Amir Singh and Another

Vs

Ram Singh and Others (And Connected Appeals)

Civil Appeals Nos. 436 to 438 of 1961

(P. B. Gajendragadkar, N. N. Wanchoo, K. C. Das Gupta JJ)

04.10.1962

JUDGMENT

GAJENDRAGADKAR, J. –

What is the effect of the retrospective operation of s. 31 introduced by the Punjab Pre-emption (Amendment) Act, 1960 (X of 1960) in the parent Act of Pre-emption (No. 1 of 1913). That is the short question which arises for our decision in these three appeals which have been ordered to be consolidated for the purpose of hearing by this Court. These appeals arise from three pre-emption suits instituted by the respondents against the respective appellants. The respondents' case was that the properties in suit had been sold by Aftab Rai on May 31, 1956, for Rs. 10,000/- to the appellants and it is these sales which they wanted to pre-empt. They alleged that they are the owners of agricultural land in Patti Aulakh and Patti Rode, in Mauza Marahar Kalan, and as such, they had the statutory right to claim pre-emption, under s. 15(c)(ii) and (iii). The appellants resisted this claim on the ground that the respective vendees from Aftab Rai had transferred by exchanged about 2 kenals out of the lands purchased by them and as a result of the said exchanges the appellants had themselves become entitled to pre-empt the said sales under the same statutory provision. Since the appellants had acquired equal status with the respondents who claimed to be the pre-emptors, their claim for pre-emption cannot be sustained. That, in brief, was the nature of the contest between the parties.

The trial Court held that the exchanges on which the appellants relied had not been proved and so, it gave effect to the respondents' right to pre-empt under s. 15(c)(ii) & (iii). The appellants took the matter before the Addl. District Judge in appeal. The lower appellate Court was pleased to admit additional evidence under 0.41, r. 27, of the Code of Civil Procedure and held that the exchanges in question had in fact been proved and were, in law, valid. It, therefore came to the conclusion that the appellants acquired equal status with the respondents and so, the respondents' claim for pre-emption must fail. That is why the appeals preferred by the appellants were allowed and the respondents' suits were dismissed.

The dispute was then taken up before the High Court of Punjab by the respondents by second appeals. Mahajan, J., who heard these appeals held that the property acquired by exchange in lieu of the part of the property purchased by the vendees did not give the appellants a right to pre-empt. He referred to the fact that exchange of lands was sometimes recognised as conferring on the party the right to pre-empt, but that was where the land exchanged did not form part of the land sold and pre-empted. In the result, the High Court held that the plea made by the appellants was not well-founded in law and so, the respondents were entitled to pre-empt. As a result of this finding, the decrees passed by the lower appellate Court were reversed and the respondents' suits were decreed. The

appellants then moved the Division Bench by Letters Patent appeals, but these appeals were dismissed. It is against the decrees thus passed by the Division Bench in Letters Patent appeals that the appellants have come to this Court by special leave.

We have already noticed that both the appellants and the respondents are claiming a right to pre-empt under s. 15(c)(ii) and (iii) of the Parent Act of 1913. On February 4, 1960, the amending Act No. 10 of 1960 was passed. Section 4 of the amending Act has substituted a new s. 15 of the old s. 15 after making substantial changes in the provisions of the earlier section. Clauses (ii) and (iii) of the original s. 15(c) have been deleted, with the result that the claims for pre-emption made both by the appellants and the respondents have ceased to be recognised by the amended provisions. The appellants contend that since the respondents have got a decree for pre-emption in their favour on the provisions of the unamended s. 15, that decree can no longer be sustained because of the provisions of s. 31 of the amending Act. Section 31 provides that no Court shall pass a decree in a suit for pre-emption whether instituted before or after the commencement of the Punjab Pre-emption (Amendment) Act, 1959 (1960) which is inconsistent with the provisions of the said Act. In support of his argument that s. 31 being retrospective in operation the respondents' title to claim pre-emption can no longer be entertained Mr. Achhru Ram for the appellants has invited our attention to a recent decision of this Court in the case of Ram Sarup v. Mushi ([1963] 3 S.C.R. 858.) pronounced on August 30, 1962. In that case, Ayyangar, J., who spoke for the Constitution Bench considered the question about the retrospective operation of s. 31 and has observed that the said provision is retrospective and that the language used in the said section is "plain the 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 relied." It was no doubt urged before the Court in that case that the words used in s. 31 did not justify the application of the amended provisions to proceedings pending before the appellate Court; the said words showed that the said provisions could be invoked only in cases which were pending before the trial Court. This contention was rejected and so, it must be taken to be settled that the provisions of s. 31 are retrospective and can be relied upon by the appellants in their present appeals before this Court.

This position would undoubtedly have helped the appellants but for another complication which has been introduced be the relevant provisions of the amended s. 15 enacted by the amending Act. We have already noticed that some persons whose right to pre-empt was recognised by the corresponding provisions of the parent Act, have been omitted by the amended section. The amended section has also introduced another class of persons on whom the right to claim pre-emption has been conferred. These persons are the tenants who hold under tenancy of the vendors the land or property sold or a part thereof. This class of tenants has been introduced in clauses (a), (b) and (c) of amended s. 15. Clause four of s. 15(a)(c) provides that the right of pre-emption in respect of agricultural land and village immovable property shall vest in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof. Similar provisions are made in clauses (a) & (b) of the said section. For the respondents Mr. Vohra contends that they are tenants who hold under tenancy of the vendor the lands in question and as such, they are now clothed with the right to claim pre-emption. In other words, the respondent's argument is that though the right to pre-empt which they possessed under clauses (ii) and (iii) of the unamended s. 15(c) of the parent Act have been taken away retrospectively by the amending Act, they have been clothed with the same right by virtue of the fact that they fall under the fourth clause of the amended s. 15(1)(c) and the conferment of this right like the destruction of their right under the deleted provisions of the unamended section must operate retrospectively. He, therefore, suggests that the respondents ought to be given as opportunity to prove their case under the fourth clause of

s. 15(c) as amended. In this connection, he has referred us to the fact that this plea has been specifically taken by the respondents in their statement of the case before this Court. It is on this plea that the question about the effect of the retrospective operation of s. 31 arises.

Mr. Achhru Ram contends that though s. 31 is retrospective and in that sense the rights to pre-empt which vested in the respondents at the time when they instituted the present suits have been retrospectively taken away from them, it cannot be said that the right to pre-empt to which the respondents lay claim in the present appeals has been retrospectively created. His argument is that by the amending Act, the Legislature has no doubt provided that certain classes of persons who were entitled to pre-empt under the old Act should not be given that right and the extinction of the said right should operate retrospectively, but that cannot be said to be the policy of the legislature in regard to the rights which have been created for the first time by the amending Act.

The argument thus presented may prima facie appear to be attractive; but a close examination of the words used in s. 31 shows that it is not well-founded. Section 31, in substance, requires the appellate Court to pass a decree in a pre-emption matter which is not inconsistent with the provisions of the amending Act. In the present appeals, if we were to uphold the respondents' right to claim pre-emption on the strength of the provisions of s. 15(c) as they stood prior to the amendment, that would be inconsistent with the provisions of the amending Act, and so, the change made by the amending Act has to be given effect to and the right which once vested in the respondents must be deemed to have been retrospectively taken away from them. On this point there is no dispute. Would it make any difference in the legal position when we are dealing with rights which are created for the first time by the amending Act on the date when this Court will pass a decree in the present appeals ? If the rights created in favour of the tenants are not recognised and a decree is passed ignoring the said rights, that decree would be inconsistent with the relevant provisions of the amending Act, and s. 31 has clearly enjoined that no Court shall pass a decree which is inconsistent with the provisions of the amending Act. The position, therefore, appears to be clear that when a decree is passed in a pre-emption matter pending before the appellate Court, that Court must refuse to recognise the right to pre-empt which was recognised by the unamended Act but has been dropped by the amending Act just as much as it must recognise rights which were not recognised by the unamended Act but have been created by the amending Act. The retrospective operation of s. 31 necessarily involves effect being given to the substantive provisions of s. 15 retrospectively and that will apply as much to the extinction of the old rights as to the creation of new ones. The retrospective operation of s. 15 which is consequential on the retrospective operation of s. 31 is not affected by the fact that the right of pre-emption prescribed by s. 15 is referred to as a right which shall vest in the persons specified in sub-sections (a), (b) and (c) of s. 15(1).

It is, however, urged that the law of pre-emption requires that the pre-emptor must possess the right to pre-empt at the date of the sale, at the date of the suit and at the date of the decree. This position cannot be disputed. But when it is suggested that the respondents cannot claim that they had the right when they brought the present suit or when the sales were effected, the argument ignores the true effect of the retrospective operation of s. 31 and s. 15. If the inevitable consequence of the retrospective operation of s. 31 is to make the substantive provisions of s. 15 also retrospective, it follows that by fiction introduced by the retrospective operation, the rights which the respondents claim under the amended provisions of s. 15 must be deemed to have vested in them at the relevant time. If the relevant provisions are made retrospective by the legislature, the retrospective operation must be given full effect to, and that meets the argument that the right to pre-empt did not exist in the respondents at the time when the sale transactions in question took place. Therefore, we are satisfied that the respondents are entitled to claim that they should be given an opportunity to prove

their case that as tenants of the lands in suit they have a right to claim pre-emption. Incidentally, when the respondents filed the present suits, they had a right to pre-empt under the relevant provisions of the Act as they stood at that time; by the amendment, that right has been taken away, but instead they claim another right by virtue of their status as tenants of the lands, and this right is, by the retrospective operation of s. 31, available to them. We must accordingly set aside the decrees passed by the High Court and send the matters back to the trial Court with a direction that it should allow the respondents an opportunity to amend their claims by putting forth their right to ask for pre-emption as tenants under the amended provision of s. 15. After the amendments are thus made, the appellants should be given an opportunity to file their written statements and then appropriate issues should be framed and the suits tried and disposed of in the light of the findings on those issues in accordance with law. Under the unusual circumstances in which the litigation has thus secured a further lease of life, we direct that the costs incurred so far should be borne by the parties.

Appeal allowed. Cases remitted.

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