

(1996) 01 SC CK 0061

In the Supreme Court Of India

Case No : Civil Appeal No's. 2308 of 1996.

Karan Singh and others, etc.,

APPELLANT

Vs

Bhagwan Singh (Dead) by LR's. and others, etc.,

RESPONDENT

Date of Decision : 24-01-1996

Acts Referred:

Evidence Act, 1872 — Section 115

Punjab Pre-emption Act, 1913 — Section 15

Citation : (1996) 1 AD 917 : AIR 1996 SC 2249 : (1996) 1 JT 618 : (1996) 113 PLR 321 : (1996) 1 SCALE 594 : (1996) 7 SCC 559 : (1996) 1 SCR 924 : (1996) 1 UJ 419

Hon'ble Judges : K. Ramaswamy, J;G.B. Pattanaik, J

Bench : Division Bench

Advocate : S. K. Baggar, Monika Bhanot, S. Baggar and S. Baggar, for the Appellant; Ashok Sen, Manish Kumar. Chaudhary and S. K. Verma, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted
2. Substitution of legal representatives of the first respondent is allowed.
3. Bhagwan Singh, the respondent has 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 appellant. 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 principle plea was that being co-owner, he is entitled to pre-emption of the land purchased by

the appellant. The trial court decreed the suit of the respondent. Appeal filed by appellants was dismissed and on appeal 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 species to strangers from whom the appellant had purchased, has no right to exercise the right to pre-emption u/s 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 where under the right of preemption 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 coparcenaries or joint owners, is entitled u/s 15 to exercise the right 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 u/s 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 decree 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 lands sold were in specie from the co-parcenary property. Having inducted the strangers into the property, he cannot object to his vendees selling the property to the third parties and claim right of preemption 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 preemptor that he will not pre-empt the purchaser can invoke the doctrine of estoppel against the preemptor. Having sold the lands to the strangers, he cannot plead invalidity of the title of his vendees selling the same lands to another stranger 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 coparcenaries 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

Amarjit Kaur Vs. Pritam Singh and Others, 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 a 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 confirmed the decree of the trial Court and granted to Bhagwan Singh the right 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 and that of the trial Court, i.e., Sub-Judge, Second Class, Bhiwani made on October 31, 1985 in suit No. 201/83 are set aside. In conclusion, the suit stands dismissed but, in the circumstances, parties are directed to bear their own costs.