

Amarjit Kaur

Vs

Pritam Singh and Others

Smt. Tej Kaur and Another

Vs

Ajaib Singh and Others

Banta Singh

Vs

Bachan Singh and Others

Karam Chand and Another

Vs

Partap Singh and Another

Ranjit Singh

Vs

Narinjan Singh and Others

Chhanga Singh

Vs

Maghar Singh and Another

Bakshish Singh and Another

Vs

Harbans Singh and Others

Harbhajan Singh

Vs

Mohan Singh and Others

Civil Appeals Nos. 941(N), 1123(N), 1572(N), 1666, 1667, 1760(N) and 1870 of 1973 and Civil Appeal No. 8 of 1974

JUDGMENT

MATHEW, J. -

1. In these appeals, a common question of law arises for consideration and this judgment will dispose of all the appeals.
2. We will take up for consideration Civil Appeal No. 941(N) of 1973. The appellant challenges the correctness of a decree passed by the High Court dismissing a suit for pre-emption. The plaintiff property belonged to Defendant No. 4. He sold the same to Defendants Nos. 1 to 3 by a sale deed dated July 29, 1965 and registered on October 14, 1965. The appellant who is the daughter of Defendant No. 4, claiming that she has a right to pre-empt, instituted the suit through her guardian. The trial Court decreed the suit. Against the decree, an appeal was preferred by the vendees. The appeal was dismissed on July 17, 1971. An appeal was preferred to the High Court against this decree. The Punjab Pre-emption (Repeal) Act, 1973 (Act 11 of 1973) received the assent of the Governor of Punjab on April 6, 1973 and was published in the Punjab Gazette on April 9, 1973. The High Court allowed the appeal and dismissed the suit holding that the provisions of Section 3 of the above Act should govern the decision. The plaintiff-appellant then applied for leave to file letters patent appeal. That was dismissed.

3. Section 3 of the Punjab Pre-emption (Repeal) Act, 1973, provides :

Bar to pass decree in suit for pre-emption. - On and from the date of commencement of the Punjab Pre-emption (Repeal) Act, 1973, no court shall pass a decree in any suit for pre-emption.

The section, in effect, says that no court shall decree a suit for pre-emption after the coming into force of the Act. The question is, whether the appellate court, when it passes a decree, confirming the decree for pre-emption passed by the trial Court or the lower appellate Court, is passing a decree for pre-emption.

4. In *Lachweshwar Prasad Shukul v. Keshwar Lal Chaudhuri* (1940 FCR 84) it was held that once the decree passed by a court had been appealed against, the matter became sub-judice again and thereafter the appellate court has seisin of the whole case, though for certain purposes, e.g., execution, the decree was regarded as final and the courts below retained jurisdiction. The Court further said that it has been a principle of legislation in British India at least from 1861 that a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Civil Procedure Code on courts of original jurisdiction, that even before the enactment of that Code, the position was explained by Bhashyam Iyengar, J. in *Kristnama Chariar v. Mangammal* ((1902) ILR 26 Mad 91, at p. 95-96) in language which makes it clear that the hearing of an appeal is under the processual law of this country in the nature of a re-hearing, and that it is on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.

5. As an appeal is a re-hearing, it would follow that if the High Court were to dismiss the appeal, it would be passing a decree in a suit for pre-emption. Therefore, the only course open to the High Court was to allow the appeal and that is what the High Court has done. In other words, if the High

Court were to confirm the decree allowing the suit for pre-emption, it would be passing a decree in a suit for pre-emption, for, when the appellate court confirms a decree, it passes a decree of its own, and therefore, the High Court was right in allowing the appeal.

6. We, therefore, dismiss the appeal but, in the circumstances, make no order as to costs.

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