

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

RSA No.419 of 1989 (O&M)

Date of decision : 25.05.2016

Krishan Lal and others

...Appellants

Versus

Viran Wali (deceased) through LR's.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. M.S. Rakkar, Sr. Advocate with
Mr. K.G. Chaudhry, Advocate for the appellant.

Mr. B.R. Gupta, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellants-defendants are aggrieved of the concurrent finding of fact, whereby suit for possession by way of pre-emption at the instance of erstwhile owner Viran Wali had been decreed and the appeal filed against the same, has been upheld.

Mr. M.S. Rakkar, learned Senior Advocate assisted with Mr. K.G. Chaudhary, Advocate appearing on behalf of appellants, in support of his arguments, has raised multifold arguments to contend that land measuring 25 kanals 11 marlas was owned by following persons:-

- a) Veeran Wali

- b) Ram Rakhi
- c) Chanan Devi
- d) Bharavawali

Ram Rakhi had sold her 1/4th share i.e. 6 kanals 8 marlas vide sale deed dated 12.09.1986 to Krishan Lal and Gurbachan. Veeran Wali filed the suit in 1986 claiming the preemptory right being co-sharer. The aforementioned suit was decided on 28.07.1988. In support of his contentions, he has relied upon following case laws:-

- “1. *Sunehra and another Vs. Barham Parkash, 1996(3) RCR (Civil) 342*
2. *Karan Singh Vs. Bhagwan Singh (dead) by LRs, 1996(2) RRR 105.*
3. *Suresh Kumar Vs. Chanchal Singh and another, 1995(3) RRR 369*
4. *Gurdayal Vs. Sant Lal and others, 2007(3) RCR (Civil) 34”*

to contend that Act is retrospective in nature and not prospective and, therefore, the Punjab Pre-emption Act, 1913 (hereinafter to be referred as 'Act of 1913') as amended in 1995 repealed the provision of Section 15 of the Act and right to pre-emption ceases to exist. All these facts have not been noticed by both the Courts below. He further submits that legislature in the wisdom also incorporated 15(2) to give protection to the female to inherit the property from husband and the father. Since appellant-vendor had acquired the property by father and, therefore, they could not bring the case within the framework of Section 15 of Punjab Pre-emption Act, 1913. The factum of inheritance of the property by the father in the cross-examination of PW1 has been admitted, thus urges this Court to frame following substantial questions of law:-

1. Whether the amendment caused in the Punjab Pre-Emption Act 1913 would be retrospective or prospective in nature?
2. Whether the suit of the respondent-plaintiff was maintainable in view of provision of Section 15(2) of Punjab Pre-Emption Act, 1913?
3. Whether the Court can take notice of the challenge in law and set aside the decree because of the right having being taken away in lieu of amendment caused in 1995?

Mr. Rakkar, further submits that during the pendency of the appeal, successors-in-interest of Veeran Wali sold the land in the year 2000-2002-2003 and the sale deeds in this regard are sought to be placed on record by invoking the provision of Order 41 Rule 27 of the Code of Civil Procedure to say that once other co-owners had lost the right of ownership, they cannot permitted to pursue the matter under the Repealed Act.

Mr. B.R. Gupta, learned counsel appearing on behalf of the respondent submits that in lieu of judgment rendered by Full Bench of the Hon'ble Supreme Court in *Shyam Sunder Vs. Ram Kumar, 2001(8) SCC 24*, it has been held that amendment is prospective in nature and not retrospective.

Mr. Rakkar and Mr. Gupta, have also relied upon same judgment rendered by Hon'ble Supreme Court in *Atam Prakash Vs. State of Haryana and others, AIR 1986 SC 859* to contend that whether pre-emption right granted to co-owner or tenant is valid or not.

Mr. Gupta, submits that in *Atam Prakash's* case, it has been held that the classification in Section 15 of the Punjab Pre-Emption Act was inconsistent with the modern ideas by observing that keeping in view of the fact where the suits were pending and decrees have been passed or appeals are

pending before the Appellate Court, the same had been ordered to be disposed of in accordance with declaration granted and in case where no appeals have been filed against those decrees, decrees shall be binding inter parties. The Punjab Pre-Emption Act came to be pondered by the Hon'ble Supreme Court in *Pirithi Vs. Mohan Singh and others, 2011(9) SCC 107* by holding therein that suit for pre-emption has been filed by co-sharer whether right would be available to him as during the pendency of the suit, the Act was amended and right had been taken away. The preemptor must have a right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree.

I have heard learned counsel for the parties and appraised the paper book and of the view that sale deeds aforementioned would not entail into taking away the right of successors-in-interest of Veeran Wali in view of ratio decidendi culled out by Hon'ble Supreme Court in Pirithi's case as right of pre-emption had accrued on the date of sale and not on filing of the suit. Subsequent event thus cannot be taken into consideration. Hon'ble Judges in judgment rendered in *Shyam Sunder Vs. Ram Kumar, 2001(8) SCC 24* have held that applicability of the Punjab Pre-Emption Act, 1913 to be prospective in nature and not retrospective, therefore, judgment (supra) relied upon by Mr. Rakkar, would not come to his rescue. The matter of consideration before the Hon'ble Supreme Court in Atam Prakash's case was with regard to the right of ownership vis-a-vis tenant, which was held to be inconsistent with the modern ideas and was considered to be fuddle and piratical. The respondent-plaintiff did not base their claim as per the provision of Sub-Section 2 of Section 15. Even otherwise as per the evidence brought on record i.e. Ex.P2, the property had fallen to sister from their mother on demise of the father and this fact

surfaced from later part of the cross-examination conducted by the defendants. Ex.P2 Jamabandi also reveals the factum of inheriting of the property, thus the case of the respondent-plaintiff falls within the provision of Section 15 of the 1913 Act and not 15(2) as sought to be projected in this Court.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below, much less, no substantial questions of law arises for determination.

Dismissed.

25.05.2016

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**(AMIT RAWAL)
JUDGE**