
(1986) 03 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Regular First Appeal No. 73 of 1975

Bhag Bhari and others

APPELLANT

Vs

Sarla Devi and others

RESPONDENT

Date of Decision : 19-03-1986

Acts Referred:

Citation : (1987) PLJ 621 : (1988) 2 RRR 347

Hon'ble Judges : S.P.Goyal, J and I.S.Tiwana, J

Advocate : R. C. Setia, Advocate., Advocates for appearing Parties

Judgement

S.P. Goyal J.

1. This appeal against the judgment of the learned Sub Judge Ist Class has arisen out of a suit filed by the appellants for possession of the shop in dispute by way of specific performance of the agreement of sale dated September 13, 1969, executed between the appellants and respondent Nos. 2 to 5. The said shop was originally owned by Sumer Chand and on his demise was inherited by all the respondents. The plaintiffs, however, claimed that in a family arrangement the shop had fallen to the share of respondents Nos. 2 to 5 and they were its exclusive owners when the agreement was entered into. As respondent No. 1 was also one of the natural heirs, she was impleaded as a defendant to ward off any objection by her to the enforcement of the agreement.

2. During the pendency of the suit, Sarla Devi, respondent No. 1, filed a petition under Section 22 of the Hindu Succession Act (for short, called the Act) to acquire the ownership of the 4/5th share of respondent Nos. 2 to 5 in the shop in dispute in which they conceded her right and executed a sale deed in her favour on July 20, 1970, qua their share. The validity of the sale in favour of Sarla Devi was challenged on a number of grounds, but the only one which survives for determination in this appeal is that the provisions of Section 22 of the Act are ultra vires of the provisions of Articles 14, 15 and 19 of the Constitution and that the Parliament was not competent to enact the said Section 22 being beyond the scope of "Entry 5" of the Concurrent List which covers the subject of intestate

succession. The validity of the sale in favour of respondent No. 1 was upheld by the trial Court and the suit dismissed, which necessitated the filing of this appeal.

3. As observed above, the judgment and decree of the trial Court is assailed only on the ground that the legislative provision contained in Section 22 of the Act is ultra vires of the Constitution. The challenge on the basis of Articles 14, 15 and 19 of Constitution was that the right of preemption contained in the said section was unreasonable restriction on the right of a citizen to acquire, hold and dispose of property. This matter stands concluded by a judgment of the Supreme Court in *Ram Sarup and others v. Munshi and others*, 1963 P.L.R. 531 wherein the challenge to the constitutional validity of the right of preemption under section 15 of the Punjab Preemption Act on similar grounds was turned down by the Constitution Bench.

4. The preferential right to acquire the interest in the joint property proposed to be transferred has been guaranteed to the cosharers only under the said Section 22. The attack against the right of preemption of a cosharer on the basis of Article 14 has also been turned down by a recent judgment of the Supreme Court in *Atam Parkash v. State of Haryana and others*, 1986(1) 89 P.L.R. 329 : 1987 RRR 116. The right of preemption guaranteed under Section 22 of the Act, therefore, would also not be open to challenge on the basis of Article 14 of the Constitution. The argument based on Article 15 was that the right of preemption under the said section has been guaranteed only to Hindus whereas it is not available to nonHindus living in India. It was, therefore, argued that provisions of Section 22 of the Act have resulted in discrimination on the basis of religion between the Hindus and the nonHindus in the country. The law of succession applicable to the communities other than the Hindus is based on their personal law. The Hindu Succession Act governs only the Hindus. The non Hindus are not readily agreeable to any change in their personal law. The classification, therefore, was quite rational and the provisions of Section 22 would not be open to challenge on the ground of discrimination between Hindus and nonHindus.

5. Lastly it was contended that the subject of succession squarely falls under "Entry 5" of the Concurrent List and, as such, no provision regarding preferential right of acquisition of property could be provided in the Act. This matter also stands concluded by the earlier Division Bench decision of this Court in *Jaswant and others v. Shrimati Basanti Devi*, 1970 P. L. J. 587 wherein it was held that the Parliament was competent to enact Section 22 under "Entry 6" of the Concurrent List and that this provision would be applicable only to the urban property and not to the agricultural land. It is not necessary that all the provisions of a statute must be covered under one entry and an enactment can contain provisions on more than one subject covered under various entries of the said list. The Parliament was, therefore fully competent to enact Section 22 by virtue of its powers under "Entry 6" of the Concurrent List and the contention raised has no merit.

6. For the reasons recorded above, this appeal is dismissed leaving the parties to

bear their own costs.