

JINDA RAM (DEAD) BY LRS.

v.

RAM PRAKASH AND ANR.

NOVEMBER 10, 1995

[J.S. VERMA AND K. VENKATASWAMI, JJ.]

Punjab Pre-Emption Act, 1913 : Section 15(1)(b).

Pre-emption suit—Plaintiff co-sharer and tenant—Claim for pre-emption held not lost merely because partition had taken place during pendency of appeal.

In a suit filed by the appellant-plaintiff, who was a co-sharer and tenant, pre-emption right in respect of agricultural suit lands under Section 15(1)(b) fourthly and fifthly to the Punjab Pre-Emption Act, 1913 was claimed. The Trial Court granted partial relief but the First Appellate Court dismissed the plaintiff's suit. The High Court held that notwithstanding the admitted position that plaintiff was a co-sharer at the time of sale, at the time of filing of suit for pre-emption and also at the time of passing of the decree by the Trial Court, he lost his right of pre-emption as there was a partition during the pendency of the appeal. Against the decision of the High Court an appeal was preferred before this Court.

Allowing the appeal and setting aside the order of the High Court, this Court

HELD : The High Court was not right in holding that the plaintiff would lose his right of pre-emption on account of a partition that had taken place pending appeal even though his right as a co-sharer to pre-empt was established in the Trial Court and not challenged by the vendees-defendants. The relevant period to exercise the right of pre-emption is the period when the sale was effected and when the suit was filed claiming that right. Therefore, the appellants are entitled to a decree as prayed for regarding their right of pre-emption. [62-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9992 of 1995.

A From the Judgment and Order dated 18.3.92 of the Punjab & Haryana High Court in R.S.A. No. 2342 of 1991.

A.K. Goel and Ms. Sheela Goel for the Appellants.

C.L. Sahu for the Respondents.

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The Judgment of the Court was delivered by

VENKATASWAMI, J. Leave granted.

Heard counsel on both sides.

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This appeal by special leave is directed against the judgment and order dated 18.3.1992 of the High Court of Punjab & Haryana in RSA No. 2342 of 1981. The question that arises for consideration in this appeal is whether a partition effected during the pendency of the appeal affects the right of a person who was admittedly a co-sharer at the time of sale of pre-emption.

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Brief facts are the following :

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The appellants are the legal representatives of one Jinda Ram who was the plaintiff and filed a suit for pre-emption for agricultural land measuring 20 kanals 4 marlas as described in the Plaint Schedule. This right of pre-emption was claimed under Section 15(b) fourthly and fifthly of the Punjab Pre-emption Act, 1913 as a co-sharer and also as a tenant. The suit was contested and the trial court framed as many as 10 issues and found that the plaintiff was a co-sharer in the joint khewat of the suit land and has a preferential right of pre-emption. The claim of the plaintiff that he was a tenant was also found in favour of the plaintiff. Though the plaintiff claimed that the value of the property was only Rs. 6,000 as against the sale price shown in the document as Rs. 10,500, the trial court did not agree with this contention of the plaintiff. Notwithstanding the finding in favour of the plaintiff with regard to his right of pre-emption, the trial court granted a partial relief only on the ground that out of 8 vendors, six were females and the right of pre-emption was available to the plaintiff only to the extent of 2 male vendors shares and on that finding granted a decree in favour of the plaintiff.

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Aggrieved by the decree of the trial court in not granting full relief,

the plaintiff preferred an appeal. The learned Additional District Judge, Karnal reversed the conclusion of the trial court that the plaintiff was not entitled to the right of pre-emption so far as the shares of female vendors were concerned. However, the lower appellate court dismissed the suit taking away even the partial relief granted by the trial court by holding that vendees- defendants after the purchase of the suit land became co-sharers and as such there could be no right of pre-emption against them. Consequently the first appellate court while dismissing the appeal dismissed the suit as well.

Still aggrieved, the plaintiff preferred a second appeal to the High Court. The learned Single Judge while setting aside the reasoning of the lower appellate Court as mentioned above observed as follows :

"That findings of the lower appellate court that vendees have become co-sharers by the impugned sale and so the plaintiff has no statutory right of pre-emption is palpably wrong and legally unsustainable".

Having held so, the learned Judge gave another reasoning for dismissing the second appeal. It was contended before the learned Single Judge that the pre-emptor has to maintain his qualification at all the three stages, namely, (a) at the time of sale, (b) at the time of institution of suit and (c) at the time of decree. It was further pointed out before the learned Single Judge that during the pendency of the appeal, the suit lands were partitioned and in view of the changed position, the claim of the plaintiff that he continues to be a co-sharer in the joint holding was without any merit. This contention was accepted by the High Court and consequently, the appeal was dismissed. Hence, the present appeal by special leave.

The learned counsel appearing for the appellants (legal representatives of plaintiff) submitted that the view taken by the learned Single Judge that notwithstanding the admitted position that plaintiff was a co-sharer at the time of sale, at the time of filing of the suit for pre-emption and also at the time of passing of the decree by the trial court, the plaintiff would lose his right of pre-emption if there is a partition during the pendency of the appeal cannot at all be sustained. He submitted that if such a contention is accepted, no decree for pre-emption can successfully be obtained. He also invited our attention to Section 21(A) of the Punjab Pre-Emption Act, 1913. His further contention was that in any event that

A the plaintiff's claim for the right of pre-emption in his status as a tenant could not be defeated.

B We find substance in the argument of the learned counsel for the appellant and we are of the view that the learned Judge was not right in holding that the plaintiff would lose his right of pre-emption on account of a partition that had taken place pending appeal even though the right of the plaintiff as a co-sharer to pre-empt was established in the trial court and not challenged by the vendees-defendants. The relevant period to exercise the right of pre-emption is the period when the sale was effected and when the suit was filed claiming that right. In this view of the matter, C the judgment and order of the learned Single Judge cannot be sustained and accordingly, it is set aside. The appellants are entitled to a decree as prayed for regarding their right of pre-emption.

D So far as the valuation of the land is concerned, though the trial court fixed it as Rs. 11,667.50, the lower appellate court at the instance of the plaintiff on appeal has fixed the sale consideration at Rs. 7,200 plus stamp, registration and execution charges as fixed in the decree of the trial court. The appellants will deposit the amount as determined by the first appellate court in the trial court within two months from this date.

E The appeal is allowed accordingly. No costs.

T.N.A.

Appeal allowed.