

Kanta Rani Alias Kanti Devi and Another

Vs

Rama Rani

Civil Appeal No. 453 of 1988

(E.S. Venkataramiah, N.D. Ojha JJ)

08.02.1988

JUDGMENT

VENKATARAMIAH, J. -

1. The two short questions involved in this case are (i) whether the right of pre-emption conferred on a tenant by a customary law is heritable or not and (ii) whether on the death of such a tenant, who had filed a suit for pre-emption his legal representatives can continue the suit.
2. The property in dispute which is a double storied building situated in the town of Jagadhri, District Ambala, Haryana originally belonged to one Om Prakash. Kishan Chand was in possession of a part of the said property as a tenant. Om Prakash sold the entire property including the portion occupied by Kishan Chand to the respondent for a sum of Rs. 23,000 under a registered sale deed dated July 11, 1980. It is alleged that in the town of Jagadhri there was in force a customary law under which a tenant in occupation of a building had a right of pre-emption. Aggrieved by the sale of the property in his occupation as a tenant, Kishan Chand filed a suit for pre-emption in the Court of the Sub-Judge, II Class, Jagadhri in Civil Suit No. 131 of 1980 on August 26, 1980 stating that the value of the portion of the property occupied by him was Rs. 10,000. The respondent denied that there was such a customary law conferring a right of pre-emption on a tenant in force in the town of Jagadhri and that in the event of a decree being passed in the suit the plaintiff should be asked to pay a sum of Rs. 20,000 by way of consideration. During the pendency of the suit, Kishan Chand died on August 8, 1983. An application was filed under Order 22 Rule 3, Civil Procedure Code by the appellants, who were the legal representatives of Kishan Chand to bring them on record in the place of the original plaintiff, Kishan Chand and to permit them to prosecute the suit further. The respondent opposed the said application contending that the right of pre-emption, even if it existed, was only a personal right of Kishan Chand and was not heritable and, therefore, the appellants were not entitled to be brought on record as the legal representatives of Kishan Chand. It was further contended by the respondent that the suit was liable to be dismissed on the death of Kishan Chand as the right to sue did not survive. The trial court allowed the application made under Order 22 Rule 3, Civil Procedure Code holding that the right of pre-emption was heritable and the right to sue survived on the death of the plaintiff in favour of his legal representatives. Aggrieved by the order passed by the trial court, the respondent filed a revision petition under Section 115, Civil Procedure Code before the High Court of Punjab and Haryana in Civil Revision No. 3411 of 1983. Before the High Court, the respondent relied on a Full Bench decision of the High Court of Punjab and Haryana in Chandrup Singh v. Data Ram ((1982) Punj LR 771 (FB)) in which it had been held that a statutory right of pre-emption resting only on blood relationship created by Section 15(1) of the Punjab Pre-emption Act, 1913 (1 of 1913) (hereinafter referred to as 'the Act') (as it was in force in Haryana) was not a heritable right and did not devolve on the heirs on the death of the plaintiff-pre-

emptor before the grant of the decree in the suit. Though the learned Judge, who heard the revision petition, was of the view that the above Full Bench decision ran counter to the decision of the Supreme Court in *Hazari v. Neki* ((1968) 2 SCR 833 : AIR 1968 SC 1205) he allowed the petition following the Full Bench decision on the ground that the said decision was binding on him and declared that the suit instituted by Kishan Chand had abated on his death.

3. We have gone through the decision of this Court in *Hazari* case ((1968) 2 SCR 833 : AIR 1968 SC 1205) and also the Full Bench decision of the High Court of Punjab and Haryana in *Chandrup* case ((1982) Punj LR 771 (FB)). The facts in *Hazari* case ((1968) 2 SCR 833 : AIR 1968 SC 1205) were these. The plaintiff, who was the father's brother of one Dhara Singh instituted three suits for pre-emption of the lands sold by Dhara Singh under three sale deeds on the ground that he had a superior right of pre-emption on the basis of his relationship with the vendor as against the purchasers under Section 15(1)(a) of the Act. The suits were decreed by the trial court. The purchasers took the matter in appeal before the First Appellate Court and those appeals were dismissed, but in one of the appeals there was a slight modification in the amount which the plaintiff had to pay to the purchasers. The purchasers filed three second appeals before the High Court against the judgments and the decrees of the First Appellate Court and the plaintiff also preferred a second appeal before the High Court in one of the cases against the increase made in the price of the land by the First Appellate Court. While the second appeals were pending in the High Court, the plaintiff died. After his death applications were moved under Order 22 Rule 11 of the Civil Procedure Code to bring the legal representatives of the deceased plaintiff on record. All the four second appeals were heard and dismissed by the High Court. The purchasers having failed in the Letters Patent appeals filed before the Punjab and Haryana High Court against the decrees passed in the second appeals, filed three appeals before this Court by special leave. It was contended before this Court by the purchasers that on the death of the plaintiff, the right to sue came to an end his legal representatives were not entitled to claim any benefit under the decrees in question. Rejecting the above contention this Court observed at page 836 of the Reports thus :

In support of these appeals, learned counsel put forward the argument that the right of pre-emption claimed by Neki deceased plaintiff was a personal right which died with him upon his death and the legal representatives of Neki were not entitled to be granted a decree for pre-emption. The argument was that the statutory right of pre-emption under the Punjab Act was not a heritable right and no decree for pre-emption should have been passed by the lower court in favour of the legal representatives as representing the estate of Neki. We are unable to accept the argument put forward by the appellants. It is not correct to say that the right of pre-emption is a personal right on the part of the pre-emptor to get the re-transfer of the property from the vendee who has already become the owner of the same. It is true that the right of pre-emption becomes enforceable only when there is a sale but the right exists antecedently to the sale, the foundation of the right being the avoidance of the inconveniences and disturbances which would arise from the introduction of a stranger into the land. The correct legal position is that the statutory law of pre-emption imposes a limitation or disability upon the ownership of a property to the extent that it restricts the owner's right of sale and compels him to sell the property to the person entitled to pre-emption under the statute. In other words, the statutory right of pre-emption though not amounting to an interest in the land is a right which attaches to the land and which can be enforced against a purchaser by the person entitled to pre-empt.

4. In reaching the above conclusion this Court while accepting the contention that the right of pre-emption under Section 15(1)(a) of the Act did not create an interest in the land was, however, of the view that the right did not abate on the death of the plaintiff during course of the proceedings in court. This Court referred to the decision of the Punjab and Haryana High Court in Faqir Ali Shah v. Ram Kishan (133 PR 1907). and the decision of the Allahabad High Court in Wajid Ali v. Shaban (ILR 31 All 623). In the latter decision namely, the Wajid Ali case (ILR 31 All 623] the High Court of Allahabad had held that where a right of pre-emption existed by custom as recorded in the village Wajib-ul-arz, the right having once accrued did not of necessity lapse by the death of the pre-emptor before making a claim, but descended along with the property by virtue of which it subsisted to the heir of the pre -emptor. It is significant that in that case the High Court of Allahabad had taken the view that the right of pre-emption which had accrued in favour of the pre-emptor would descend along with the property in virtue of which it subsisted to the heir of the pre-emptor, even when the death of the pre-emptor had taken place before he made a claim for pre-emption. The Full Bench of the High Court of Punjab and Haryana which heard Chandrup case ((1982 Punj LR 771 (FB)) after noticing the decision of this Court in Hazari case ((1968) 2 SCR 833 : AIR 1968 SC 1205) distinguished the said decision observing thus :

21. To conclude, on the particular language of the statute, on principle, and on the weight of precedent, it is held that the purely statutory right of pre-emption, resting wholly on blood relationship alone under Section 15(1) of the Punjab Pre-emption Act, is not a heritable right and does not devolve on the heirs on the death of the plaintiff - pre-emptor before the grant of the decree in the suit. The answer to the question posed at the very outset is thus rendered in the negative.

5. We find it difficult to agree with the decision of the Full Bench of the High Court of Punjab and Haryana in the above case.

6. While it may not be disputed that a right of pre-emption does not give rise to an interest in immovable property, in the instant case the plaintiff had acquired the said right of pre-emption under the customary law by virtue of the right of tenancy which he had in the portion of the property in his possession. It cannot be disputed that the right of tenancy itself was heritable and, therefore, every right attached to the said right of tenancy or incidental to it should ordinarily be heritable. There can be no distinction between a right of pre-emption arising under the statute law or such a right arising under customary law. The other reason given by the Full Bench in order to distinguish the decision of this Court in Hazari case ((1968) 2 SCR 833 : AIR 1968 SC 1205) namely that the pre-emptor had died at the stage of second appeal in the said case while the pre-emptor had died in the case before the Full Bench at the stage of trial also does not appeal to us. The view expressed in Muhammad Husain v, Niamet-un -nissa (ILR 20 All 88) that under Mohammadan law applicable to the Sunni sect if a plaintiff in a suit for pre-emption had not obtained his decree for pre-emption in his lifetime the right to sue did not survive to his heirs is not relevant for purposes of this case. It is true that the said decision was noticed by this Court in Hazari case ((1968) 2 SCR 833 : AIR 1968 SC 1205) but this Court did not express any opinion on the correctness of the above position. In the case before us the right of pre-emption is claimed not on the basis of Mohammadan law but under customary law by the heirs of a tenant who was in possession of the property in question and who had instituted a suit for enforcing the said right of pre-emption. It is appropriate to refer to the following passage in Faqir Ali case (133 PR 1907) which is extracted in Hazari case ((1968) 2 SCR 833 : AIR 1968 SC 1205) at page 837 :

While, therefore, there is good reason why voluntary transfers should not pass a right

of pre-emption as regards properties previously sold, those reasons do not apply to transfers by inheritance. As regards transfers by inheritance, the general principle should apply that the right of pre-emption passes with the land.

Mr. Grey laid great stress on Sections 13 and 16 of the Punjab Laws Act urging that the father was the person on whom the notice had to be served, and that it was he who had the right to sue and that the right was thus a personal one that could not be inherited by the son. The right was no doubt a personal one in the father based on his land, but I can see no reason why such right cannot be inherited by the son. If the father had waived or otherwise disposed of his right this would no doubt be binding on the son, as the father was representing the whole estate.

Where, however, the father has done nothing of the kind, but has simply taken no steps in the matters, there seems to me no reason why the son should not step into the shoes of his father and take the same action as the father could have done. The son inherits the other causes of action belonging to his father any why not this one ? Nor do I see why the son cannot come in under Section 16, simply alleging that no notice as required by Section 13 was served on his father.

7. Hence the fact that the pre-emptor had died in the present case at the trial stage cannot make any difference. We are, therefore, of the view that the decision of the Punjab and Haryana High Court in Chandrup (1982 Punj LR 771 (FB)) is inconsistent with the decision of this Court in Hazari case ((1968) 2 SCR 833 : AIR 1968 SC 1205) and has to be overruled. We accordingly overrule it. We hold that the right to sue in the present case survived on the death of Kishan Chand in favour of the appellants who were his legal representatives and they were entitled to be brought on record in substitution of the original plaintiff Kishan Chand under Order 22 Rule 3 of the Civil Procedure Code. The appeal is accordingly allowed, the order of the High Court is set aside and the order of the trial court is restored. The trial court is directed to bring the appellants on record as the legal representatives of the deceased-plaintiff and to proceed to dispose of the suit on merits.

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