

Sadhu Singh and Another

Vs

Dharam Dev and Others

Civil Appeal No. 2047 of 1973

(V. R. Krishna Iyer, R. S. Pathak, O. Chinnappa Reddy JJ)

31.07.1980

JEDGMENT

V. R. KRISHNA IYER, J. –

1. The short and single point raised by Shri Harbans Singh, learned counsel appearing for the appellants, in this appeal by special leave is that the decree for pre-emption passed against the appellant is unsustainable in view of Section 3 of the Punjab Pre-emption (Repeal) Act, 1973 which reads thus :

3. 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.

2. The section is plain and its meaning unambiguous that there is a statutory mandate against passing a decree for enforcement of a right of pre-emption in the State of Punjab. The only point here is as to whether a decree already passed by the trial Court, challenged in appeal after the Act was passed and affirmed on appeal would fall within the mischief of Section 3 while the case pends in the High Court. We think that Section 3 interdicts the passing of a decree even in appeal. For one thing a decree challenged in appeal is reopened and the appellate hearing is a rehearing of the whole subject-matter and when a decree is passed in appeal the first decree merges in the appellate decree and it comes within the scope of Section 3. The decision of this Court in *Official Liquidator v. R. Desikachar* directly covers the situation.

3. Necessarily, we have to allow the appeal and dismiss the suit, but in the circumstances no costs.

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