

KARNAIL SINGH
v.
ANIL KUMAR AND ANR.

JANUARY 10, 1995

[K. RAMASWAMY AND SUJATA V. MANOHAR, JJ.]

Punjab Pre-emption Act, 1913—Clause (iv) of s.15 (1)(b)—Pre-emption—Sister sold her share out of joint family property—Brother entitled to pre-emption as "other co-sharer".

Sister of respondent sold her share out of joint property to appellant by registered sale deed dated January 22, 1985. Respondent filed suit for pre-emption under clause (ii) of Section 15(1)(b) of the Punjab Pre-emption Act, 1913. Trial Court decreed the suit. Appeal and second appeal were dismissed.

Dismissing the appeals for different reasons, this Court

HELD : 1.1. Respondent entitled to claim pre-emption as he was not a party to the sale transaction executed by sister and he was "other co-sharer" as envisaged in 15(1)(b)(fourthly) of the Punjab Pre-emption Act, 1913. [166-B]

1.2. Clauses (i) to (iii) of Section 15(1)(b) as amended in 1980 were declared *ultra-vires* Articles 14 and 15 of the Constitution but as validity of 15(1)(b)(iv) was upheld it entitled those relations covered under Section 15(1)(b)(i) to (iii) who are "co-sharers" to pre-emption rights. [167-B-D]

Atam Prakash v. State of Haryana, [1986] 2 SCC 249 and *Bhikha Ram v. Ram Sarup*, [1992] 1 SCC 319, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1569 of 1986.

From the Judgment and Order dated 22.1.85 of the Punjab & Haryana High Court in R.S.A. No. 3126 of 1984.

K.K. Mohan for the Appellant.

D.V. Sehgal and Prem Malhotra for the Respondents.

A The following Order of the Court was delivered :

B This appeal by special leave arises from the judgment of the High Court of Punjab & Haryana dated January 22, 1985 made in RSA 3126/84. The facts not in dispute are that Anil Kumar and the vendor of the appellant Neeru are brother and sister. Neeru sold the property in dispute to the appellant by a registered sale deed. Anil Kumar laid the suit for pre-emption under s.15(1)(b) clause secondly of the Punjab Pre-emption Act, 1913, (for short, 'the Act'). The trial court decreed the suit and it is confirmed by the appellate court. The second appeal was dismissed in limine. By then, this court in *Atam Prakash v. State of Haryana*, [1986] 2 SCC 249, declared Clauses (i) to (iii) of Clause (1) of s.15(1)(b) of the Act as amended in 1960 as *ultra vires* of Articles 14 and 15 of the Constitution. Consequently, the claim of the respondent on the basis of clause secondly of s.15(1)(a) having been declared to be *ultra vires*, this court granted leave.

D In *Atam Prakash's* case, this court upheld the constitutional validity of Clause fourthly which postulates entitlement of pre-emption by "other co-sharers". Subsequently, the questions whether the relations covered in Clauses (i) to (iii) of s.15(1) are co-sharers under clause fourthly and whether they are entitled to the benefit of the pre-emption, were referred to a Bench of three Judges. In *Bhikha Ram v. Ram Sarup*, [1992] 1 SCC 319, this Court considered the controversy and held that s.15 after the amendment in 1960 provided that where the sale is of a share out of the joint property and is not by the co-sharers jointly, the right of pre-emption was vested fourthly in the "other co-sharers". It was further held that this court in *Atam Prakash's* case did not intend to exclude any specified co-sharer from the scope of clause fourthly of s.15(1)(b) of the Act. It was concluded thus :-

G "We find it difficult to hold that the purport of this Court's decision in *Atam Prakash* case was to deny the right of pre-emption to those relative or relative of the vendor or vendors who were specified in the erstwhile first three clauses of s.15(1)(b) even if they happen to be co-sharers. The expression 'other co-sharers' was used in the fourth clause of the said provision to ensure that no co-sharer was left out or omitted and not to deny the right to kinsfolk would have exercised the right in the order of preference, for which no justification was found. The relations in the first three clauses of

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s.15(1)(b) may or may not be co-sharers. The use of the expression 'other' in clause fourthly conveys the possibility of their being co-sharer also. What this Court disapproved as offensive to Articles 14 and 15 is the classification based on consanguinity and not on co-ownership. The right of pre-emption to co-sharers is held to be *ultra vires* the Constitution. Therefore, it is difficult to hold that this court intended to deny the right of pre-emption of those kinsfolk even if they happened to be co-shares. That would clearly be discriminatory".

In view of the above declaration of law by this Court, it is now concluded that even relations who would be otherwise not entitled under clauses (i) to (iii) of s.15(1)(b) of the Act would also become 'co-sharers' under clause fourthly. Being not a party to the sale transaction of joint property, they are entitled to claim pre-emption. It is not in dispute, as stated earlier, that the respondent Anil Kumar was not a party to the sale transaction executed by his sister Neeru. Therefore, he would be other co-sharer in clause fourthly of sub-s. (1)(b) of s.15 of the Act. As a consequence, he is entitled to pre-emption. Shri K.K. Mohan, learned counsel for the appellant, contended that there is no evidence to show that respondent Anil Kumar is a co-sharer. On the other hand, the recitals in the sale deed shows that there was a prior partition under which Neeru had obtained the property under sale towards her share and, therefore, Anil Kumar cannot be said to be a co-sharer. The learned counsel for the respondents has produced before us a document of the year 1974-75 which was already marked in the trial court which would show that they are the co-owners. In this view, we do not think that we will be justified to remit the matter for further evidence.

The appeal is accordingly dismissed though for different reasons. No costs.

A.G.

Appeal dismissed.