

Mansu

Vs

Shadi Ram

Civil Appeal No. 3809 of 1984

(M. M. Punchhi, S. C. Sen JJ)

20.02.1996

JUDGMENT

1. The sole appellant having died, application for substitution is allowed.
2. The appellant before us (now represented by his heirs and legal representatives) is the plaintiff-pre-emptor. The respondent on the other side is the vendee. The suit property was sold by a set of co-sharers, males as well as females. The appellant staked claim to the suit property in exercise of his right of pre-emption based on tenancy. The respondent resisted the suit contending that since the vendors were the males and females, the share of the female vendor was not pre-emptable in terms of Section 15(2) of the Punjab pre-emption Act as applicable to the State of Haryana. And further, if the sale by female vendors was not pre-emptable, he as a successors-in-interest became a co-sharer in the suit land, and as such he had a superior right over the plaintiff under Section 5(1) of the aforesaid Act.
3. The Trial Court as also the lower appellate Court went into oral and documentary evidence adduced by the parties in coming to the firm conclusion that the appellant being a tenant had a superior right of pre-emption in preference of the respondent. The High Court allowed the second appeal of the vendee-respondent and dismissed the (sic) of the appellant, on the premise that when part of the sale effected by female vendors was not pre-emptible under Section 15(2) then the vendee, as a co-sharer in his own right, had a right to pre-empt the sale may be by the male vendors under Section 15(1) of the Act. It is this view of the High Court which has been put to challenge before this Court.
4. In *Attam Prakash v. State of Haryana*, (1986) 2 SCC 249 : (AIR 1986 SC 859), this Court has categorically struck down Section 15(2) of the Act as ultra vires the Constitution. As referred to earlier, Section 15(2) applies to cases of sales made by females. Due to the non obstante clause operating in Section 15(2) those sales are not pre-emptable under Section 15(1) of the Act. When the right of pre-emption under Section 15(2) is no longer a viable, it can now be searched in Section 15(1) in so much as is left alive in *Attam Prakash's* case. Thereunder, in clause forthly, the right of pre-emption vests in a co-sharer and then in clause 1 fifthly' it vests in the tenant who holds under tenancy of the vendor or vendors the land or property sold or a part thereof. Uptill the High Court decision, the co-sharer had a superior right of pre-emption over the tenant. In the meantime, however, by Haryana Amendment Act 10 of 1995 which came into force on July 7, 1995, the right of pre-emption in favour of the co-sharer has been withdrawn by causing necessary amendment in the parent Act. The right of pre-emption now survives only in favour of the tenant and not for any other. Thus, the superior claim of the respondent presently stands snatched away from him by statutory amendment. This Court in *Karan Singh v. Bhagwan Singh (D)* by LRs, 1996

(1) Scale 564, has taken the view in this context that it would take judicial notice of the law as prevailing on the date of the order or judgment and apply it to mould relief accordingly. Following the same line of reasoning the respondent has to be rendered defenceless in asserting his claim for pre-emption on the basis of co-sharership.

5. The appellant on the other hand can only succeed on the basis of his tenancy right. Mr. Harbans Lal, learned senior counsel for the respondent has made an effort to convince us that the revenue record adduced in evidence in support of the plea of tenancy is not reliable, especially when there are entries suggestive of the fact, that the tenant was not in cultivating possession in part of the land. These entries were examined by the Courts below, and were reconciled in favour of the tenant/appellant on the premise that there was a presumption in favour of continuity of his possession and once it was conceded that the appellant was the tenant over the land in dispute, he shall be presumed to have continued thereafter unless by some cogent evidence or over act it could be proved that he abandoned the tenancy or was otherwise evicted in accordance with law. The oral evidence goes to support the appellant that he continued to be in possession till date. He, thus, has a right to maintain his possession under the existing State of law in exercise of his right of preemption as a tenant.

6. For the reasons stated above, the appeal is allowed, the judgment and order of the High Court is set aside and that of the lower appellate Court affirming that of the trial Court is restored. There shall be no order as to costs. Let the pre-emption money be deposited by the appellant within sixty days from today, if not already deposited, in terms of the decree of the trial Court, failing which the suit for pre-emption shall stand dismissed as also this appeal. Appeal allowed.