

Shanti Devi (Smt) and Another

Vs

Hukum Chand

Civil Appeals Nos. 8755-56 of 1995

(N. P. Singh, K. Venkataswami JJ)

22.08.1996

ORDER

1. These appeals have been filed for setting aside the order dated 20-3-1990 passed by the High Court allowing the civil revision application which had been filed on behalf of the respondent-decree-holder.

2. There is no dispute that the land in question was transferred in favour of Appellant 1 by one Kishan Chand and Jagdish Chand in the year 1980. Thereafter a suit for pre-emption was filed on behalf of the respondent. That suit was decreed on 27-8-1983. The appeal filed on behalf of the appellants was dismissed by the court of appeal on 30-11-1983. Second appeal filed on behalf of the appellants was also dismissed by the High Court on 5-4-1984. Thereafter, the decree-holder-respondent took steps for execution of the decree for pre-emption of the lands in question in the year 1984. An objection was taken before the executing court that as the only share in the land in question had been transferred the decree for pre-emption cannot be executed. That objection found favour with the executing court. Being aggrieved by the order passed by the executing court the respondent filed civil revision before the High Court which was allowed by the impugned order. The High Court after referring to the earlier judgments of the said court including the Full Bench judgment observed :

"The proposition laid down in the Full Bench judgment, referred to above, has no applicability to the facts of the present case. In that case the question was as to whether the sale was of specific khasra number out of the joint land. The question of getting the physical possession of the specific khasra numbers out of the joint holding is governed by the provisions of the Code of Civil Procedure, which provides as to how the decree for immovable property is to be executed. Admittedly, the decree is for specific khasra numbers which were sold to the vendee by the vendor. That being so, the decree-holder is entitled to the physical possession of the specific khasra numbers though it may be open to the judgment-debtors to make adjustments at the time of partition, if any."

3. Faced with this situation aforesaid, on behalf of the appellants it was submitted before the High court that as the relevant provision of the Punjab Pre-emption Act, 1913 (10 of 1913) had been declared to be unconstitutional by the Constitution Bench of this Court in the case of *Atam Prakash v. State of Haryana* [(1986) 2 SCC 249] the decree passed in the suit for pre-emption filed on behalf of the respondent shall be deemed to be a nullity and as such the decree cannot be executed. The High Court rejected the said objection. This Court in the case of *Atam Prakash v. State of Haryana* [(1986) 2 SCC 249] has specifically said in respect of decrees which had become final as follows :

(SCC p. 263 para 14)

"We are told that in some cases suits are pending in various courts and, where decrees have been passed, appeals are pending in appellate courts. Such suits and appeals will now be disposed of in accordance with the declaration granted by us. We are told that there are a few cases where suits have been decreed and the decrees have become final, no appeals having been filed against those decrees. The decree will be binding inter partes and the declaration granted by us will be of no avail to the parties thereto."

It is, therefore, apparent that where the suits have been decreed and such decrees have become final since no appeals have been filed against the same, the said decrees are binding inter partes and the declaration made by the Supreme Court is of no avail to the parties thereto.

4. In the present case as mentioned above the suit for pre-emption was decreed on 27-8-1983. That decree was affirmed by the court of appeal on 30-11-1983. The second appeal filed before the High Court against the judgment and decree of the trial court and the court of appeal was dismissed on 5-4-1984. It is an admitted position that at no stage the appellants questioned the validity of the decree in question before this Court. We are informed that after 12 years in the year 1996, a special leave petition has been filed against the order dated 5-4-1984 passed in the second appeal by the High Court. However, the fact remains that when the High Court allowed the civil revision filed on behalf of the respondent on 20-3-1990 the decrees of the trial court, the court of appeal and the High Court in second appeal had become final. As such the direction of this Court in *Atam Prakash* case [(1986) 2 SCC 249] that such decrees shall be binding inter partes notwithstanding the declaration of this Court in the aforesaid judgment was fully applicable in the present case. The High Court has rightly come to the conclusion that notwithstanding the judgment of the Constitution Bench in the case of *Atam Prakash* [(1986) 2 SCC 249] the decree in the suit for pre-emption filed on behalf of the respondent was binding between the parties.

5. On behalf of the appellants our attention was drawn to the substituted Section 15 in the Punjab Pre-emption Act, 1913 which has been notified on 7-5-1995 and it was urged that after the said amendment no right of pre-emption can be enforced. Section 15 which has been substituted is as follows :

"15. Right of pre-emption to vest in tenant. - The right of pre-emption in respect of sale of agricultural land village immovable property shall vest in the tenant who holds under tenancy of the vendors the land or property sold or a part thereof."

6. On a plain reading the aforesaid section has been introduced prospectively and there is no question of the said section affecting in any manner the judgment and decree passed in the suit for pre-emption as early as in the year 1983 affirmed by the High Court in the second appeal in the year 1984.

7. According to us the impugned order passed by the high Court is in terms of the direction given by this Court in the judgment of the Constitution Bench in *Atam Prakash* case [(1986) 2 SCC 249] and we find no reason to take a contrary view. These appeals are accordingly dismissed. No costs.