

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**206****RSA No.3015 of 1996****Date of Decision : 07.02.2024**

Sodan

....Appellant

VERSUS

Ashar Khan and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sudhir Aggarwal, Advocate for the appellant.

Ms. Gagan Preet Saini, Advocate for
Mr. Pavan Malik, Advocate for the respondent.**ALKA SARIN, J. (Oral)**

1. The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 30.08.1996 passed by the First Appellate Court whereby the appeal filed by the plaintiff-appellant challenging the judgment and decree dated 16.07.1994 passed by the Trial Court has been dismissed on the ground that the 1995 amendment to the Punjab Pre-emption Act, 1913 whereby the right of the co-sharer was taken away to pre-empt the sale would be applicable and that the right of pre-emption of the plaintiff-appellant, who had filed the suit for pre-emption on the basis of being a co-sharer, was no longer available to him.

2. Learned counsel for the plaintiff-appellant has relied upon a judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **Shyam Sunder & Anr. vs. Ram Kumar & Anr. [2001(3) RCR (Civil) 754]** wherein it was held as under :

“29. 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.”

3. Learned counsel appearing on behalf of the defendant-respondent is not in a position to dispute the legal position.

4. In view of the above, the judgment and decree dated 30.08.1996 passed by the First Appellate Court is set aside. The matter is remanded back to the First Appellate Court for deciding the appeal afresh, on merits, in accordance with the law laid down by the Hon'ble Supreme Court in the case of **Shyam Sunder** (supra). The parties are directed to appear before the First Appellate Court concerned on **28.02.2024** at 10.00 am.

5. Disposed off. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

07.02.2024
jk

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