

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

RSA-227-1996 (O&M)
Date of decision: 22.03.2024

Jai Parkash @ Parkash and Another ... Appellant(s)

Versus

Suraj Mal and Others ...Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harinder Singh Sandhu, Advocate for the appellants.

Mr. Dhananjay Mittal, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 13.10.1995 passed by the First Appellate Court.
2. Brief facts relevant to the present *lis* are that on 29.01.1993 Telu Ram son of Smt. Bhaga sold his 1/4th share in land measuring 24 kanals 12 marlas comprised in Khewat No.315, Khasra Nos.528-529, 1/4th share in land measuring 56 kanals comprised in Khewat No.466, Khasra Nos.766, 767 and his 15/60th share in land measuring 27 kanals 8 marlas comprised in Khewat No.731, Khasra Nos.1202, 1203 total measuring 27 kanals for the sale consideration of Rs.1,14,750/-. The present suit was filed by the plaintiff-appellants for pre-empting the sale on the ground that they were co-sharer in the suit property. Vide judgment and decree dated 21.10.1994 the suit was decreed by the Trial Court. Aggrieved by the same, an appeal was preferred by the defendant-respondents which was allowed

vide judgment and decree dated 13.10.1995 on the ground that there was an amendment in the Punjab Pre-emption Act, 1913 whereby the right of the co-sharer had been taken away.

3. Learned counsel for the plaintiff-appellants 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 would apply prospectively and would not have retrospective effect. It was further held that the right to pre-empt must exist on the date of the decree of the first Court and that the amendment under Section 15 as introduced by the Haryana Amendment Act of 1995 does not have retrospective effect.

4. Learned counsel for the defendant-respondents is not in a position to controvert the position in law as laid down by the Hon'ble Supreme Court in **Shyam Sunder's** case (supra).

5. Heard.

6. In the present case the suit was dismissed only on the ground that as per the amendment under Section 15 of the Act the rights of a co-sharer to pre-empt have been taken away. The law now stands settled 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.'

7. In view of the fact that the suit was dismissed only on the ground that vide Notification dated 07.09.1995 there was an amendment to Section 15 of the Act and the case was not decided on merits, this Court

deems it appropriate to remand the matter back to the First Appellate Court concerned to decide the same afresh, on merits, on all issues. Since the matter pertains to the year 1996, the Registry is directed to remit the matter for **15.05.2024** to the successor Court of the learned First Appellate Court, who shall issue notice to the parties and proceed accordingly.

8. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

22.03.2024
Ankur

(ALKA SARIN)
JUDGE

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