

LETTERS PATENT APPEAL

Before Gurdev Singh and Gopal Singh, JJ.

BIRJEE,—Appellant

versus

PIRTHI ETC,—Respondents.

Letters Patent Appeal No. 725 of 1970

May 26, 1972

Punjab Pre-emption Act (1 of 1913)—Section 15—Provisions of section 15(2)—Whether over-ride section 15(1)—Sale of agricultural land by persons inheriting it directly from their maternal grandfather, their mother having predeceased her father—Whether covered by section 15(2)(a)—Brother and brother's sons of the vendor's mother alone—Whether have the right to pre-empt such sale.

Held, that the provisions of sub-section (2) of section 15 of the Punjab Pre-emption Act, 1913 over-ride the provisions of sub-section (1) of section 15 of the Act, and if a sale falls within both the sub-sections, sub-section (2) must prevail notwithstanding anything contained in sub-section (1). Sub-section (2) of section 15 will apply if the property sold is inherited by the female through her father or her husband. (Para 13)

Held, that the wording of section 15(2) of the Act indicates that the Legislature while amending the provisions pertaining to the right of pre-emption in respect of agricultural land and village immovable property put sales of properties inherited by a female from her father and her husband in a separate category and has confined the right of pre-emption to persons specified therein. In case of the property which has come into the hands of a female or her children by inheritance from her father, the right of pre-emption is to vest only in the brother or brother's son of such female. Section 15(2)(a)(II) further makes it clear that if a sale of such property is made by the son or daughter of such female who has inherited the property from her father, the right to pre-empt vests in the mother's brother or the mother's brother's sons, which means the brother or brother's sons of the female from whose father they got the property by inheritance. This furnishes an effective key to the intention of Legislature. Where the property inherited by a female from her father is sold by herself, the right to pre-empt vests in her brother or brother's sons, and if the sale is by the sons or daughters of such female after they inherit their maternal grand father's property, the right to pre-empt still vests in their mother's brother or the mother's brother's son. In these circumstances, the fact that the mother of the vendor had pre-deceased her father would make no difference and the sale would stand on the same footing as a sale made by the sons and

daughters of a female who had actually inherited the property on the death of her father.

(Para 5)

Letters Patent Appeal from the decree of the Court of the Hon'ble Mr. Justice D. S. Tewatia, dated the 21st day of May, 1970, passed in R.S.A. 712/65, affirming that of the Additional District Judge, Hissar, dated 20th February, 1965, who reversed that of the Senior Sub-Judge, Hissar, dated 19th November, 1963, and dismissed the plaintiff's suit with costs throughout.

Mohinderjit Singh Sethi, Advocate, for the appellant.

R. S. Mittal and Priya Mal, Advocates, for the respondents.

JUDGMENT

GURDEV SINGH, J.—In this appeal under clause 10 of the Letters Patent the short question involved relates to interpretation of section 15(2)(a) of the Punjab Pre-emption Act, 1913 (hereinafter referred to as the Act).

(2) The property sought to be pre-empted originally belonged to Gulzari, father of the appellatant—Smt. Birjee. He had another daughter Smt. Mahakauri. On Gulzari's death without a male issue or a widow his estate was mutated in equal shares in favour of Smt. Birjee and the sons and daughters of her sister Smt. Mahakauri, who had predeceased her father.

(3) On the 9th January, 1962, the land inherited by Inder, Mahavir and others (sons and daughters of the said Smt. Mahakauri) was sold away by them to Pirthi Singh, Sajjan Singh and Dala Singh respondents for Rs. 11,000. Smt. Birjee thereupon sued to pre-empt the sale on the ground that she was a co-sharer. Denying that the plaintiff had any right of pre-emption the vendees pleaded, *inter-alia*, that the land in suit was no longer joint, the parties being in possession of specific Khasra numbers. The learned trial Judge, however, rejected this plea and decreed Smt. Birjee's suit on payment of Rs. 11,000. In appeal, the learned Additional District Judge, without going into the plaintiff's claim that she was a co-sharer reversed the decree of the trial Court on the finding that the property in dispute having come into the vendors' hands from their maternal grandfather Gulzari, the case fell under section 15(2)(a) of the Act and the right of pre-emption did not vest in a co-sharer;

Birjee v. Pirthi, etc. (Gurdev Singh, J.)

the sole ground on which the plaintiff has based claim. This finding having been upheld by a learned Single Judge of this Court the pre-emptor has come up in further appeal.

(4) The persons in whom the right of pre-emption vests in respect of agricultural land and village immovable property are specified in section 15 of the Punjab Pre-emption Act, 1913, as it stands amended. The relevant clause of section 15 of the Act under which a co-sharer, as the plaintiff-appellant claims to be, has a right to pre-empt, runs thus:—

“15(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest:—

(a) * * * *

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly:—

First, in the sons or daughters or sons' sons or daughters's sons of the vendor or vendors;

Secondly, in the brothers or brother's sons of the vendor or vendors;

Thirdly, in the father's brothers or father's brother's sons of the vendor or vendors;

Fourthly, in the other co-sharers;

Fifthly, * * * *

Section 15(2) of the Punjab Pre-emption Act, however, provides:—

“Notwithstanding anything contained in sub-section (1):—

(a) where the sale is by a female of the land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest:—

(I) if the sale is by such female, in her brother or brother's son;

- (ii) if the sale is by the son or daughter of such female, in the mother's brother or the mother's brother's sons of the vendor or vendors.
- (b) where the sale is by a female of the land or property to which she has succeeded through her husband or through her son, in case the son has inherited the land or property sold, from his father, the right of pre-emption shall vest:—
- (i) First, in the son or daughter of such husband of the female.
- (ii) Secondly, in the husband's brother or the husband's brother's son of such female."

(5) It is clear that under this sub-section a co-sharer as such has not been given any right to pre-empt. Accordingly, when the sale sought to be pre-empted is by a female and is of the type of the property described therein, the provisions of sub-section (1) of section 15 will be of no avail to a co-sharer in view of the opening words of sub-section (2) of section 15, "Notwithstanding anything contained in sub-section (1)". The learned Single Judge has held that since the property sold had come into the hands of the vendors by inheritance from the father of their mother, clause (a) of sub-section (2) of section 15 of the Act governed the case and the appellant Smt. Birjee as a co-sharer was not entitled to pre-empt. The appellant's learned counsel urges that clause (a) of sub-section (2) of section 15 of the Act cannot apply as the property in dispute had been inherited by vendors directly from their maternal grandfather without their mother Smt. Mahakauri having ever succeeded to it. According to the clear language of section 15(2)(a) of the Act, it cannot be disputed that the provisions of this clause apply not only to a sale by a female of the property that she has inherited from her father but also to the sale of such property by her sons and daughters after inheriting the same. The controversy thus narrows down to the question whether sales by the sons or daughters of a female who inherit the property of their mother's father, their mother having predeceased, are covered by clause (a) of sub-section (2) of section 15 of the Act. The wording of section 15(2) of the Act indicates that the Legislature while amending the provisions pertaining to the right of pre-emption in respect of agricultural land and village immovable property put sales of properties inherited by a female from her father and her husband

Birjee v. Pirthi, etc. (Gurdev Singh, J.)

in a separate category and has confined the right of pre-emption to persons specified therein. In case of the property which has come into the hands of a female or her children by inheritance from her father, the right of pre-emption is to vest only in the brother or brother's son of such female. Section 15(2)(a)(II) further makes it clear that if a sale of such property is made by the son or daughter of such female who has inherited the property from her father, the right to pre-empt vests in the mother's brother or the mother's brother's sons, which means the brother or brother's sons of the female from whose father they got the property by inheritance. This furnishes an effective key to the intention of Legislature. Where the property inherited by a female from her father is sold by herself, the right to pre-empt vests in her brother or brother's son, and if the sale is by the sons or daughters of such female after they inherit their maternal grandfather's property, the right to pre-empt vests in their mother's brother or the mother's brother's sons. In these circumstances, the fact that the mother of the vendor had predeceased her father would make no difference and the sale would stand on the same footing as a sale made by the sons and daughters of a female who had actually inherited the property on the death of her father.

(6) It is by rule of representation, which is well-recognised both in Hindu Law and Customary Law, that the sons and daughters of a predeceased daughter succeed to the estate of their maternal grandfather and take the share to which their mother would have been entitled had she been alive when the succession opens. We, thus, find that the interpretation placed by the learned Single Judge on the relevant provisions of section 15 of the Act is correct and even if the appellant's claim that she was a co-sharer of the vendors is conceded, she has no right to pre-empt the sale in dispute.

(7) A number of authorities have been cited before us in the course of arguments but none of them has direct bearing on the question that has arisen before us.

(8) In *Devi Singh v. Nandu and others* (1), it was held that sub-section (2) of section 15 is an exception to the general rule laid down in sub-section (1) and, therefore, the sales made by the female owner which are not covered by sub-section (2) are pre-emptible under sub-section (1).

(1) 1962 Curr. L.J. 97.

(9) In *Gurbachan Singh v. Smt. Bhagwati & others* (2), I had observed that sub-section (1) of section 15 of the Act was applicable to sales made by a male or a female. On advertng to the facts of that case, it will be seen that these observations were made with reference to such sale by a female as was held not covered by sub-section (2) of section 15 of the Act. This rule is in accord with *Devi Singh's case* (1). (*Supra*).

(10) In *Jai Singh v. Mughla and others* (3), a Division Bench of this Court ruled that as sub-section (2) of section 15 of the Punjab Pre-emption Act starts with a *non-obstante* clause, the provisions of sub-section (1) of section 15 have to be read subject to sub-section (2) and if a sale falls within both the sub-sections, it is sub-section (2) which would apply to it irrespective of the fact that it could also be covered by sub-section (1).

(11) In *Kahla Singh and others v. Rajinder Singh and others* (4), it was held that the word "succeed" as used in section 15(2) of the Punjab Pre-emption Act indicates that the property is such as a female gets on the death of relatives mentioned therein and the word clearly conveys the idea of succession and not of transfers *inter vivos* including gifts.

(12) In *Mohinder Singh and others v. Balbir Kaur and another* (5), it was held that the word "through" in section 15(2) of the Punjab Pre-emption Act, means 'medium', 'agency', 'instrument', 'by means of', 'by the action of', 'by the instrumentality of' etc. and it also means 'on account of', 'owing to', 'from and by means of', and that the word cannot be read in any other sense. It also reiterates the dictum of this Court that sub-section (2) of section 15 is in the nature of *non obstante* clause and is an exception to the rule laid down in sub-section (1) that where sub-section (2) applies, the provisions of sub-section (1) do not operate. Tek Chand, J., further held that where a property is acquired under a will by the daughters from their father, sale by one of the daughters was not pre-emptible by another and the sale was not covered by sub-section (2) of section 15 of the Act.

(2) 1966 Cur. L.J. 10.

(3) 1967 P.L.R. 475.

(4) 1966 P.L.R. 589.

(5) 1968 P.L.R. 752.

Sant Lal v. State of Haryana etc. (Tuli, J.)

(13) All these authorities are consistent with the view we have taken. In brief, we have held that the provisions of sub-section (2) of section 15 over-ride the provisions of sub-section (1) of section 15 of the Act, and if a sale falls within both the sub-sections, sub-section (2) must prevail notwithstanding anything contained in sub-section (1). Sub-section (2) of section 15 will apply if the property sold is inherited by the female through her father or her husband. The clear position that emerges is that sub-section (2) of section 15 is applicable to the property inherited by a female from her father and is available for pre-emption to her brothers and brother's sons, while the sale of the property inherited by a female from her husband or son is open to pre-emption, firstly, by her husband's son or daughter and, secondly, by her husband's brother or husband's brother's sons.

(14) For all these reasons, we find no merit in this appeal. We accordingly affirm the findings of the learned Single Judge and dismiss the appeal with costs.

GOPAL SINGH, J.—I agree.

B.S.G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SANT LAL,—Petitioner

versus

State of Haryana, etc.—Respondents.

Civil Writ No. 4574 of 1971

May 26, 1972

Punjab Agricultural Produce Markets Act (XXIII of 1961 as amended by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (XXV of 1970)—Sections 12(2) (c) (iii) and 13—Punjab Agricultural Produce Markets (General) Rules (1962)—Rules 21(3) and 21(5)—Section 12(2) (c) (iii)—Nomination of a licensee as member of a Market Committee—Such licensee—Whether must have