

SMT. SHANTI DEVI AND ANR.

v.

HUKUM CHAND

AUGUST 22, 1996

[N.P. SINGH AND K. VENKATASWAMI, JJ.]

*Punjab Pre-Emption Act, 1913 :*

*Pre-emption—Land transferred in favour of appellant—Suit filed by respondent for Pre-emption decreed on 27.8.1983—Decree affirmed by Court of Appeal on 30.11.1983—Second appeal filed before High Court dismissed on 5.4.1984—Decree attaining finality—Proceedings for execution of decree by respondent—Objection taken by appellant that as only share in the land in question had been transferred the decree passed for pre-emption cannot be executed—Objection allowed by Executing Court—Revision preferred by respondent before High Court—Objection by appellant that as the relevant provisions of the Punjab Pre-emption Act, 1913 had been declared to be unconstitutional by the Supreme Court in Atam Prakash's case the decree passed shall be deemed to be nullity—High Court holding that notwithstanding the judgment in the case of Atam Prakash the decree in the suit for pre-emption filed on behalf of the respondent was binding between the parties—Appeal—Held conclusion reached by High Court was correct—When the High Court allowed the civil revision filed on behalf of the respondent on 20.3.1990 the decrees of the trial Court, the court of appeal and the High Court in second appeal had become final—As such the direction of this Court in Atam Prakash's Case that such decrees shall be binding inter-parties notwithstanding the declaration of this Court in the aforesaid judgment, was fully applicable in the present case.*

*Section 15 (As notified on May 7, 1995) Held prospective in operation.*

*Atma Prakash v. State of Haryana & Ors., [1986] 2 SCC 249, applied.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8755-56 of 1995.

From the Judgment and Order dated 20.3.90 of the Punjab & Haryana High Court in C.R. Nos. 2552 and 2553 of 1988.

A Mela Ram Sharma K. B. Rohtagi and Ms. Aparna Rohtagi for the Appellants.

Prem Malhotra for the Respondents.

The following Order of the Court was delivered :

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These appeals have been filed, for setting aside the order dated March 20, 1990, passed by the High Court allowing the civil revision application which had been filed on behalf of the respondent - decree holder.

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There is no dispute that the land in question was transferred in favour of the appellant No. 1 by one Kishan Chand and Jagdish Chand in the year 1980. Thereafter a suit for pre-emption was filed on behalf of the respondent. That suit was decreed on 27.8.1983. The appeal filed on behalf of the appellants was dismissed by the court of appeal on 30.11.1983.

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Second appeal filed on behalf of the appellants was also dismissed by the High Court on 5.4.1984. Thereafter, the decree holder - respondent took steps for execution of the decree for pre-emption of the lands in question in the year 1984. An objection was taken before the executing court that as only share in the land in question had been transferred the decree passed for pre-emption cannot be executed. That objection found favour with the executing court. Being aggrieved by the order passed by the executing court the respondent filed civil revision before the High Court which was allowed by the impugned order. The High Court after referring to the earlier judgments of the said court including the Full Bench judgment observed :

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"The proposition laid down in the Full Bench judgment, referred to above, has no applicability to the facts of the present case. In that case the question was as to whether the sale was of specific khasra No. out of the joint land. The question of getting the physical possession of the specific khasra nos. out of the joint holding is governed by the provisions of the Code of Civil Procedure, which provides as to how the decree for immovable property is to be executed. Admittedly, the decree is for specific khasra nos. which were sold to the vendee by the vendor. That being so, the decree-holder is entitled to the physical possession of the specific khasra nos. though it may be open to the judgment-debtors to make

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adjustments at the time of partition, if any." A

Faced with this situation aforesaid, on behalf of the appellants it was submitted before the High Court that as the relevant provisions of the Punjab Pre-emption Act, 1913 had been declared to be unconstitutional by the Constitution Bench of this Court in the case of *Atam Prakash v. State of Haryana & Ors.*, reported in [1986] 2 SCC 249, the decree passed in the suit for pre-emption filed on behalf of the respondent shall be deemed to be nullity and as such decree cannot be executed. The High Court rejected the said objection. This Court in the case of *Atam Prakash v. State of Haryana & Ors.*, has specifically said in respect of decrees which had become final as follows : B C

"We are told that in some cases suits are pending in various Courts and, where decrees have been passed, appeals are pending in appellate Courts. Such suits and appeals will now be disposed of in accordance with the declaration granted by us. *We are told that there are few cases where suits have been decreed and the decrees have become final, no appeals having been filed against those decrees. The decrees will be binding inter-parties and the declaration granted by us will be of no avail to the parties thereto.*" (emphasis supplied) D E

It is, therefore, apparent that where the suits have been decreed and such decrees have become final since no appeals have been filed against the same, the said decrees are binding inter-parties and the declaration made by the Supreme Court is of no avail to the parties thereto. E

In the present case as mentioned above the suit for pre-emption was decreed on 27.8.1983. That decree was affirmed by the court of appeal on 30.11.1983. The second appeal filed before the High Court against the judgment and decree of the trial court and the court of appeal was dismissed on 5.4.1984. It is admitted position that at no stage the appellants questioned the validity of the decree in question before this Court. We are informed that after 12 years in the year 1996, a Special Leave Petition has been filed against order dated 5.4.1984 passed in the second appeal by the High Court. However, the fact remains that when the High Court allowed the civil revision filed on behalf of the respondent on 20.3.1990 the decrees of the trial court, the court of appeal and the High Court in second appeal had become final. As such the direction of this Court in *Atam Prakash's* F G H

A case *supra* that such decrees shall be binding inter-parties notwithstanding the declaration of this Court in the aforesaid judgment, was fully applicable in the present case. The High Court has rightly come to the conclusion that notwithstanding the judgment of the Constitution Bench in the case of *Atam Prakash* (*supra*) the decree in the suit for pre-emption filed on behalf of the respondent was binding between the parties.

B On behalf of the appellants our attention was drawn to the substituted Section 15 in the Punjab Pre-emption Act, 1913 which has been notified on 7th May, 1995 and it was urged that after the said amendment no right of pre-emption can be enforce. Section 15 which has been substituted is as follows :

C "15. *Right of pre-emption to vest in tenant :*

D The right of Pre-emption in respect of sale of agricultural land and village immovable property shall vest in the tenant who holds under tenancy of the vendors the land or property sold or a part thereof."

E On a plain reading the aforesaid section has been introduced prospectively and there is no question of the said section affecting in any manner the judgment and decree passed in the suit for pre-emption as early as in the year 1983 affirmed by the High Court in the second appeal in the year 1984.

F According to us the impugned order passed by the High Court is in terms of the direction given by this Court in the judgment of the Constitution Bench in *Atam Prakash* case (*supra*) and we find no reason to take a contrary view. These appeals are accordingly dismissed. No costs.

T.N.A.

Appeals dismissed.