Court in R.S.A. Nos. 1703, 1824-31 of 1983.

S.K. Mehta, Dhruv Mehta, Aman Vachher for the Appellant.

B R.K. Kapoor, Anis Ahmed Khan, Pradipta Varma and Ravindra Bana for the Respondents.

Gopal Krishan Chawla in person for the Respondent.

The following Order of the Court was delivered :

C These appeal by special leave arise from the judgment of the Punjab and Haryana High Court dated December 14, 1983 in RSA 1703/83 and batch.

D The only question is whether the appellant can claim pre-emption by virtue of the fact that he has purchased the property from the karta of the joint family. Admittedly, one Gopal Krishan Chawla was the karta of the family. Initially, one Sunder Das, father of Gopal Krishan Chawla, agreed to sell the property to the appellant under an agreement of sale dated May 24, 1965. Ultimately, the suit filed by the appellant was decreed for specific performance, pursuant to which Gopal Krishan Chawla had executed the sale deed on 25.6.1979. Thereafter, the children of Gopal Krishan Chawla and the tenants filed the above suits for pre-emption. The trial court dismissed the suit as against the sons but decreed the suit in favour of the daughters by name - Meeka and Madhu and also in favour of tenants. On appeal, it was confirmed and Second Appeal was dismissed.

F By operation of s.10 of the Punjab Pre-Emption Act, 1913, (for short, 'the Act') in case of a sale by joint owners, no party to such a sale shall be pre-empted to claim a right of pre-emption. It is seen that Gopal Krishan Chawla, being the Karta of the joint family had sold the property pursuant to the decree of specific performance. Therefore, the daughters, though may not be co-parceners but, being members of the joint family, are bound by the sale by the karta or the manager of the Hindu Joint family. The sale was obviously for family necessity. The courts below, therefore, were not right in granting the decree in favour of Meeka and Madhu.

H However, the fact remains that the suits filed by the tenants, have been decreed. By operation of Clause Fifthly of Sub-s. (1-b) of s.15 of the

Act, the tenants are entitled to the pre-emption. The validity of Clause Fifthly was upheld by this Court in *Atam Parkash v. State of Haryana*, [1986] 2 SCC 249. Accordingly, we hold that the decree of pre-emption granted in favour of the tenants has rightly been decreed. In consequence, the appellant does not get any benefit under the orders of this Court though we hold that the daughters Meeka and Madhu are not entitled to claim pre-emption of the property. A B

The appeals are dismissed in respect of the suits for pre-emption by the tenants. The suit filed by the daughters stands dismissed. However, no consequence would flow therefrom since the suits filed by the tenants have been decreed and we have affirmed in their judgment. No costs. C

It is not in dispute that Meeka and Madhu have deposited the pre-emption amount in 1983 in the trial court and the amount is lying in the deposit. In view of the fact that we upset the decree, the amount is to be deposited by the tenants instead. We permit Meeka and Madhu to withdraw the amount from the trial Court and the tenants are directed to deposit the pre-emption money as directed by the trial court, pro-rata within a period of two months from today. In addition, the tenants are directed to pay interest on the amount deposited by Meeka and Madhu @ 10% from the date of the deposit till the date of withdrawal. D

A.G.

Appeals dismissed.