

(1986) 11 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : S.A.O. No. 40 of 1986

Smt. Leela Wati and others

APPELLANT

Vs

Hukam Chand and another

RESPONDENT

Date of Decision : 05-11-1986

Acts Referred:

Punjab Pre-emption Act, 1913 — Section 15(1)

Citation : (1986) 11 P&H CK 0006

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : N.K. Kapur, for the Appellant; A.S. Nehara, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—This appeal is directed against the judgment dated 28.4.1986 of the learned Additional District Judge, Sirsa allowing in appeal amendment of the plaint on an application filed by the Plaintiffs-Respondents, setting aside the judgment and decree dated 24.4.1985 of the learned Sub Judge IIIrd Class, Sirsa and remitting the case back to the trial Court for deciding the same afresh on the basis of the amended plaint.

2. Briefly the facts are that one Nanka Ram was the owner of the suit land and vide registered sale deed dated 12.4.1982 he sold the same to the Defendants-Appellants. Hukam Chand and others Plaintiffs-Respondents filed a suit seeking to preempt the said sale on the ground that they are the grandsons of vendor Nanka Ram. This claim for pre-emption made by them was established and the suit was decreed in their favour. The vendees-Appellants being aggrieved from the decree of the trial Court filed an appeal which came up for hearing before the learned Additional District Judge, Sirsa. The Supreme Court vide its judgment in *Atma Parkash v. State of Haryana and Ors.* (1986) 89 P. L. R. 329 held that the right of pre-emption given by Section 15(1) and (2) of the Punjab pre-emption Act as applicable to the State of Haryana on the ground of consanguinity is ultra vires of the Constitution. The right of preemption given to a co-sharer and a

tenant in respect of the land sold was. however held to be intra vires. As a sequel to the judgment in Atam Parkash"s case (supra) the appeal of the vendees was likely to succeed as the right of pre-emption on the ground of being grandsons of the vendor was no longer available to the Respondents. They, therefore, filed an application under Order 6 Rule 17 CPC seeking amendment of the plaints so as to incorporate a fresh ground for pre-emption of the sale i. e. that they were the co-sharers along with the vendor in respect of the suit land. It was pleaded that due to inadvertance this right of pre emption was not asserted in the plaint as originaily filed in the trial Court. The learned First Appellate Court allowed this application, permitted the said ground to be inserted in the plaint by way of its amendment and as already observed remitted the case back to the trial Court for its disposal.

3. The learned Counsel for the Appellants has contended that the sale which was sought to be pre-empted has taken place on 12.4.1982. The period of limitation for a suit for pre emption of the said sale expired on 12.4.1983. Thus a valuable right had accrued to the Appellants which could not be defeated by allowing amendment of the plaint and permitting incorporation of an altogether a new ground to enable the Respondents to assert their right of pre emption. He placed reliance on the Full Bench judgment of this Court in Banta Singh and Ors. v. Shrimati Harbhajan Kaur and others 1974 P. L. J 328 He contends that the suit for pre-emption based on the ground of consanguinity had to be dismissed in view of the law laid down in Atam Parkash"s case (supra). Thus a valuable right accrued to the Appellants inasmuch as their right to retain the property had become indefeasible. If that right is put in jeopardy by allowing amendment of the plaint, a gross injustice would be done to them which cannot be compensated by the award of costs.

4. After hearing the learned Counsel for the parties I am of the view that the judgment under appeal cannot be sustained. The amendment has been wrongly allowed. Indubitably a valuable right had accrued to the Appellants by lapse of the period of limitation. A fresh ground asserting the right of pre-emption could not be allowed to be pressed into service by the Respondents after expiry of more than four years after the date of sale which was sought to be pre-empted. The principles laid down by the Full Bench in Banta Singh"s case (supra) ought to have been followed by the learned Additional District Judge. I also find support for my view from Gurmukh Singh v. Dalip Singh 1971 P. L. J. 224 where the facts were almost similar. Pre-emption was originally sought on the ground of relationship and by amendment after expiry of the period of limitation, superior right of pre-emption was claimed on the additional ground of cosharership. It was held that there is no connection between the ground originally taken and the ground that is sought to be added. If a suit had been brought on the date of amendment on the ground of co-sharership that would have been obviously barred by time. This ground is conspicuous by its absence in the original plaint. The same view was taken in Shankar Singh v. Chanan Singh (1968) 70 P. L. R. 455. There is no doubt that the learned First Appellate Court has not exercised

its discretion in a judicial Manner and has in fact transgressed its jurisdiction in allowing a new ground for claiming a superior right of pre-emption.

5. I, therefore, allow this appeal, set aside the judgment dated 28 4.1986 of the learned Additional District Judge, Sirsa and remand the case to him for deciding the appeal on the basis of the original pleadings. The parties through their counsel are directed to appear before the learned Additional District Judge, Sirsa on 3.12.1986.