

APPELLATE CIVIL

Before Harbans Singh, J.

SURJIT SINGH,—Appellant.

versus

NAZIR SINGH, AND ANOTHER,—Respondents.

Regular Second Appeal No. 971 of 1961.

Punjab Pre-emption Act (I of 1913) as amended by Punjab Act (X of 1960)—S. 15—Sale by a female owner—Property inherited neither from her father nor from her husband but acquired by herself—Sale—Whether pre-emptible and by whom—Sub-section (2)—Whether overrides sub-section (1) so far as sales by females are concerned.

1965.

July, 13th

Held, that a female may acquire property either by inheritance or by self-acquisition or by gift from others. In each of these cases, she may be a sole owner of the property. The idea behind sub-section (2) of section 15 of the Punjab Pre-emption Act is that if the property has come to her by inheritance from her father's side, descendants of that side should alone have a right to pre-empt, and if she had inherited the property from her husband, it should be the husband's relations who should have a right to pre-empt. On the other hand, if the female has acquired the property herself, either by purchase or by gift, there is no reason why her own relations as mentioned in sub-clause (a) or sub-section (1), should not have a right to pre-empt, just as in the case of a sale by a male proprietor.

Held, also that no doubt special provisions over-ride the general provisions but such over-riding is only to the extent to which special provisions are inconsistent with the general provisions. The provision of sub-section (2) are not inconsistent with sub-section (1) of the Punjab Pre-emption Act and does not over-ride it, so far as sales by females are concerned. Consequently sub-section (1)(a) would be applicable to sales by a female of properties other than the properties which are dealt with in sub-section (2).

Second Appeal from the decree of the Court of Shri E. F. Barlow, District Judge, Bhatinda, dated the 11th July, 1961, reversing that of Shri Raj Kumar Gupta, Sub-Judge 1st Class, Mansa, dated 24th February, 1961 and granting the plaintiff a decree for possession by pre-emption of the suit land on payment of Rs. 12,000 by 8th September, 1961, failing which his suit would stand dismissed with costs throughout otherwise the plaintiff's would get his costs for the suit throughout.

J. N. SETH, ADVOCATE, for the Appellant.

DALJIT SINGH, ADVOCATE, for the Respondents.

JUDGMENT

Harbans Singh, J. HARBANS SINGH, J.—The point of law urged by the learned counsel for the appellant in this case relates to the interpretation of sub-sections (1) and (2) of section 15 of the Punjab Pre-emption Act, as amended by Punjab Act 10 of 1960, which came into force on 4th of February, 1960. It is urged that though the sale took place on 3rd of September, 1959, the suit having been filed after coming into force of the amended section, the law, as amended, would apply.

The sale is by Mst. Dalip Kaur of the land in dispute which admittedly she got by way of a gift from her husband Maghar Singh. The pre-emptor is a minor son of the vendor who filed the suit for pre-emption through his maternal grandfather. There were only two points involved in the case; one was of limitation and the other whether the plaintiff had a superior right of pre-emption. The trial Court found the suit beyond limitation and, consequently, dismissed the suit. He had, however, given a finding in favour of the plaintiff that he had a superior right to pre-empt. The plaintiff went up in appeal and the lower appellate Court held that the suit was within limitation. With regard to the other issue, the same was in favour of the appellant and he did not press it, and apparently the learned counsel for the respondent-vendee did not address any arguments on issue No. 1 to support the judgment of the trial Court, the appeal was, consequently, accepted and the suit of the plaintiff decreed. The vendee has come up in appeal.

The learned counsel for the appellant has not challenged the finding of the lower appellate Court that the suit is within time because the period of limitation will begin to run from the date the deed was entered in the books and not from the date on which it was presented and signed by the Sub-Registrar. The only point urged by him is that in view of the provisions of sub-section (2) of section 15 of the Act, a sale by a female is pre-emptible only if it is of a type which is covered by sub-section (2) of section 15. In other words he urged that a sale by a female is pre-emptible only if she has either inherited the property from her father or from her husband; but if she has acquired the property herself or she has received it by gift, then the sale is not pre-emptible.

Section 15 of the Pre-emption Act runs as follows:—

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

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(a) where the sale is by a sole owner,—

First, in the son or daughter or son's son or daughter's son of the vendor;

Secondly, in the brother or brother's son of the vendor;

Thirdly, in the father's brother or father's brother's son of the vendor;

* * * * *

(b) where the sale is of a share out of joint land

* * * * *

* * * * *

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly,—

* * * * *

(2) Notwithstanding anything contained in sub-section (1),—

(a) where the sale is by a female of 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 brothers or the mother's brother's sons of the vendor or vendors;

(b) where the sale is by a female of 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,—

“FIRST, in the son or daughter of such female;

SECONDLY, in the husband's brother or husband's brother's son of such female.”

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The argument of the learned counsel for the appellant is that, as clearly stated in sub-section (2), the provisions of this sub-section override the provisions of sub-section (1). There is no dispute with this proposition, Sub-section (1) (a) deals with a sale by a sole owner. The words "sole owner" will include a female sole owner as well as a male sole owner. However, if a sale is by a female sole owner and the property sold is of a type which is described in sub-clause (a) or sub-clause (b) of sub-section (2), then in view of the overriding nature of the provisions of sub-section (2) the right of pre-emption will vest in the persons mentioned therein rather than the persons who are mentioned in sub-clause (a) of sub-section (1). Thus, if the property sold by a female had been inherited by her from her father or brother, then the right of pre-emption will vest in her brother or brother's son in preference to the persons mentioned in sub-clause (a) of sub-section (1). In other words, if a female has inherited the property from her father's side, the right of pre-emption will vest only in the descendants of her father, namely, her brother or brother's son. Now, if we go back to sub-section (1) (a), brother or brother's son of the vendor takes a second position in case of a sale by a sole owner and the son or daughter takes the first place. The result of the provisions of sub-section (2), therefore, to my mind, is that in case of a sale of property inherited by a female from her father's side, brother and brother's sons are to be preferred to the sons and other relations mentioned in sub-clause (a) of sub-section (1) and the latter have no right to pre-empt and this right is given solely to the brother or brother's sons. Similarly, in case the property is inherited by a female from her husband, then although the first right is given to the son or the daughter of the female vendor, just as is provided in sub-clause (a) of sub-section (1), yet the second place is given to the husband's brother or husband's brother's son of the female vendor rather than to the brother or brother's son of the vendor herself.

The learned counsel, however, does not stop here. According to him, the words "notwithstanding anything contained in sub-section (1)" mean that so far as a female is concerned, sub-section (1) stands repealed and is altogether inapplicable. I am afraid, I cannot agree with this contention. No doubt, special provisions override the general provisions but such overridings only to the extent

to which the special provisions are inconsistent with the general provisions and, consequently, sub-section (1) (a) would be applicable to sales by a female of properties other than the properties which are dealt with in sub-section (2).

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There is no difficulty in understanding the idea behind the provisions made in sub-section (2). A female may acquire property either by inheritance or by self-acquisition or by gift from others. In each of these cases, she may be a sole owner of the property. The idea is that if the property has come to her inheritance from her father's side, descendants of that side should alone have a right to pre-empt, and if she had inherited the property from her husband, it should be the husband's relations who should have a right to pre-empt. On the other hand, if the female has acquired the property herself, either by purchase or by gift, there is no reason why her own relations, as mentioned in sub-clause (a) of sub-section (1), should not have a right to pre-empt, just as in the case of a sale by a male proprietor. In the present case, as already stated, there is no dispute that the property was acquired by her by way of gift from her husband. Such an acquisition cannot be equated to inheritance by her from her husband, and sub-section (2) is, no doubt not applicable. However, as discussed above, provisions of sub-section (2) do not exclude the application of sub-clause (a) of sub-section (1) of section 15, and as provided therein her son is entitled to claim superior right of pre-emption.

The learned counsel for the appellant referred to two decided cases in support of his wide contention that sub-section (2) overrides sub-section (1) so far as sales by females are concerned. The first of these is *Debi Ram and another v. Smt. Chembeli and another* (1), (by Shamsher Bahadur, J.). The head-note runs as follows:—

“The words ‘notwithstanding anything contained in sub-section (1)’ as used in sub-section (2) of section 15 of the Punjab Pre-emption Act, indicate that whatever is stated in sub-section (2) would prevail over the rights recognised in sub-section (1). Sub-section (2) deals with the

(1) I.L.R. (1963) 2 Punj. 233=1963 P.L.R. 500.

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sale of property belonging to females to which they have succeeded either paternally or through their husbands. In either event, the co-sharers do not come into the picture at all as possible pre-emptors. They are excluded, even if the *khata* is joint, from exercising the right of pre-emption to which they are entitled under sub-section (1), clause (b) fourthly of section 15."

The words underlined by me in the head-note above make it quite clear that the learned Judge was dealing with sales of property belonging to females to which they had succeeded either paternally or through their husbands. As already discussed, these two types of properties are specifically dealt with in sub-section (2) and right of pre-emption in respect of sales of such properties is given only to the persons mentioned therein, and, consequently, no other person described in clauses (a), (b) and (c) of Sub-Section (1) would have a right to pre-empt. This case is, however, no authority for the proposition that even if the sale is of a type of a property which is not covered by sub-section (2), the provisions of sub-section (1) would not apply. Reference was then made to *Santa Singh v. Hazara Singh and others* (2), (by D. K. Mahajan, J.). In that case one Kartar Singh died leaving a widow Darshan Kaur, a minor son, Sarmukh Singh and two minor daughters. The widow sold the entire property including the shares of her minor son and two minor daughters. Kartar Singh's step brother Hazara Singh, being the *pichhlag* son of Kartar Singh's father Roda Singh, brought a suit for pre-emption. The trial Court had decreed the entire suit. The learned Judge held that the sale by the widow could be treated as four different sales relating to the shares of each one of the four heirs. So far as the sale of the share of the minor son is concerned, it was held that Hazara Singh had a right to pre-empt under sub-clause (a) of sub-section (1) of section 15 but so far as the sales by the widow and her two female children were concerned, they were to be governed by sub-section (2) of section 15 and, consequently, were not pre-emptible. The observations, on which reliance is being placed by the learned counsel for the appellant, are contained in paragraph 4 of the judgment at page 134 of the report and are as follows:—

"The opening words of section 15(2) are 'notwithstanding anything contained in sub-section (1)'.

Then there are two categories of sales dealt with in clauses (a) and (b). The first category of sale dealt with is by a female of land or property to which she succeeds through her father or brother. The second type of sale is by a female where she succeeds through her husband or through her son. It is common ground that if the present sale is a sale under sub-section (2) of section 15 the plaintiff-pre-emptor has no right to pre-empt. The plaintiff-pre-emptor will have only a right of pre-emption if the sale is of second type under section 15(1). It is well known canon of construction of statutes that a specific provision will exclude a general provision. It is also obvious that what was being sold under the sale deed were their own respective shares by each of the owners, * * *

In this view of the matter the sales must be treated so far as the three females are concerned by them under section 15(2) and once they are treated as sales by them under section 15(2), they cannot be pre-empted by the pre-emptor. He can only pre-empt the sale by the male owner under section 15(1) and that has been conceded by Mr. Narinder Singh."

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I am afraid, these observations, in no way support the contention of the learned counsel for the appellant. As is clear from the pedigree-table given in the opening part of the judgment, the property was inherited by the widow, Mst. Darshan Kaur, the minor son and the minor daughters from Kartar Singh. Therefore, so far as Darshan Kaur is concerned, she had inherited the property from her husband and so far as the minor daughters are concerned, they had inherited the property from their father. So in case of each of the three female vendors, the property was of a type which was covered by sub-section (2) of section 15, and the observations, of the learned Judge and the decision, with all respect, were in accordance with the provisions of law. This decision, however, is no authority for the proposition that except in the case of two types of properties mentioned in sub-section (2) of section 15, no sale by a female is pre-emptible.

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For the reasons given above, I find no force in the contention which is raised by the learned counsel for the appellant and dismiss the appeal. In the peculiar circumstances of the case, I leave the parties to bear their own costs in this Court.

K.S.K.

INCOME-TAX REFERENCE

Before Inder Dev Dua and Prem Chand Pandit, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB,—*Applicant.*

versus

M/S JAGATJIT DISTILLING & ALLIED INDUSTRIES LTD.—
Respondent.

Income Tax Reference No. 6 of 1962.

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Income-Tax Act (XI of 1922)—S. 10(2)(xv)—Winding up petition filed against the company by some shareholders—Compromise brought about by a negotiator as a result of which winding up petition was withdrawn—Amount paid to the negotiator—Whether allowable—Travelling expenses incurred by company's employees in connection with the defence of winding up petition—Whether allowable.

Held, that the amount paid by the company to a negotiator as his remuneration for bringing about a compromise between the company and the shareholders who had filed the winding up petition as a result of which the said petition was withdrawn and dismissed is allowable under section 10(2)(xv) of the Indian Income-Tax Act, 1922. The amount was expended wholly and exclusively for the purpose of the business of the assessee-company for, if the share holders had succeeded in their litigation, the company would have been wound up and its entire business come to an end. Since the existence of the Company was threatened, it was part of its business to defend this litigation. Thus, this expenditure was incurred for the preservation of its business.

Held, that the travelling expenses incurred by the employees of the company in defending the winding up petition against the company are also allowable under section 10(2)(xv) of the said Act, as they were incurred wholly and exclusively for the purpose of the business of the company.