Bachan Singh and Another

Vs

Chhotu Ram and Others

Civil Appeal No. 911 of 1971

Partap Singh and Others

Vs

Bhoop Singh and Others

Civil Appeal No. 639 of 1985

(E. S. Venkataramiah, Ranganath Misra JJ)

23.07.1986

JUDGMENT

RANGANATH MISRA, J. –

1. These two appeals by special leave are directed against two different judgments of the Punjab and Haryana High Court in suits for pre-emption. The facts of the two cases are different

C.A. 639/85

2. In this appeal the alienation was on November 22, 1972, by one Nathu and his wife Smt. Singari in favour of outsiders. Plaintiffs claimed possession of the property by way of pre-emption on the ground that they have superior right being father's brother's sons of Nathu covered under Section 15(1)(a) Thirdly of the Punjab Pre-emption Act, 1913. That claim was decreed so far as Nathu's half share in the property was concerned and the claim as against the alienation of half share by his wife was rejected. The alienees' appeal to the District Judge as also the High Court did not succeed.

3. A Constitution Bench of this Court in the case of Atam Parkash v. State of Haryana ((1986) 2 SCC 249), has recently held : (SCC p. 263, para 13)

There is, therefore, no reasonable classification and clauses 'First', 'Secondly' and 'Thirdly' in Section 15(1)(a) . . . are, therefore, declared ultra vires the Constitution.

The result of this decision in Atam Parkash case ((1986) 2 SCC 249) is that Section 15(1)(a) Thirdly is, and was not, available to the plaintiffs to base their claim of pre-emption upon. C.A. 639/85 has, therefore, to be allowed and the decree passed by the trial court as upheld in the first and second appeals must be reversed. Plaintiffs' suit for pre-emption has to be dismissed. Since the reversal is the outcome of a judgment delivered by this Court during the pendency of the civil appeal, we direct partied to bear their respective costs throughout.

C.A. 911/71

4. Sonu Ram, defendant 1, was the owner of about 9 bighas of agricultural properties in which Bachan Singh and Niranjan Singh, plaintiffs, claimed to be the cultivation tenants. Sonu Ram sold the property under a registered sale deed dated July 22, 1959. The tenant filed a suit on July 21, 1960, for a decree for possession by pre-emption. With effect from February 4, 1960, Section 15 of the Punjab Pre-emption Act, 1913 ('the Act'for short), was amended by Act 10 of 1960. Under the amendment, inter alia, a new clause was inserted in Section 15(1)(a), namely, "Fourthly" which reads as under :

> Fourthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof.

5. The Amending Act brought in a new provision by way of Section 31 to the following effect :

> Punjab Pre-emption (Amendment) Act, 1959 to apply to all suits. - 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, which is inconsistent with the provisions of the said Act.

6. The trial court as also the first appellate court took the view that on the date when the sale took place the plaintiffs had no right of pre-emption and as such the claim was not maintainable. Before the High Court in second appeal the appellants placed reliance on the Constitution Bench decision of this Court in Amir Singh v. Ram Singh ((1963) 3 SCR 884). The High Court took the view that on the date of sale the plaintiffs had no right infringed though they had such right on the date of the suit. As one of the requirements of the law was that the plaintiffs to succeed in a suit for pre-emption should have a superior right of pre-emption on the date of sale also the plaintiff's claim could not be decreed. The High Court, therefore, unheld the decree of the court below.

7. We have heard learned counsel for both the sides at some length and are inclined to agree with the submissions advanced on behalf of the appellants that all the three courts have gone wrong in dismissing the claim. Gajendragadkar, J. (as he then was) who spoke for the Constitution Bench in Amir Singh case ((1963) 3 SCR 884) categorically held :

> 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 ignors the true effect of the retrospective operation of Section 31 and Section 15. If the inevitable consequence of the retrospective operation of Section 31 is to make the substantive provisions of Section 15 also retrospective, it follows that by fiction introduceds by the retrospective operation, the rights which the respondents claim under the amended provisions of Section 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 effected 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.

8. In view of the categorical indication that Section 15 was retrospective, it must follow that the newly inserted clause Fourthly in Section 15(1)(a) of the Act was in existence at all relevant times. So far as facts of this case are concerned, the plaintiffs must be presumed to have had a right to pre-empt on the date of sale. Admittedly, the suit was filed subsequent to the amendment. It is a well settled principle of law that when the legislature makes provision for a deeming situation to give effect to the mandate of the legislature, all things necessary to effectuate the retrospective intention must be deemed to have existed. All the courts in our view clearly went wrong in dealing with the legal situation. The High Court erroneously distinguished the rule in Amir Singh case ((1963) 3 SCR 884) even though the ratio applied in all fours. The judgments and decrees of all the three courts are set aside. The plaintiffs are found entitled to pre-empt the alienee under Section 15(1)(a) Fourthly of the Act as amended by the Act of 1960. We allow the appeal, reverse the decrees of all the courts below and direct that the plaintiffs' suit shall be decreed. Plaintiffs shall be entitled to their costs throughout. The trial court is directed to give effect to the decree passed by this Court.

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