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PIRTHI

v.

MOHAN SINGH & ORS.

(Civil Appeal No. 6391 of 2003)

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SEPTEMBER 2, 2011

[P. SATHASIVAM AND H.L. GOKHALE, JJ.]

PUNJAB PRE-EMPTION ACT, 1913:

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s. 15 (as amended by Haryana Amendment Act 10 of 1995) – Right of pre-emption – Suit for pre-emption filed by co-sharer – During pendency of the suit s. 15 amended in 1995 – Suit dismissed by trial court – Judgment upheld by first appellate court and High Court – Held: Haryana Amendment Act 10 of 1995 is not a declaratory Act and, therefore, it has no retrospective operation – The pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the court of the first instance – Since the Amendment Act came into force during the pendency of the suit, in the instant case, in the absence of “right of pre-emption” on the date of passing of the decree by the court of the first instance, all the three courts below including the High Court rightly dismissed the suit of the plaintiff.

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The instant appeal arose out of the concurrent judgments of the three courts below, including the High Court, dismissing the suit for possession by way of pre-emption filed by the co-sharer plaintiff-appellant, as during the pendency of the suit before the trial court, s.15 of the Punjab Pre-emption Act, 1913 was substituted by the Haryana Amendment Act 10 of 1995 to the effect that right of pre-emption in respect of agricultural land would vest in the tenant who holds under tenancy of the vendor(s).

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Dismissing the appeal, the Court

HELD: 1. It is true that the suit, in the instant case, was filed prior to the amendment in the Punjab Pre-emption Act, 1913. The Pre-emption law has been amended and notified by Gazette Notification dated 17.05.1995. Section 15 as amended provides that the right of pre-emption in respect of sale of agricultural land and village immoveable property shall vest in the tenant who holds under tenancy of the vendor(s) the land or property sold or a part thereof. This change in the law affects all pre-emption cases based upon the co-sharership. In view of this change in the law, a co-sharer has no right to bring a suit for possession by way of pre-emption. [para 5] [127-D-F]

1.2. The pre-emptor who claims the right to pre-empt the sale on the date of the sale must continue to possess that right till the date of the decree. If he loses that right before the passing of the decree, decree for pre-emption cannot be granted even though he may have had such right on the date of the suit. [para 8] [128-D-E]

1.3. The Constitution Bench in *Shyam Sunder's case** has observed that the Amending Act 10/1995 is not a declaratory Act and, therefore, it has no retrospective operation. [para 17] [134-E]

* *Shyam Sunder and Others vs. Ram Kumar and Another*, (2001) 8 SCC 24 – followed.

Didar Singh vs. Ishar Singh (2001) 8 SCC 52 ; *Bhagwan Das (dead) by LRS. and Others vs. Chet Ram*, 1971 (1) SCC 12; and *Rikhi Ram and Another vs. Ram Kumar and Others*, (1975) 2 SCC 318 – relied on.

Ramjilal vs. Ghisa Ram (1996) 7 SCC 507 – stood overruled in *Shyam Sunder's Case*.

A 1.4. In a suit for pre-emption, the pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the court of the first instance. In the case on hand, the amendment Act came into force with effect from B 17.05.1995 and the suit had been laid on 31.10.1992. On the date of institution of the suit, the plaintiff/pre-emptor had a right to claim "right of pre-emption". However, during the pendency of the suit, since the amendment Act came into force, deleting the right of pre-emption and C in the absence of such right on the date of passing of the decree by the court of first instance, both the courts below have correctly appreciated the effect of the amendment and the High Court also rightly dismissed the second appeal holding that the plaintiff had lost the character of a co-owner during the pendency of the suit D by virtue of the amendment Act. [para 17] [135-B-E]

E 1.5. In view of the interpretation of the Constitution Bench in respect of substituted s.15 introduced by the Haryana Amendment Act, 1995 in the Parent Act i.e. the Punjab Pre-emption Act, this Court concurs with the view expressed by all the three courts below including the High Court. [para 18] [135-F]

Case Law Reference:

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| F | 2001 (1) Suppl. SCR 115 | followed | para 6 |
| | 1971 (2) SCR 640 | relied on | para 7 |
| | (1975) 2 SCC 318 | relied on | para 8 |
| G | (2001) 8 SCC 52 | relied on | para 11 |
| | (1996) 7 SCC 507 | stood overruled | para 11 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6391 of 2003.

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From the Judgment & Order dated 7.3.2002 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 136 of 2011. A

Mahabir Singh, Rakesh Dahiya, Nikhil Jain, Gagan Deep Sharma and Sunil Kumar Jain for the Appellant. B

Pramod Dayal for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. This appeal is directed against the final judgment and order dated 07.03.2002 passed by the High Court of Punjab and Haryana at Chandigarh in RSA No. 136 of 2001 whereby the High Court dismissed the appeal filed by the appellant herein. C

2. Brief facts: D

(a) The appellant-plaintiff and respondent No.5 – whose name has been deleted from the array of parties by this Court's order dated 08.08.2003, filed a suit for possession by way of pre-emption being Civil Suit No. 107/92/93 against respondent Nos. 1-4 herein (Defendants) before the Civil Judge (Jr. Division), Bahadurgarh, Haryana claiming themselves to be co-sharers with the vendor - Shiv Lal-defendant No.3 (respondent No.3 herein-since deceased, his legal representatives are on record), who sold away his half share of the suit land comprised in Khewat No. 22 (min.), Khasra Nos. 47 and 48, Khasra No. 1043 measuring 3 bighas, 3 biswas pukhta 1058 (2-11) and Khewat No. 28 (min.), Khasra Nos. 54-55. Khasra No. 5496/1693 (2-16) 5497/1693(1-5) total measuring 10 Bighas 8 Biswas to defendant Nos. 1 & 2 (respondent Nos. 1 & 2 herein) by sale deed dated 08.06.1992 for a consideration of Rs.1,40,000/- and for declaring the lease deed No. 326 dated 07.05.1992 illegal, null and void and unwarranted by law. Defendant Nos. 1 & 2 are brothers and defendant No. 4 (respondent No.4 herein) is their E
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A mother.

B (b) When the case was fixed for service of the remaining defendants, defendant Nos. 1 & 4 filed an application for dismissing the suit of the plaintiffs being not maintainable on the ground that after passing of the Punjab Pre-emption (Haryana Amendment) Act, 10 of 1995, (hereinafter referred to as "the Act") the right of pre-emption on the basis of co-sharership is not available to them. The Civil Judge (Jr. Division), by judgment dated 09.02.1996, accepting the application filed by the defendants dismissed the suit filed by the plaintiffs.

C (c) Aggrieved by the said judgment, the plaintiffs filed an appeal being Civil Appeal No. 23 of 1996 before the Additional District Judge, Jhajjar. By order dated 18.07.2000, the Additional District Judge dismissed the appeal filed by the plaintiffs.

D (d) Challenging the order passed by the Additional District Judge, Pirthi-plaintiff No.1 (appellant herein) filed regular second appeal being RSA No. 136 of 2001 before the High Court of Punjab & Haryana at Chandigarh. The High Court, by impugned judgment dated 07.03.2002, holding that the plaintiff/appellant had lost the character of a co-owner during the pendency of the suit, dismissed the appeal. Against the said judgment, the appellant-plaintiff has filed this appeal by way of special leave petition before this Court.

E 3. Heard Mr. Mahabir Singh, learned senior counsel for the appellant and Mr. Pramod Dayal, learned counsel for respondent Nos. 2 & 4. Despite service of notice, respondent Nos.1 and 3 have not chosen to appear in-person or through counsel.

Discussion:

H 4 It is the case of the respondents/defendants that superior

right of pre-emption on the basis of co-sharership is not available to plaintiffs now. After passing of the Act, this right has been restricted only to the tenants and the plaintiffs have no locus-standi to file and pursue their suit as they are not claiming the right as tenants. It is the claim of the appellant/plaintiff that the suit in question was instituted prior to the amendment in the Punjab Pre-emption Act, 1913 hence the amendment in the Act is not applicable to the present case. The trial Court accepted the objection of the defendants as to the maintainability of the suit and dismissed the same as not maintainable which was affirmed by the lower appellate Court. The same view has been reiterated by the High Court by dismissing the second appeal.

5. It is true that the suit, in the present case, was filed prior to the amendment in the Punjab Pre-emption Act, 1913. Section 15 of the Pre-emption law has been amended and notified vide Gazette Notification dated 17.05.1995 which reads as under:

"15. Right of Pre-emption to vest in tenant – 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 vendor/vendors the land or property sold or a part thereof."

This change in the law affects all pre-emption cases based upon the co-sharership. In view of this change in the law, a co-sharer has no right to bring a suit for possession by way of pre-emption, hence the application filed by the defendants for dismissing the suit of the plaintiffs being not maintainable had been accepted by the trial Court and suit of the plaintiff came to be dismissed. This was affirmed by the lower appellate Court and finally by the High Court which order is under challenge in this appeal.

6. While ordering notice on the special leave petition, even as early as on 02.09.2002, it was specifically mentioned that

A as to why the case be not decided in the light of a Constitution Bench judgment in *Shyam Sunder and Others vs. Ram Kumar and Another*, (2001) 8 SCC 24.

B 7. In *Bhagwan Das (dead) by LRS. and Others vs. Chet Ram*, 1971 (1) SCC 12, a three-Judge Bench of this Court, while considering right of pre-emption has held that pre-emptor's right should subsist till institution of suit for pre-emption and passing of decree. It was further held that the rule that a pre-emptor must maintain his qualification to pre-empt up to the date of decree was recognized as well settled.

C 8. In *Rikhi Ram and Another vs. Ram Kumar and Others*, (1975) 2 SCC 318, again, a three-Judge Bench of this Court, while considering right of pre-emption under the Punjab Pre-emption Act, 1913, after adverting to the principles laid down in *Bhagwan Das* (supra) and considering Section 15(1) of the Punjab Pre-emption Act held that under the general law of pre-emption, it is firmly established that the decisive date as regards the right of pre-emptor to pre-empt the sale was the date of the decree. In other words, the pre-emptor who claims the right to pre-empt the sale on the date of the sale must continue to possess that right till the date of the decree. If he loses that right before the passing of the decree, decree for pre-emption cannot be granted even though he may have had such right on the date of the suit.

F 9. Now, let us consider the decision of the Constitution Bench i.e. *Shyam Sunder* (supra) and its applicability to the case on hand. Both the above decisions being *Bhagwan Das* (supra) and *Rikhi Ram* (supra) were relied on by the Constitution Bench.

G 10. The very same Haryana Amendment Act, 10 of 1995, which introduced Section 15, was considered by a Constitution Bench in *Shyam Sunder* (supra). The question posed before the Constitution Bench was:

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“What is the effect of substituted Section 15 introduced by the Haryana Amendment Act, 1995 (hereinafter referred to as ‘the amending Act, 1995’) in the parent Act i.e. the Punjab Pre-emption Act (hereinafter referred to as ‘the parent Act’) as applicable to the State of Haryana whereby the right of a co-sharer to pre-empt a sale has been taken away during the pendency of an appeal filed against a judgment of the High Court affirming the decree passed by the trial Court in a pre-emption suit?”

11. When in the case of *Shyam Sunder* (supra), the main appeal, i.e., Civil Appeal No. 4680 of 1993 came up for hearing before a Bench of this Court, the Bench, on the question of the effect of the amendment made in 1995 in the parent Act, found that there is conflict in the view taken in the decisions of two three-Judge Benches of this Court, which are *Didar Singh vs. Ishar Singh* (2001) 8 SCC 52 wherein it was held that in a suit for pre-emption, the pre-emptor must prove his right to pre-empt up to the date of decree of the first court and any loss of right or subsequent change in law after the date of adjudication of the suit and during pendency of appeal would not affect the decree of the first court and *Ramjilal vs. Ghisa Ram* (1996) 7 SCC 507 wherein it was laid down that appeal being continuation of the suit, the right to claim pre-emption must be available on the date when the decree is made and is finally to be affirmed or needs to be modified at the time of disposal of the appeal therefrom, and since the amending Act came into force during pendency of appeal, the right and remedy of the plaintiff stood extinguished and as a result the suit must fail. In order to resolve the conflict between the aforesaid two decisions rendered by two different Benches, the Bench referred the appeal for decision by a Bench of five Judges. It is in this way, the matter was heard by the Constitution Bench.

12. 1The Constitution Bench noted the facts which have given rise to Civil Appeal No. 4680 of 1993. The defendant-appellants herein purchased land measuring 54 kanals,

A situated in Village Rithal Phogat, being 1/2 share of the land
of Khewat Nos. 204, 205 and 206, measuring 108 kanals for
a sum of Rs 84,000/- from vendors viz. Bharpai, Chhoto and
Pyari — daughters of Bhagwana vide sale deed dated
17-07-1985. The plaintiff-respondents herein claimed
B preferential right to pre-empt the sale in favour of the defendant-
appellants on the ground that they are co-sharers by means of
a civil suit laid before the Sub-Judge, 1st Class, Gohana. In the
said suit, issues were framed and the trial court decided all the
issues in favour of the plaintiff-respondents and consequently
C on 30-5-1990 the suit was decreed. The respondents after
passing of the decree by the court of first instance deposited
the purchase money as required under Order 20 Rule 14 CPC.
The appeal preferred by the appellants before the first appellate
court and the second appeal before the High Court were
D dismissed and the decree of the trial court was affirmed. The
appellants thereafter preferred this appeal by way of special
leave petition. During pendency of the appeal, Section 15(1)(b)
of the parent Act, on the basis of which the suit was filed by
the plaintiff-respondents, was amended and was substituted by
new Section 15 whereby the right of a co-sharer to pre-empt a
E sale was taken away. The substituted Section 15 of the Act has
been quoted earlier.

13. Since several decisions have been cited, the
Constitution Bench categorized those decisions and referred
F them as first, second and third categories of decisions. The
first category of decisions are those wherein the view of law
expressed is that in a suit for pre-emption, the pre-emptor must
possess his right to pre-empt right from the date of sale till the
date of decree of the first court, and loss of that right after the
G date of decree either by own act, or an act beyond his control
or by any subsequent change in legislation which is prospective
in operation during pendency of the appeal filed against the
decree of the court of first instance would not affect the right of
the pre-emptor. The second category of decisions deals with
H the cases where right of a pre-emptor was taken away after

the date of decree of the first court and during pendency of the appeal by statutory enactment which had retroactive operation. In such cases, it was held that the appellate court is competent to take into account legislative changes which are retrospective and accordingly affect the rights of the parties to the litigation. The decisions in the third category of cases are those where it has been held that appeal being a continuation of the suit, the right to pre-empt a sale must be available on the date when the decree is made and is finally to be affirmed or needs to be modified at the time of disposal of appeal and in case of loss of right by legislative changes during pendency of appeal, the suit for pre-emption must fail. After analyzing various decisions referred to in the first category, the Constitution Bench formulated the following legal principles:

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“1. The pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the court of the first instance only.

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2. The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.

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3. A pre-emptor who has a right to pre-empt a sale on the date of institution of the suit and on the date of passing of decree, the loss of such right subsequent to the decree of the first court would not affect his right or maintainability of the suit for pre-emption.

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4. A pre-emptor who after proving his right on the date of sale, on the date of filing the suit and on the date of passing of the decree by the first court, has obtained a decree for pre-emption by the court of first instance, such

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A right cannot be taken away by subsequent legislation during pendency of the appeal filed against the decree unless such legislation has retrospective operation.”

B 14. The legal position that emerges on review of the second category of decisions is that the appeal being a continuation of the suit, the appellate court is required to give effect to any change in law which has retrospective effect. In para 15, the Constitution Bench has held that the legal principle that emerges out of the aforesaid decisions is that an appeal being a continuation of the suit, the right to pre-empt must be available on the date when the decree is made and is finally to be affirmed or needs to be modified at the time of disposal of the appeal and where right and remedy of the plaintiff has been taken away statutorily during pendency of appeal, the suit must fail.

D 15. The following discussion and conclusion in para 28 are relevant:

E “... .. In *Shanti Devi v. Hukum Chand*, (1996) 5 SCC 768, this Court had occasion to interpret the substituted Section 15 with which we are concerned and held that on a plain reading of Section 15, it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not affect the right of the parties which accrued to them on the date of the suit or on the date of passing of the decree by the court of first instance. We are also of the view that the present appeals are unaffected by change in law insofar it related to determination of the substantive rights of the parties and the same are required to be decided in the

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light of the law of pre-emption as it existed on the date of passing of the decree.” A

16. After analyzing all the decisions cited therein, the Constitution Bench has concluded thus:

“44. From the aforesaid decisions, the legal principle that emerges is that the function of a declaratory or explanatory Act is to supply an obvious omission or to clear up doubts as to meaning of the previous Act and such an Act comes into effect from the date of passing of the previous Act. Learned counsel for the appellants strongly relied upon a decision of a two-Judge Bench of this Court in Mithilesh Kumari v. Prem Behari Khare in support of his argument. In the said decision, it was held by this Court that the Benami Transactions (Prohibition) Act, 1988 being a declaratory Act, the provisions of Section 4 of the Act have retroactive operation. The reliance on this decision by the appellants' counsel is totally misplaced as this decision was overruled in R. Rajagopal Reddy v. Padmini Chandrasekharan wherein it was held that the Act was not passed to clear any doubt that existed as to the common law or the meaning of effect of any statute and it was, therefore, not a declaratory Act. B
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45. We have already quoted substituted Section 15 of the amending Act but do not find that the amending Act either expressly or by necessary implication intended to supply an omission or to clear up a doubt as to the meaning of the previous Section 15 of the parent Act. The previous Section 15 of the parent Act was precise, plain and simple. There was no ambiguity in it. The meaning of the words used in Section 15 of the parent Act was never in doubt and there was no omission in its phraseology which was required to be supplied by the amending Act. Moreover, the amending Act either expressly or by implication was not intended to be retroactive and for that F
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A reason we hold that amending Act 10 of 1995 is not a declaratory Act and, therefore, it has no retrospective operation.

B 46. For the aforesaid reasons, we approve the view of law taken in *Didar Singh v. Ishar Singh* and further hold that the decision in the case of *Ramjilal v. Ghisa Ram* does not lay down the correct view of law.

C 47. The result of the aforesaid discussion is that the amending Act being prospective in operation does not affect the rights of the parties to the litigation on the date of adjudication of the pre-emption suit and the appellate court is not required to take into account or give effect to the substituted Section 15 introduced by the amending Act.

D 48. In view of what has been stated above, these appeals fail and accordingly are dismissed, but there shall be no order as to costs."

E 17. From the above discussion, particularly, in para 45, the Constitution Bench observed that the Amending Act 10/1995 is not a declaratory Act and, therefore, it has no retrospective operation. In para 46, the Constitution Bench has approved the view of law taken in *Didar Singh* (supra) and further held that the decision in the case of *Ramjilal* (supra) does not lay down the correct view of law. No doubt, in the penultimate para F 47, the Constitution Bench has concluded that the amending Act being prospective in operation does not affect the rights of the parties to the litigation on the date of adjudication of the pre-emption suit and the appellate court is not required to take into account or give effect to the substituted Section 15 G introduced by the amending Act. It is clear that the appellate court is not required to take into account or give effect to the substituted Section 15 introduced by the amending Act. On the other hand, as discussed and concluded in para 46, the dictum laid down in *Didar Singh* (supra) has been approved. In *Didar H Singh* (supra), it was held that in a suit for pre-emption, pre-

emptor must prove his right to pre-empt up to the date of the decree of the first court and any loss of right or subsequent change in law after the date of adjudication of the suit and pendency of appeal would not affect the decree of the first court. The said view has been approved by the Constitution Bench. In other words, in a suit for pre-emption, the pre-emptor must prove his right to pre-empt up to the date of decree of the first court. To put it clear, the pre-emptor must have the right to pre-empt on the date of sale on the date of filing of the suit and on the date of passing of the decree by the court of the first instance [Emphasis supplied]. In the case on hand, the amendment Act came into force with effect from 17.05.1995 and suit had been laid on 31.10.1992. In other words, on the date of institution of the suit, the plaintiff/pre-emptor had a right to claim "right of pre-emption". However, during the pendency of the suit, since the amendment Act came into force, deleting the right of pre-emption and in the absence of such right on the date of passing of the decree by the court of first instance, we are of the view that both the courts below have correctly appreciated the effect of the amendment and the High Court also rightly dismissed the second appeal holding that the plaintiff had lost the character of a co-owner during the pendency of the suit by virtue of the amendment Act.

18. In view of the above discussion and the interpretation of the Constitution Bench in respect of substituted Section 15 introduced by the Haryana Amendment Act, 1995 in the Parent Act i.e. the Punjab Pre-emption Act, we concur with the view expressed by all the three courts including the High Court. Consequently, the appeal fails and the same is dismissed. No order as to costs.

R.P.

Appeal dismissed.