Ram Sarup

Vs

Munshi and Others (and connected appeals)

Civil Appeals Nos. 139, 147, 214 and 510 of 1961

(P. B. Gajendragadkar, N. Rajgopala Ayyangar, A. K. Sarkar, J. R. Mudholkar, K. C. Das Gupta JJ)

30.08.1962

JUDGMENT

AYYANGAR, J. -

These four appeals which have been filed pursuant to special leave granted by this Court principally raise for consideration the constitutional validity of s. 15 of the Punjab Pre-emption Act (Act I of 1913), hereinafter referred to as the Act. The property involved in these appeals are agricultural lands and in each one of them decrees have been passed in favour of the pre-emptors whose claim to pre-empt was based on different sub-clauses of s. 15, and the vendees who are the appellants in the several appeals challenge the constitutional validity of the law under which the suits have been decreed.

One of the appeals - Civil Appeal No. 214 of 1961 however could be decided without considering the constitutional point regarding the validity of s. 15 of the Act and it would therefore be convenient to dispose it of first. The facts giving rise to the appeal are briefly as follows : The 5th and 6th respondents before us owned certain agricultural land in village Dugri which they sold to the appellants by a deed dated April 25, 1957. Respondents 1 to 4 instituted a suit against the appellants to which the vendors - respondents 5 & 6 were also impleaded as co-defendants. The right of pre-emption was based on the plaintiffs being the nearest collaterals of the vendors and heirs according to the rule of succession. There were certain points of dispute on the facts but these are not now material and it is sufficient to state that the suit was decreed by the Subordinate Judge on December 10, 1958. This judgment in favour of respondents 1 to 4 was affirmed by the District Judge on appeal and on further appeal, by the High Court. It is from this judgment and decree of the High Court that the vendees who are the appellants before us have brought the matter to this Court.

The appellants were five in number. They fell into two groups constituted respectively by the 1st and 2nd appellants who are brothers and by appellants 3, 4 and 5. While the appeal was pending in this Court the 1st appellant - Mehar Singh died on May 18, 1960, leaving a widow and five children - four daughters and a son, as his heirs. No application was, however, made to bring on record the legal representatives of the deceased 1st appellant - Mehar Singh and learned Counsel appearing for the other four appellants informed the office that the legal representative were not being brought on record and that he would proceed with the appeal on behalf of the four surviving appellants.

At the hearing of the appeal learned Counsel for the respondents submitted that the appeal ought to be dismissed as incompetent since the same had abated on the death of the first appellant without his legal representatives being brought on record. Learned Counsel for the appellants, however, contended that whatever might be the position as regards the share to which Mehar Singh was

entitled in the property purchased, the interest of the deceased was distinct and separate from that of the others and that the abatement could be in any event only partial and would not affect the continuance of the appeal by the surviving appellants at least as regards their share in the property. As the deed of sale under which the appellants purchased the property was not among the printed records of this Court, the appeal was adjourned in order to enable learned Counsel for the appellants to produce it and substantiate his contention that the interest of the deceased Mehar Singh was distinct and separate. An English translation of the deed of sale has now been produced before us and a perusal of it indicates that the submission made on behalf of the appellants is not sustainable. The consideration for the sale is a sum of Rs. 22,750/- and the conveyance recites that Mehar Singh and the second appellant had paid one half amounting to Rs. 11,375/- while the other three appellants had paid the other half. It is therefore not a case of a sale of any separated item of property in favour of the deceased-appellant but of one entire set of properties to be enjoyed by two sets of vendees in equal shares. It is clear law that there can be no partial pre-emption because pre-emption is the substitution of the pre-emptor in place of the vendee and if the decree in favour of the pre-emptors in respect of the share of the deceased Mehar Singh has become final it is manifest that there would be two conflicting decrees if the appeal should be allowed and a decree for pre-emption insofar as appellants 2 to 5 are concerned is interfered with. Where a decree is a joint one and a part of the decree has become final by reason of abatement, the entire appeal must be held to be abated. It is not necessary to cite authority for so obvious a position but we might refer to the decision of this court in Jhanda Singh v. Gurmukh Singh (deceased) (Civil Appeal No. 344 of 1956, decided on April 10, 1962.). The result is that the appeal fails as having abated and is dismissed with costs.

Civil appeal No. 139 of 1961 :

> The material provision of s. 15 of the Act relevant for the consideration of the constitutional point raised in this appeal is s. 15(a), but as the validity of other clauses of the same section are challenged in the other appeals, we consider it convenient to set out the other relevant ones also :
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> "15. Subject to the provisions of section 14 the right of pre-emption in respect of agricultural land and village immoveable property shall vest -
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> (a) where the sale is by a sole owner or occupancy tenant or, in the case of land or property jointly owned or held, is by all the co-sharers jointly, in the persons in order of succession, who but for such sale would be entitled, on the death of the vendor or vendors, to inherit the land or property sold :
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> (b) where the sale is of a share out of joint land or property, and is not made by all the co-sharers jointly, - firstly, in the lineal descendants of the vendor in order of succession; secondly, in the co-sharers, if any, who are agnates, in order of succession;
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> (c) If no person having a right of pre-emption under clause (a) or clause (b) seeks to exercise it :-
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> #..... ..... thirdly, in the owners of the estate;....."##

The following few facts are necessary to be stated to appreciate the manner in which the question

arises. One Ram Nath sold certain agricultural land of an area of about 65 bighas in village Durjanpur in District Sangrur of Punjab to the second respondent Pooran by a deed of sale dated December 12, 1957. The vendee - Pooran - sold the land he had purchased, in favour of Ram Sarup - appellant before us. Subsequently Munshi - the first respondent - brought a suit - Suit 297 of 1958 - in the Court of the Subordinate Judge First Class at Narwana stating that he was the son of vendor Ram Nath and claiming pre-emption under s. 15 of the Act. There were rival claims for pre-empting the same property and another suit was filed in regard to it which was tried along with the suit by Munshi, but this failed and is no longer of relevance. The main contest to the suit by Munshi was based upon a denial of the fact that he was the son of Ram Nath. This issue was found in favour of the respondent by the Subordinate Judge who decreed the suit, which judgment was confirmed successively by the District Judge on appeal and thereafter by the High Court on second appeal. It was therefore common ground that if s. 15(a) was constitutionally valid, the sale by Ram Nath was subject to the right of Munshi to pre-empt and that consequently his suit was properly decreed. The constitutional validity of s. 15 was not contested before the High Court because of the decision of a Full Bench of that Court which had upheld its validity. It was only at the stage of an application for a review of the Judgment of the High Court that this point was raised but the learned Judges rejected it and it was on the ground of this constitutional point that special leave was granted and that is the only point for consideration in this appeal.

Before adverting to the points urged by learned Counsel as regards the constitutional validity of s. 15 it is necessary to notice an argument urged on behalf of the appellant for sustaining a contention that even apart from the unconstitutionality of the provision the right of pre-emption conferred by s. 15(a) has ceased to be enforceable. The argument under this head was rested on the opening words of s. 15 and certain other provisions to which we shall immediately advert. It would be noticed that s. 15 opens with the words "Subject to the provisions of section 14 the right of pre-emption in respect of agricultural land..... shall vest". Section 14 runs in these terms :

> "14. No person other than a person who was at the date of sale a member of an agricultural tribe in the same group of agricultural tribes as the vendor shall have a right of pre-emption in respect of agricultural land sold by a member of an agricultural tribe."

The expression "agricultural tribe" referred to in s. 14 is defined in s. 3(4) of the Act thus :

> "member of an agricultural tribe and group of agricultural tribes shall have the meanings assigned to them respectively under the Punjab Alienation of Land Act, 1900."

Next it would be seen that s. 15 employs the words "in respect of agricultural land". "Agricultural land" is defined in s. 3(1) of the Act thus :

> "'agricultural land' shall mean land as defined in the Punjab Alienation of Land Act, 1900 (as amended by Act I of 1907), but shall not include the rights of a mortgagee, whether usufructuary or not, in such land";

Section 6 of the Act enacts;

> "6. A right of pre-emption shall exist in respect of agricultural land and village immoveable property, but every such right shall be subject to all the provisions and

limitations in this Act contained".,

and s. 23 enacts :

> "No decree shall be granted in a suit for pre-emption in respect of the sale of agricultural land until the plaintiff has satisfied the Court -
>
> (a) that the sale in respect of which pre-emption is claimed is not in contravention of the Punjab Alienation of Land Act, 1900 : and
>
> (b) that he is not debarred by the provisions of section 14 of this Act from exercising the right of pre-emption."

Now, by the Adaptation of Laws (Third Amendment) Order, 1951, the Punjab Alienation of Land Act, 1900, has been repealed and the argument urged by the learned Counsel for the appellant was that by reason of the repeal of that Act the right of pre-emption granted by s. 15(a) has become unavailable. The argument was somewhat on these lines. It is under s. 6 that the right of pre-emption is recognised and granted, though s. 15 sets out the circumstances in which it arises. Under s. 6 the right is (a) in respect of "agricultural land", and (b) the right conferred by the Act is subject to every provision and limitation contained in it. In the Act, as originally framed before the amendment effected by the Adaptation of Laws (Third Amendment) Order, 1951 i.e., before the repeal of the Punjab Alienation of Land Act, 1900, there were two principal limitations on the right of pre-emption in respect of "agricultural land" : (1) it applied only to such land as was defined in the Punjab Alienation of Land Act, and (2) by virtue of s. 14 there was a limitation of the group of persons who might claim the right of pre-emption if a sale took place by "a member of an agricultural tribe", and the expression "member of an agricultural tribe" was as defined by the Punjab Alienation of Land Act. Section 15 therefore was subject to the limitations of s. 14 and to the definition of 'agricultural land' and 'agricultural tribe' and this read in conjunction with the positive provision in S. 23 has become wholly inapplicable and unworkable after the repeal of the Punjab Alienation of Land Act of 1900. The problem here raised is dependent upon the construction which the several provisions which we have set out earlier would bear after the repeal of the Punjab Alienation of Land Act, 1900. One thing is clear and that is that the authority which effected the repeal of the Punjab Alienation of Land Act did not consider that Punjab Act I of 1913 had itself to be repealed. We shall now consider the effect of the repeal of the Punjab Alienation of Land Act with reference to each of the provisions :-

> Definition of 'agricultural land' under s. 3(1) : Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated. The effect of incorporation is stated by Brett, L.J., in Clarke v. Bradlaugh ((1881) 8 Q.B.D. 63.) :
>
> "Where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second."

In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it. Section 2 of the Punjab Alienation of Land Act, 1900, as amended by Act I of 1907 defined

'Land' as follows:

> "The expression 'land' means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agricultural or for pasture, and includes....."

It is not in dispute that the land concerned in the claim for pre-emption made in the appeal satisfies this definition.

We shall next take up the effect of the repeal of the Punjab Alienation of Land Act, 1900, on s. 14 of the Act and of the definition contained in s. 3(4) thereof of the expression "member of an agricultural tribe" and the effect of these on the right of pre-emption conferred by s. 15(a). With the repeal of the Punjab Alienation of Land Act, 1900, it is manifest that s. 14 would lose all significance, but this does not help, in any manner, the contentions urged by learned Counsel for the appellant. It would be seen that s. 14 is restrictive, in that in the case of the alienations by persons referred to in that section the right of pre-emption is conferred upon a limited group. With the repeal of the Punjab Alienation of Land Act, 1900, the restriction imposed by s. 14 as regards the availability of the right of pre-emption to particular agricultural tribes would disappear. In other words, the effect of the removal of the limitation of s. 14 would only be that the opening words of s. 15 cease to operate. In such circumstances s. 14 would lose all significance because the post-Constitution law does not recognise membership of tribes as conferring any special rights and consequently the elimination of s. 14 would leave s. 15 without the limitation originally imposed upon it. In the same manner the restriction imposed upon the passing of decrees by s. 23 could also not operate after the repeal of the Punjab Alienation of Land Act but that would leave the Court with an unfettered power to grant decrees under the provisions of the Act, i.e., without the limitations imposed by s. 23.

We are therefore clearly of the opinion that neither the repeal of the Punjab Alienation of Land Act, 1900, nor the consequential removal of the fetters imposed by ss. 14 and 23 have the effect of rendering the substantive provision contained in s. 15 not available to those who satisfy its terms. In these circumstances we have necessarily to consider the main question raised by learned Counsel for the appellant, viz., that the rights conferred upon the pre-emptor is an unreasonable restriction on the right of vendors "to hold and dispose of property" and of prospective vendees "to acquire property" guaranteed to citizens of India by Art. 19(1)(f) of the Constitution.

Before proceeding to consider the question about the constitutional validity of s. 15(a) of the Act, it is necessary to mention that s. 15 of the Act has been the subject of very substantial amendments effected by the Punjab Pre-emption (Amendment) Act of 1960 (Act 10 of 1960). This however makes no difference to the present appeal since the relevant portion of s. 15 as amended reads :

> "15. (1) The right of pre-emption in respect of agricultural land and village immoveable property shall vest -
>
> (a) where the sale is by a sole owner -
>
> FIRST, in the son or daughter or son's son or daughter's son of the vendor;"

In view of this feature, it is needless to consider in this appeal as to whether the amending Act is retrospective and if so, the degree of retrospectivity - a question which falls for decision only in Civil Appeal No. 510 of 1961.

It is common ground that the right of pre-emption granted by the statute is a restriction on the right "to hold and dispose of property" on the part of the vendor - the right guaranteed by Art. 19(1)(f) of the Constitution. The question, however, is whether the restriction imposed is reasonable and in the interest of the general public within Art. 19(5) of the Constitution. The general question about the impact of the right conferred by Art. 19(1)(f) on the right of pre-emption has been dealt with exhaustively in the judgment of this Court in Bhau Ram v. Baij Nath ((1962) Supp. 3 S.C.R. 724.) and it is unnecessary to cover the ground again. The proper approach to the question would be as to whether the grounds which are stated to underlie the provision are reasonable judged in the light of present-day standards and needs of the community and are in the interests of the general public. The question about the reasonableness of this restriction contained in s. 15 of the Act was considered by a Full Bench of the High Court of Punjab in Uttam Singh v. Kartar Singh (A.I.R. 1954 Punjab 55.) and as the grounds stated there have been referred to with approval in subsequent decisions of the Punjab High Court and were relied on before us by learned Counsel for the respondent we might as well extract the passage in full :

> "It is plain that the objects underlying ss. 15 and 16 of the Act may be briefly enumerated as follows :
>
> (1) to preserve the integrity of the village and the village community;
>
> (2) to avoid fragmentation of holdings;
>
> (3) to implement the agnatic theory of the law of succession;
>
> (4) to reduce the chances of litigation and friction and to promote public order and domestic comfort; and
>
> (5) to promote private and public decency and convenience."

The reference here in the above passage to "the promotion of public order and domestic comfort" and to "private and public decency and convenience" obviously have relevance to urban immoveable property dealt with in s. 16. The grounds on which the reasonableness of the right of pre-emption granted by law in regard to agricultural property dealt with in s. 15 would therefore appear to be the first four of the above. Among them much stress could not be laid on the avoidance of chances of litigation and friction because the existence of the right of pre-emption could also give rise to litigation which otherwise might not exist. Nor can the ground of avoidance of fragmentation of holdings afford assistance to sustain the claim of a son to pre-empt in the event of a sale by a sole owner-father, for that criterion has primary relevance to the right of pre-emption enjoyed by co-sharers and the like. The grounds for upholding s. 15(a) as reasonable and in the interest of the general public therefore finally resolve themselves into two :

> (1) to preserve the integrity of the village and the village community; and
>
> (2) to implement the agnatic rule of succession.

The objective underlying the first ground is prima facie reasonable and calculated to further the interest of the general public. It was however pointed out by learned Counsel for the appellant that with the large scale migration of population into Punjab consequent of the problems created by partition there has been a disintegration of the village community and that in the circumstances, what is at the present date imperatively required is not the keeping out of strangers from rural areas

but rather for their being absorbed into the village community and that in that context the existence of a law which prevented such absorption could not be characterised as being either reasonable or in the interests of the general public. Though we see some force in this submission of learned Counsel we are unable to accept it as a final and conclusive answer to the argument against the reasonableness of the provision for we find that in the schemes for rehabilitation of the refugees the principle of the integrity of the village community and the need to maintain some degree of cohesion as regards the population in each village has been observed and, indeed, forms the basis of the methods by which different groups of refugees were settled in various parts of the Punjab. It has thus been possible to reconcile somewhat the needs of the refugees being settled in India, with the preservation of the integrity of the village community.

Even if this ground cannot serve to sustain the constitutionality of the provision, we consider that the other ground via., that the next in succession should have the chance of retaining the property in the family, would suffice to render the restriction reasonable and in the interest of the general public within Art. 19(5). In this connection we might refer to the reasoning in the decision of the Rajasthan High Court in Siremal v. Kantilal (A.I.R. 1954 Rajasthan 195.) where the learned Judges struck down as unconstitutional a provision in s. 3 of the Marwar Pre-emption Act which granted a right of pre-emption "to persons related within three degrees to the vendor of the house or building-plot provided that the nearer in degree shall have priority over one more remote" as an unreasonable restriction on the right conferred by Art. 19(1)(f) of the Constitution. The basis of this ruling was that the impugned enactment conferred the right of pre-emption on all relations within three degrees and did not restrict it to the members of the family. Under s. 15 of the Act, particularly after the amendment effected by Act 10 of 1960, the right of pre-emption is confined to the members of the family of the vendor, i.e., those who would have succeeded to the property in the absence of any alienation.

The relevant portion of s. 15(1) after amendment reads :

> "15. (1) The right of pre-emption in respect of agricultural land and village immoveable property shall vest -
>
> (a) where the sale is by a sole owner, - FIRST, in the son or daughter or son's son or daughter's son of the vendor;
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> SECONDLY, in the brother or brother's son of the vendor;
>
> THIRDLY, in the father's brother or father's brother's son of the vendor;
>
> FOURTHLY, ..."

No doubt, the son and the other members of the family would not have been entitled to a present interest in the property alienated and consequently would not have a right to prevent the alienation (in which event, however, it is needless to add that a right to pre-empt was wholly unnecessary as a means of preserving the property), but they would have a legitimate expectation of succeeding to the property - an expectation founded on and promoted by the consciousness of the community. If the social consciousness did engender such feelings, and taking into account the very strong sentimental value that is attached to the continued possession of family property in the Punjab, it could not be said that the restriction on the right of free alienation imposed by s. 15(1)(a) limited as it is to small class of near relations of the vendor is either unreasonable or not in the interest of the general

public. The result is the appeal fails and is dismissed with costs.

Civil Appeal No. 147 of 1961.

The facts giving rise to this appeal are briefly as follows : The appellant - Dalip Singh purchased under a deed dated June 1, 1957, agricultural land measuring 98 bighas and 10 biswas situated in village Bailerkha in district Sangrur under a registered deed of sale. The vendors were Nihal Singh, Wazir Singh and Gurdial Singh who are respondents 2 to 4 before us. Sunder Singh - brother of respondents 2 & 3 and uncle of the 4th respondent filed a suit in the Court of the Sub-Judge, Narwana, for pre-emption basing his claim under s. 15(a) of the Act. It is manifest that even under the amended s. 15 a person in the position of the first respondent has a right to pre-empt. It would be seen that under s. 15(a), as it originally stood, the right of pre-emption is conferred upon persons who would succeed as heir to the vendor in the event of his death. In other words, pre-emption in such cases is the grant of an option to the heirs to retain property in the family. As we have already pointed out in dealing with the claim by a vendor's son in Appeal 139 of 1961, we consider that the provisions contained in s. 15(a), as it originally stood, as well as in the modified form in which it has been re-enacted do not transgress the limits of reasonableness required by Art. 19(5) of the Constitution. As the constitutionality of s. 15(a) was the only ground which was or could be canvassed before us in this appeal and as we are rejecting it, it follows that the appeal fails. It is accordingly dismissed with costs.

Civil Appeal No. 510 of 1961

What now remains to be dealt with is Civil Appeal 510 of 1961. This appeal arises out of a suit filed by the first respondent as plaintiff for pre-emption of certain agricultural land in village Fatehabad in Amritsar district. The sale which gave rise to the suit was under a deed dated December 29, 1949, in favour of the appellant-Dayal Singh. The claim to pre-empt was based on s. 15(c) "thirdly" of the Punjab Pre-emption Act, 1913, which has already been set out. The expression "estate" which is used in cl. (c) "thirdly" is not defined by the Act but by reason of its s. 3(6) the definition in s. 3 of the Punjab Land Revenue Act, 1887, is attracted to it. Turning now to s. 3 of the Punjab Land Revenue Act (Act XVII of 1887), it defines an 'estate' as meaning, inter alia, "any area for which a separate record-of-rights has been made." It was the case of the plaintiff-first respondent before us that he owned land in the "estate" whereas the vendee - the appellant before us did not own any land there. The defendant while not disputing that the plaintiff owned land in the village or the correctness of the allegation that the land was in an "estate", sought to prove that he too owned land in the same village and "estate" but in this he failed. As the case of the plaintiff was directly covered by the terms of the statute his suit was decreed by the trial Court on November 8, 1951, and an appeal and second appeal there-from were also dismissed. It was from this judgment of the High Court that this appeal has been brought and the principal point on which leave was granted related to the constitutionality of the provision in s. 15 of the Pre-emption Act upon which the respondent based his claim to pre-empt.

In regard to the point about the constitutional validity of s. 15(c) "thirdly" we consider that the case is clearly covered by the judgment of this Court in Bhau Ram v. Baij Nath ([1962] Supp. 3 S.C.R. 724.) where the Court upheld the validity of the right of pre-emption granted under Ch. XIV of the Berar Land Revenue Code (Appeal 430 of 1958). In the case of an estate within s. 3 of the Punjab Land Revenue Act of 1887, s. 61 of the Act enacts :

"61(1) In the case of every estate, the entire estate and the landowner or, if there are

more than one, the landowners jointly and severally, shall be liable for the land revenue for the time being assessed on the estate :

Provided that.

(a) the State Government may by notification declare that in any estate a holding or its owner shall not be liable for any part of the land-revenue for the time being assessed on the estate except that part which is payable in respect of the holding; and

#(b).....##

(2) A notification under proviso (a) to sub-section (1) may have reference to any single estate or to any class of estates or estates generally in any local area."

Thus it will be seen that an "estate" is an unit of assessment and there is a joint and several liability on persons owning land within the "estate" to pay the entire assessment due on the estate. Thus though it is not really the case of a co-sharer, it is somewhat akin to that of a co-sharer because of the joint liability for payment of land revenue. We therefore consider that the restriction on the right of a vendor in such a case is a reasonable one and not repugnant to Art. 19 of the Constitution. As learned Counsel for the appellant desired to have time to ascertain whether there had been a notification of the Local Government such as is referred to in s. 61 of the Punjab Land Revenue Code, we adjourned the case to enable him to produce the notification, if there was one, and we were informed that there was none.

If therefore the matters had stood as under the law as enacted in s. 15 of the Act the appeal would have to be dismissed. The Punjab Legislature, however, effected substantial amendments to the Punjab Pre-emption Act of 1913 by Punjab Act 10 of 1960 and it is the impact of this later legislation on the rights of the parties to this appeal that now requires to be considered. Punjab Act 10 of 1960 received the assent of the Governor on February 2, 1960, and was published in the Punjab Government Gazette two days later. By s. 4 of the Amending Act s. 15 of the parent Act was repealed and in its place was substituted a new provision which omitted to confer a right of pre-emption in the case of persons "owning land in the estate" as the original section 15(c) "thirdly" had done. Retrospective effect was given to the provisions contained in the Amending Act by the insertion of a new s. 31 in the parent Act which read :

"31. No court shall pass a decree in suit for pre-emption whether instituted before or after the commencement of the Punjab Pre-emption (Amendment) Act, 1959, which is inconsistent with the provisions of the said Act".

It may be mentioned that the figure 1959 in s. 31 is an obvious mistake for 1960 which is the correct year of the Amending Act. The question now for consideration is whether by reason of this amendment in the law, the respondent is entitled to the benefit of the decree which he obtained under the previously existing enactment. That s. 31 is plainly retrospective and that it affects rights to pre-emption which had accrued before the coming into force of the Amending Act is not in controversy for s. 31, in plain terms, makes the substantive provisions of the enactment applicable to suits whether instituted "before or after" the commencement of the Amending Act. It was urged before us by learned Counsel for the appellant that in view of the plain language of s. 31 this Court should apply the substantive law enacted by the Punjab Legislature in the amended s. 15 of the Pre-emption Act and set aside the decree for pre-emption passed in favour of the first respondent. In this

connection learned Counsel referred us to the judgment of the Federal Court in Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri ([1940] F.C.R. 84.) as to the course which this Court would adopt in giving effect to Amending legislation in terfering with the rights of parties in pending appeals, and to the decision of a Division Bench of the Punjab High Court in Ram Lal v. Raja Ram ([1960] 62 P.L.R. 291.) where the learned Judges, on a construction of s. 31 of the Act, set aside a decree for pre-emption passed in favour of the respondent before the Court, giving effect to the provisions contained in Punjab Act 10 of 1960.

Mr. Achhru Ram, learned Counsel for the respondent, however, submitted that the language employed in the new s. 31 was not sufficient to permit a decree passed in favour of a pre-emptor being set aside by an appellate Court merely because the ground on which pre-emption had been claimed and decreed was not one that was included within the amended provisions. He placed reliance on the principle that besides the rule of construction that retrospective operation is not, in the absence of express words therefor, to be given to a statute so as to impair existing rights except as regards matters of procedure, there was a further well-recognised rule that a statute was not to be construed to have a greater retrospective operation than its language rendered strictly necessary. The argument was that though by the use, in s. 31, of the words "Suit for pre-emption instituted before or after the commencement of the Act" a certain amount of retrospective effect was intended, still the retrospectivity was but partial in its operation and that the words used did not permit the setting aside by an appellate Court of a decree which was validly passed under the substantive law applicable to the facts at the date of the original decree. In this connection he placed considerable reliance on the employment of the words "no decree shall be passed" in the opening words of s. 31 as indicative of a ban only on the passing of a decree an event which he contended would occur, firstly when a trial Court passed a decree and secondly when the trial Court having refused a decree, the appellate Court is called upon to pass a decree which the trial Court should properly have done and in no other contingency. On this reasoning the contention was urged that where a trial Court had passed a decree and that decree gave effect to the law as it stood up to the date of that decree, the words of s. 31 did not enable an appellate Court to set aside that decree on the ground of a change in the substantive law effected by the Amending Act. Through we agree that there is a presumption against the retrospective operation of a statute and also the related principle that a statute will not be construed to have a greater retrospective operation than its language renders necessary, we consider that in the present case the language used in s. 31 is plain and comprehensive so as to require an appellate court to give effect to the substantive provisions of the Amending Act whether the appeal before it is one against a decree granting pre-emption or one refusing that relief. The decision of the Federal Court in Lachmeshwar Prasad v. Keshwar Lal ([1940] F.C.R. 84.) on which learned Counsel for the appellant relied fully covers this case. The question there raised related to the duty of the Federal Court when an amending Act enacted after the decree appealed from was passed adversely interfered with the rights of the respondent before the Court. The learned Judges held that the provisions of the Act were clearly retrospective and should be applied to the decree which was the subject-matter of appeal before it and the appeal was accordingly allowed and remitted to the High Court for effect being given to the new legislation. Mr. Achhru Ram, however, sought to suggest that the language of s. 7 of the Bihar Moneylenders Act, 1939 which was the subject of construction before the Federal Court was differently worded and was of wider amplitude. That section ran:

> "7. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any agreement, no Court shall, in any suit brought by a money-lender before or after the commencement of this Act in respect of a loan advanced before or after the commencement of this Act or in any appeal or proceedings in revision arising out of such suit, pass a decree for an amount of

> interest for the period preceding the institution of the suit, which, together with any amount already realised an interest through the Court or otherwise, is greater than the amount of loan advanced, or, if the loan is based on a document, the amount of loan mentioned in, or evidenced by such document."

In particular learned counsel stressed the fact that unlike in s. 31 of the Act now under consideration, in the Bihar Act there were specific references to "appeals" and "revision" and that this made a difference. But in our opinion this makes no difference since it is admitted that s. 31 even according to the respondent has to be given effect to, not merely by a trial Court but also by an appellate Court, only learned Counsel could urge that the appellate Court could give effect to the Amending Act only in cases where the trial Court has refused a decree for pre-emption. No distinction can, therefore, be rested on the ground that the Bihar Act specifically referred to "appeals" and "revisions" seeing that the relevant operative words in s. 7 of the Bihar Act were "no Court shall pass a decree" - words which occur in s. 31 of the Act as well. On the other hand the reasoning of the learned Judges of the Court which was based on the nature of an appeal under the Indian procedural law as a rehearing and a court of appeal being not a court of error merely, and the view expressed that when an appeal was filed the finality which attached to the decree of the trial court disappeared, all these lines or reasoning point to the fact that even when an appellate court dismisses an appeal it also is passing a decree. In this connection we consider that reasoning and the conclusion of the Division Bench of the Punjab High Court in Ram Lal v. Raja Ram ((1960) 62 P.L.R. 291.) correctly sets out the principles underlying the scope of an appeal as well as the proper construction of s. 31 of the Amending Act.

It was not suggested that if the provisions of s. 15 as amended by Punjab Act 10 of 1960 had to be applied the decree in favour of the respondent could be sustained. The result therefore is that the appeal has to be allowed, the decree in favour of the respondent set aside and the respondent's suit for pre-emption dismissed. In view, however, of the circumstances that the appellant has succeeded only by virtue of subsequent legislation, we direct that there shall be no order as to costs in the appeal.

Appeals Nos. 139, 147 and 214 dismissed. Appeal No. 510 allowed.##

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