Shri Chaman Singh and Anothers

Vs

Srimathi Jaikaur

Civil Appeal No. 774 of 1966

(K. S. Hegde, V. Ramaswami-I, A. N. Grover JJ)

11.08.1969

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of a division bench of the Punjab High Court decreeing the suit filed by the respondent for possession of certain land by pre-emption.

2. The facts may be shortly stated : Santa Singh was the owner of some land in village Samadh Bhai, tehsil Moga. He died leaving a widow Smt. Sobhi. He also left a daughter Smt. Jai Kaur from his other wife. On February 3, 1958, Smt. Sobhi sold 73 kenals 14 marlas of land to the appellants, the sale consideration mentioned in the sale deed being Rs. 8,000/-. Smt. Jai Kaur filed a suit for possession by pre-emption of the land which had been sold by Smt. Sobhi. According to her consideration of Rs. 4,000/- only had been paid by the vendee. The trial court decreed the suit in May, 1959 granting a decree for possession on payment of Rs. 6,500/- together with costs. The Second Additional Judge to whom an appeal was taken dismissed it. In the High Court the learned Single Judge took the view that Smt. Jai Kaur not being the daughter of the vendor Smt. Sobhi had no right of pre-emption under Section 15(2) of the Punjab Pre-emption Act, 1913, as amended by the Punjab Pre-emption Amendment Act, 1960. The suit was dismissed. Smt. Jai Kaur filed an appeal under Clause 10 of the Letters Patent of the High Court. Relying on an amendment made by the Punjab Pre-emption Amendment Act, 1964, in the first paragraph of clause (b) of sub-section (2) of Section 15 of the Punjab Pre-emption Act, hereinafter called the Act, the Division Bench reversed the judgment of the Single Judge and decreed the plaintiff's suit.

3. The relevant provisions of the statute may now be noticed together with the amendments made in 1960 and 1964. Section 15 of the Act was substituted by Section 4 of the Amendment Act, 1960. According to the substituted section the right of pre-emption in respect of agricultural land and village immovable property shall vest thus :

> (1) "....
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> (2) Notwithstanding anything contained in sub-section (1), -
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> (a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female, after inheritance, the right of pre-emption shall vest, -

(i) if the sale is by such female, in her brother or brother's son;

(ii) if the sale is by the son or daughter of such female, in the mother's brother or the mother's brother's sons of the vendor or vendors;"

By the Amendment Act, 1964, in the first paragraph of Section 15(2)(b) between the words "such" and "female" the words "husband of the" were inserted. The result was that after the amendment the portion of clause (b) relevant for our purpose was to read as follows :

"FIRST, in the son or daughter of such husband of the female."

4. Now if the Amendment Act of 1964 could be regarded as having retrospective operation so as to affect pending proceedings there can be no dispute that the judgment of the division bench was right and must be affirmed. The contention which has been raised on behalf of the appellants is that there is no indication in the Amendment Act of 1964 that it was to have retrospective operation and therefore the amendment made by it should be deemed to be only prospective. It may be mentioned that by Section 6 of the Amendment Act of 1960 a new Section 31 was inserted in the Act. That section provided, "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 of 1960 which is inconsistent with the provisions of the said Act." In Ram Sarup v. Munshi & Others ((1963) 3 SCR 858) this Court held that the language used in Section 31 was comprehensive enough so as to require an Appellate Court to give effect to the substantive provisions of the Amending Act whether the appeal before it was one against a decree granting pre-emption or one refusing that relief. Although Section 31 was inserted in the Act for all times the phraseology employed therein does not show that its language was meant to cover even those amendments which would be made subsequent to the Amendment Act of 1960. The word "said" can have reference in the context only to the enactment of 1960 and to no other. It would not be legitimate for the courts to give an extended effect to a provision which has retrospective operation unless the language used and words employed warrented such a course being followed. That does not appear to be the case here.

5. It appears to us that the Amendment Act of 1964 was merely of a clarificatory or declaratory nature. Even in the absence of the words which were inserted by the Amendment Act of 1964 in Section 15(2)(b) the only possible interpretation and meaning of the words "in the son or daughter of such female" could have reference to and cover the son or daughter of the husband of the female. The entire scheme of sub-section (2) of Section 15 is that the right of pre-emption has been confined to the issues of the last male holder from whom the property which has been sold came by inheritence. Looking at clause (a) of sub-section (2) where the property which has been sold has come to the female from her father or brother by succession the right of pre-emption has been given to her brother or brother's son. As has been observed in Mota Singh v. Prem Prakash Kaur & Others (ILR 1961 Punj 614, 627) the predominant idea seems to be that the property must not go outside the line of the last male holder and the right has been given to his male lineal descendants. Where the sale is by the son or the daughter of such female the right is given to the mother's brother or their sons. The principle which has been kept in view is that the person on whom the right of pre-emption is conferred must be a male lineal descendant of the last male holder of the property sold. This is so with regard to clause (a) of sub-section (2). Coming to clause (b) where the sale is by a female of land or property to which she has succeeded through her husband or through her son in case the son has inherited the same from his father the right of pre-emption is to vest firstly in the son or daughter of such female and secondly in the husband's brother or husband's brother's son of such female. Now if the son or daughter of the female who has sold the property could refer to her

son or daughter from a husband other than the one from whom the property devolved on her, it would be contrary to the scheme and purpose of sub-section (2) which essentially is to vest the right of pre-emption in the lineal descendants of the last male holder. Similarly it is unthinkable that a husband's brother or husband's brother's son should have reference to a husband to whom the property never belonged. In other words it could never be intended that if a female has had a previous husband who has either died or with whom the marriage has been dissolved and the female has remarried and succeeded to the property of her second husband the brother or the brother's son of her previous husband should be able to claim the right of pre-emption when they had nothing whatsoever to do with the property sought to be pre-empted. It would follow that under clause (b) the right of pre-emption would vest firstly in the son or daughter of the husband of the female meaning thereby either her own off-spring from the husband whom she has succeeded or the son or daughter of that husband even from another wife.

6. If the above discussion is kept in view there is no difficulty in attributing a retroactive intention to the Legislature when the Amendment Act of 1964 was enacted. It is well settled that if a statute is curative or merely declares the previous law retroactive operation would be more rightly ascribed to it than the legislation which may prejudicially affect past rights and transactions. We are in entire agreement with the following view expressed in a recent full bench decision of the Punjab High Court in Moti Ram v. Bakhwant Singh and Others (ILR (1968)(1) Punj 104, 120) in which a similar point came up for consideration :

> "A close analysis of paragraphs (First) and (Secondly) of clause (b) of sub-section (2) of Section 15 before the amendment introduced by Punjab Act 13 of 1964 would demonstrate that a son of the husband of a female vendor though not born from her womb would be entitled to pre-empt, particularly when the husband's brother and even the son of the husband's brother of that female are accorded the right of pre-emption. To reiterate, the right of pre-emption is accorded manifestly on the principle of consanguinity, the property of the female vendor being that of her husband, and there is no reason why the step-son should be excluded and the nephew of the husband included. From this alone it must be inferred that the Legislature had intended to include a step-son and consequently retrospective operation had to be given to the amending Act as such a construction appears to be in consonance and harmony with the purpose of the Act."

The result, therefore, is that the respondent was entitled to exercise her right of pre-emption under paragraph First of clause (b) of sub-section (2) of Section 15 even before the amendment made in 1964. At any rate whatever doubts existed they were removed by the Amendment Act of 1964 which must be given retrospective operation.

7. The appeal consequently fails and it is dismissed with costs.

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