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

RSA-1566-1995 (O&M)

Date of Decision : 24.10.2024

Daya Chand (deceased) through LRs & Ors

... Appellant(s)

Versus

Satish Kumar and Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. K.S. Dhaliwal, Advocate and
Mr. Vicky Sharma, Advocate for the appellants.

Mr. Kartar Singh Malik, Advocate and
Mr. Sandeep Singh Ghangas, Advocate
for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

1. The present regular second appeal has been filed by the defendant Nos.1 to 4-appellants against the judgment and decree dated 08.02.1995 passed by the Trial Court and the judgment and decree dated 17.05.1995 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 and 2 herein filed the present suit for possession by way of pre-emption of the land measuring 18 kanals being 360/760 share of total land measuring 38 kanals 0 marla situated in the revenue estate of Village Morkhi, Tehsil Safidon, District Jind. It was pleaded that the vendor-defendant No.5 (respondent No.3 herein) was owner in possession of land measuring 18 kanals being 360/760th share of total land measuring 38 kanals as described in detail in the headnote of the plaint, who vide registered sale deed No.700 dated 24.04.1992 sold the land to the defendant Nos.1 to 4-

appellants for sale consideration of Rs.56,250/-, whereas only Rs.45,250/- was actually paid. The plaintiff-respondent Nos.1 and 2 being co-sharers and the defendant Nos.1 to 4-appellants being strangers, the plaintiff-respondent Nos.1 and 2 claimed to have a superior right of pre-emption. Hence, the present suit. On notice, the defendant Nos.1 to 4-appellants herein appeared and filed their written statement raising various preliminary objections regarding locus standi, maintainability, estoppel and that *zerepanjam* was not deposited within time. On merits the defendant Nos.1 to 4-appellants herein asserted that the plaintiff-respondent Nos.1 and 2 were not co-sharers in the suit land and that they had actively participated in the sale. In the alternative it was prayed that in case the suit is decreed then the defendant Nos.1 to 4-appellants were entitled to the sale consideration. Replication was filed. On the basis of the pleadings, the following issues were framed :

1. Whether the plaintiffs have superior right to pre-empt the sale ? OPP
2. Whether the sale amount of Rs.26,250/- was fixed in good faith and actually paid ? OPD
3. If issue No.2 is not proved, what was the market value of the suit land at the time of sale ? OPP
4. Whether the plaintiffs have no locus standi to file the present suit ? OPD
5. Whether the 1/5th pre-emption amount has not been deposited within time, if so its effect ? OPD
6. Whether the plaintiffs are estopped from filing the suit by their act and conduct ? OPD
7. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
8. Relief.

3. The Trial Court vide the judgment and decree dated 08.02.1995 decreed the suit and the plaintiff-respondent Nos.1 and 2 were directed to deposit the balance amount, less 1/5th *zerepanjam* already deposited, within a period of one month from the date of the passing of the judgment and decree. Aggrieved by the same an appeal was preferred by the defendant Nos.1 to 4-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 17.05.1995. Hence, the present regular second appeal.

4. The sole argument raised by the learned counsel for the defendant Nos.1 to 4-appellants is that by way of the amendment of the Haryana Amendment Act, 1995, the right to pre-empt on the basis of co-sharer has been taken away and hence the judgments and decrees passed by the Courts be set aside.

5. *Per contra*, the learned counsel for the plaintiff-respondent Nos.1 and 2 has relied upon the judgment of the Larger Bench of the Hon'ble Supreme Court in the case of **Shyam Sunder & Anr. V/s Ram Kumar & Anr. [2001 (3) RCR (Civil) 754]** to contend that the amendment was prospective and would not have retrospective effect.

6. Heard.

7. In the present case the only argument raised by the learned counsel for the defendant Nos.1 to 4-appellants is that as per the amendment introduced by the Haryana Amendment Act, 1995 the right of a co-sharer to pre-empt a sale has been taken away. The law since stands settled by the Larger Bench of the Hon'ble Supreme Court in the case of **Shyam Sunder** (*supra*) wherein it has been held as under :

“From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise. We have carefully looked into new substituted section 15 brought in the parent Act by Amendment Act 1995 but do not find it either expressly or by necessary implication retrospective in operation which may effect the right of the parties on the date of adjudication of suit and the same is required to be taken into consideration by the appellate Court. In Shantidevi (Smt) and another vs. Hukum Chand [1996

(5) SCC 768] this Court had occasion to interpret the substituted section 15 with which we are concerned and held that on a plain reading of section 15 it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not effect the right of the parties which accrued to them on the date of suit or on the date of passing of the decree by the Court of first instance. We are also of the view that present appeals are unaffected by change in law in so far it related to determination of the substantive rights of the parties and the same are required to be decided in light of law of preemption as it existed on the date of passing of the decree.”

8. In view of the law laid down by the Hon’ble Supreme Court in the case of **Shyam Sunder’s** (supra), the argument of the learned counsel for the defendant Nos.1 to 4-appellants cannot be accepted. No question of law much less substantial question of law arises in the present case. The present appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

24.10.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO