

Ramjilal and Others

Vs

Ghisa Ram and Others

Civil Appeals No. 4017 of 1983

(K. Ramaswamy, S. Saghir Ahmed, G. B. Pattanaik JJ)

24.01.1996

ORDER

1. Leave granted in the SLP.
2. Substitution allowed.
3. These appeals were referred to a larger Bench by order of this Court made on 10-5-1994. The facts in CA No. 4017 are sufficient for disposal of these appeals.
4. The facts are that on 16-7-1979, certain lands situated in Kutiyana Tehsil and District Sirsa were sold by Mathri, Dilawar and Santosh Kumar to the appellants by registered sale deed dated 16-6-1979. The respondent filed Suit No. 581 of 1980 in the Court of Sub-Judge, Ist Class, Sirsa under Section 15(1)(b) of the Punjab Pre-emption Act, 1913 on 18-7-1980 for pre-emption of the land from the appellants on the premise that the lands originally belonged to one Shri Ram who died in the year 1944. His widow Dhapan had remained in possession as widow's estate. She cannot be said to have inherited the property through her husband. She had no right to sell the lands to the appellants as she remained limited owner. Therefore, being a co-owner of Shri Ram, the respondent is entitled to pre-emption of the lands sold by Dhapan to the appellants. Accepting the contention of the respondent, the trial court decreed the suit. On appeal, it was confirmed. Second appeal was dismissed. Thus these appeals by special leave. Section 14(1) of the Hindu Succession Act, 1956 enlarges the widow's estate known to sastric law; removed the fetters on possession and blossomed into an absolute right to the widow.
5. Pending appeals, the Haryana Pre-emption Amendment Act, 1955 (Act No. 10 of 1995) came into force w.e.f. 7-7-1995. The question arises : whether the respondent are entitled to pre-emption. This controversy was considered by this Court Karan Singh v. Bhagwan Singh [CA @ SLP (C) Nos. 14362 & 14372 of 1986, decided on 24-1-1996] by a Bench of which two of us (K. Ramaswamy and G.B. Pattanaik, JJ.) were members. Therein, it was held that the appeal was a continuation of the original proceedings. When the appellate court has seisin of the whole case, the entire controversy would be at large and the issue would be open for reconsideration. Thus the whole case is at large. For the purpose of pre-emption, the right and remedy must be available not only on the date of the sale but also on the date of the suit as well as on the date when the decree is made and is finally to be affirmed or needs to be modified at the time of the disposal of the appeal. Since the appeal is a continuation of the original proceedings, the right and the remedy should continue to subsist till this Court decides the controversy, if the appeal is presented and is pending disposal. Since the statute had intervened and the Act has taken away the right of pre-emption of the co-owners and confined the right and remedy to be only in favour of the tenants, the respondents have

lost their right of pre-emption. In other words, co-owners' right of pre-emption has been taken away by amendment to the Act. Consequentially, the respondents have lost the right, pending the appeals. This Court under Section 57 of the Indian Evidence Act shall take judicial notice of all the laws in force in the territory of India. The Court would take judicial notice of the Acts of State Legislature and Parliament. Accordingly, taking notice of the change in law, the right and remedy to the respondent have been lost. As a result, the suit for pre-emption is not maintainable.

6. The main appeal as well as connected appeals are accordingly allowed. Consequently, the suits stand dismissed. But, in the circumstances, without costs.