

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR No. 2535 of 2014 (O&M)  
Date of decision: 14.12.2015**

Neeraj and others

... Petitioners

versus

Kanwar Girish Kumar and another

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. Vikram Punia, Advocate for the petitioners.

Mr. B.R. Vohra, Advocate for the respondents.

**K.Kannan, J.**

The suit was at the instance of the plaintiffs on a claim that they had a preferential right as co-heirs at law under the Hindu Succession Act, 1956 (in short the 'Act'), The trial Court dismissed the interim player for injunction against the co-heirs from selling the property but in appeal, the Appellate Court granted the restraint order.

Counsel for the petitioners has an argument to make that the Court below has relied on two judgments of this Court that have examined the interplay of the provisions under Section 22 of the Act and Section 15 of The Punjab Pre-emption Act 1913. According to him, the provisions of Section 15 are pari materia with the right conferred under Section 22 of the Act and right of Pre-emption cannot be enforced after the provisions of Section 15 of the Punjab Pre-emption Act 1913 had been held to be unconstitutional in Atam Prakash Vs. State of Haryana, AIR 1986 SC 859.

As a mere statement of law, I must observe that the judgment in Harbir Vs. Rajpal, 2002 (2) RCR (Civil) 241, relied on by the petitioners to support this argument, with due respect does not state the law correctly. In Harbir Vs. Rajpal (supra) the claim by a person for an injunction against his brother in relation to property inherited by

them from their father that he had a right of pre-emption guaranteed under Section 22 of the Hindu Succession Act, was refused making a laconic reference to Atam Prakash case (Supra) as rendering impermissible a right of pre-emption. The reference to Atam Prakash's case under the facts and circumstances of the case, was wholly incongruous. Atam Prakash Vs. State of Haryana, AIR 1986 SC 859 has not disapproved of right to pre-emption itself as anachronistic. On the other hand, an amendment made to Section 15 of the Punjab Pre-emption Act making invidious distinction between certain male heirs being preferred to certain female heirs was held unconstitutional and violative of Article 14 of the Constitution. The striking down of certain amended provisions of the Punjab Pre-emption Act did not strike down the right to pre-emption itself. It was the discriminatory preference given to certain heirs that was struck down.

The Punjab Pre-emption Act 1913 that granted certain rights to certain classes of properties for co-owners and lessees cannot be taken to eclipse the right provided under Section 22 of the Act. It is for two reasons: the Punjab Pre-emption Act 1913 is an imperial enactment brought before Independence. The Hindu Succession Act which was the post-Independence enactment contains a specific provision that renders invalid any law which is inconsistent to the provisions of the Act. Section 4 of the Act has an over-riding effect that unless or otherwise expressly provided in the Act itself any text rule or custom or usage or any other law enforce immediately before the commencement of the Act shall cease to apply to Hindus. The governing consideration shall be only Section 22 of the Hindu Succession Act and not Punjab Pre-emption Act. Indeed, in Atam Prakash Case (Supra), examined by Hon'ble the Supreme Court was not examining any conflict between the provisions of The Punjab Pre-emption Act 1913 and Section 22 of the Act. If ever there is any repugnancy between Central legislation and a State law, the State law to that extent shall be inoperative under Article 251 of the Constitution.

The fact that 1913 Act itself was repealed in a different story. I am not finding and repugnancy as such but this is only stated for underscoring the primacy of Central legislation, such as the Hindu Succession Act. Under the circumstances, there can be no argument that the right of pre-emption is to be examined by taking the Punjab Pre-emption Act 1913 to be sole repository for exercise of such right. Even apart from the application of the Act, there is an independent right created under Section 22 of the Act allowing for a right to pre-emption to co-heirs. The term, co-owner is a larger expression than co-heir. There can be co-owners without being co-heirs at law. What Section 22 protects is a preferential right of a co-heir and does not take into its field rights amongst all classes of co-owners.

The proposition which was set through subsequent judgment in Surender Kumar Jain Vs. Madhu Gupta and another in RSA No. 1785 of 2008 decided on 15.10.2009 sets out the law correctly and after the Lower Appellate Court has considered the same and has granted the relief of injunction. I hold that it has done what was appropriate.

The order passed by the Courts below is maintained and the revision petition is dismissed.

**(K.KANNAN)**  
**JUDGE**

14.12 .2015  
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