

Karan Singh and Others

Vs

Bhagwan Singh (Dead) by LRs. and Others

Civil Appeals Nos. 2308 with 2356 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

24.01.1996

JUDGEMENT

K. RAMASWAMY, J.:-

1. Leave granted.

2. Substitution of legal representatives of the first respondent is allowed.

3. Bhagwan Singh, the respondent had sold 48 canals of land from undivided joint family properties, but in specie to Prithvi, Rattan, Krishan sons of Banwari and Karan Singh son of Sis Ram on June 15, 1978. Admittedly, they were strangers to Bhagwan Singh and were resident of village Malkos. The lands are situated in village Kayala. Though the sale deed was questioned by the wife and children of the respondent, the litigation proved unsuccessful. Prithvi Singh and Krishan have subsequently sold 34 canals 13 marlas purchased from Bhagwan Singh to the appellants. Rattan Singh also has sold 13 Kanals 7 marlas of the said land on May 18, 1982. Bhagwan Singh, thereafter, filed the suit for pre-emption under Punjab Pre-emption Act, 1913. Apart from other pleas, the principal plea was that being co-owner, he is entitled to pre-emption of the land purchased by the appellant. Though, the trial Court dismissed the suit, on appeal, the suit was decreed and the High Court in Second Appeal No. 2671/86 by judgment and order dated October 29, 1986 upheld it. Hence this appeal by special leave.

4. Shri Bagga, the learned counsel for the appellant, contended that Bhagwan Singh, having himself sold the property in pieces to strangers from whom the appellant had purchased, has no right to exercise the right of pre-emption under Section 15 of the Act. Alternatively, it is contended that Haryana State legislature has amended Section 15 of the Act by Amendment Act 10 of 1995 which has come into effect from May 7, 1995 substituting Section 15 of the principal Act whereunder the right of pre-emption is vested only in a tenant who held the land under tenancy of the vendor or part of the vendor's land sold.

5. Shri A. K. Sen, the learned senior counsel for the respondents, contended that Bhagwan Singh, being a co-owner with his co-parceners or joint owners, is entitled under Section 15 to exercise the rights of pre-emption statutorily given to a co-owner. A stranger cannot be inducted against the wishes of the co-owners into the co-parcenary or joint family property. Bhagwan Singh, having undivided interest in the co-parcenary, had a right to lay the suit for pre-emption under Section 15. The subsequent amendment is of no avail since the suit had already been decreed and this Court can

confirm the decree validly passed before the Amendment Act had come into force. Therefore, the appellate Court and the High Court were right in granting for pre-emption.

6. Having given our anxious consideration to the respective contentions, we are of the view that the contentions of Shri Bagga merit acceptance. It is seen that Bhagwan Singh himself had sold the land to the strangers to the family. The land sold were in specie from the co-parcenary property. Having inducted the stranger into the property, he cannot object to the vendees selling the property to the third parties and claim right of pre-emption from them. In a case of pre-emption as in any other the plaintiff has to establish a number of facts to succeed in his claim. It is hardly necessary to point out that cases of pre-emption are no exception to the rule of estoppel to be found in Section 115, Evidence Act. The plea of estoppel may be grounded on an indefinite variety of facts. But the precise question for consideration is whether in a case where the purchaser buys property relying on an implied assurance of the pre-emptor that he will not pre-empt the purchaser can invoke the doctrine of estoppel against the pre-emptor. Having sold the lands to the strangers, he cannot plead in validity of the title of his vendees selling the same lands to another strangers on the ground that the title is invalid, due to pre-emption right, under the Act. We appreciate that other co-owners might have a right since they may seem to object to the strangers coming into the co-parcenary estate jointly held by all the co-parceners or co-owners. Bhagwan Singh, therefore, could not validly lay the suit for pre-emption.

7. It is settled law that the right to claim pre-emption must be available at the date of sale, the date of suit and the date on which the decree is passed. In *Amarjeet Kaur v. Pritam Singh*, AIR 1974 SC 2068, this Court had held that when appeal against a decree is pending, the Court of appeal has seisin of the whole case and the whole matter becomes sub judice again though for certain purposes, i.e., execution, the decree is regarded as final. The decree of the trial Court gets merged with the decree of the appellate Court. Therefore, the Court of appeal shall have all the powers and shall perform as nearly as may be, the same duties as are conferred and imposed on the Court of original jurisdiction. When the appeal, therefore, is pending in this Court, it is continuation of the original proceedings and the entire issue is at large. It is well settled law that the Court can take judicial notice of the change in law and mould the relief on the basis of the rights altered under the amended law. Though the appellate Court reversed the decree of the trial Court and granted to Bhagwan Singh the rights of pre-emption, his entitlement to relief is at large when the matter is pending consideration before this Court. Therefore, the right to pre-emption should be available at all the stages including the final stage to affirm the decree. This Court would take judicial notice of the law prevailing as on the date of the order or judgment and apply relevant provisions of law prevailing on that day and mould the relief on the basis of that law. In view of the facts that Haryana Amendment Act, 10 of 1995 came into force w.e.f. July 7, 1995, the only person entitled under the amended law, to avail the right of pre-emption, is the tenant whose vendor's had sold the whole or a part thereof to the third parties. It would, therefore, be clear that as on date, Bhagwan Singh has no right to claim pre-emption under the Act, as amended under the Amendment Act, 1995.

8. The appeals are accordingly allowed. The judgment and order of the High Court and the decree and judgment of the appellate Court are set aside and that of the trial Court, i.e., Sub-Judge, Second Class, Bhiwani made on October 31, 1985 in suit No.201/83 is restored. In conclusion, the suit stands dismissed, but in the circumstances, parties are directed to bear their own costs. Appeal allowed.