

CASE NO.:  
Appeal (civil) 342 of 2008

PETITIONER:  
Labh Singh & Ors.

RESPONDENT:  
Bachan Singh

DATE OF JUDGMENT: 11/01/2008

BENCH:  
Dr. ARIJIT PASAYAT & AFTAB ALAM

JUDGMENT:  
J U D G M E N T

(Arising out of S.L.P. (C) No.3100 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Heard learned counsel for the parties.
2. Leave granted.
3. Challenge in this appeal is to the judgment dated 29.10.2004 passed by a learned Single Judge of the Punjab and Haryana High Court in a Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (in short \021CPC\022). The Second Appeal before the High Court was filed by the plaintiff who had succeeded before the Trial Court; but the First Appellate Court set aside the judgment and decree passed. In the Second Appeal, the judgment and decree of the Trial Court was restored and those of the First Appellate Court were set aside. The respondent as plaintiff filed a suit for pre-emption.
4. Background facts in a nutshell are as follows:

The plaintiff filed suit for possession alleging therein that the vendor Singh Ram is jointly recorded as owner of half share of land measuring 24 kanals situated in village Fatehbad Tehsil Naraingarh. The plaintiff and vendor Singh Ram are related to each other as the plaintiff is fourth degree collector of the vendor. Singh Ram had sold half of 24 kanal of land by way of registered sale deed dated 2.6.1979 registered on 29.6.1979 for an ostensible consideration of Rs.30,000/-

The plaintiff inter alia claimed superior right of pre-emption as a co-sharer with the vendor in the land in dispute under Section 15(1) of Punjab Pre-emption Act, 1913 (hereinafter referred to as the \021Act\022). It was the case of the defendant that Singh Ram was owner of only 3/4th share and his sister was owner of 1/4th share and both of them were jointly owners of half of the land. Singh Ram alone has half share of land measuring 24 kanals, but it was asserted that the sale deed was by Singh Ram and Angrezo who are owners

of the land. In replication, it was pointed out that the sale is by Singh Ram for himself and as Mukhtiar of Smt. Angrezo. Therefore, the sale is pre-emptible.

5. The Trial Court decreed the suit on the ground that the plaintiff is a co-sharer and has thus superior right of pre-emption. The Trial Court negatived the argument raised by the defendant that the sale is by a female and thus governed by the provisions of sub-section (2) of Section 15 of the Act. However, in the appeal filed by defendant, the judgment and the decree passed by Trial Court were set aside and it was held that vendee has improved his status as that of a co-sharer in view of the fact that the sale to the extent of share of Angrezo is not pre-emptible being not governed by the provisions of Section 15(2) of the Act and thus the plaintiff does not have superior right of pre-emption.

6. In Second Appeal, the following questions were formulated for consideration:

1. Whether the plaintiff has superior right of pre-emption as co-sharer?
2. Whether the suit for pre-emption can be dismissed for not disclosing the complete fact regarding the sale by Angrezo, a female vendor?

7. The High Court was of the view that right of pre-emptor cannot be defeated by virtue of amendment in Section 15 of the Act taking away right on the basis of co-sharer.

8. In support of the appeal, learned counsel for the appellants submitted that the High Court misconstrued the decision of this Court in *Atam Prakash v. State of Haryana and Ors.* (1986 (2) SCC 249).

9. It was further submitted that the view was re-iterated in *Mahant Braham Dass Singh Pannu v. Om Prakash Chaudhary* (1996 (7) SCC 97).

10. In *Atam Prakash* case (supra) it was inter alia observed as follows:-

\023We are thus unable to find any justification for the classification contained in Section 15 of the Punjab Pre-emption Act of the Kinsfolk entitled to pre-emption. The right of pre-emption based on consanguinity is a relic of the feudal past. It is totally inconsistent with the constitutional scheme. It is inconsistent with modern ideas. The reason which justified its recognition quarter of a century ago namely, the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession are today irrelevant. The list of kinsfolk mentioned as entitled to pre-emption is intrinsically defective and self-contradictory. There is therefore no reasonable classification and clauses \023First\024, \021Secondly\024 and \021thirdly\024 of Section 15(1)(a). \023First\024, \023secondly\024, and \023thirdly\024 of Section 15(1)(b), clauses \023First\024, \023secondly\024 and \023thirdly\024 of Section 15 (1)(c) and the whole of Section 15(2) are, therefore, declared ultra-vires the constitution.

We are told that in some cases suits are pending in various courts and, where decrees have been passed, appeals are pending in appellate

courts. Such suits and appeals will now be disposed of in accordance with the declaration granted by us. We are told that there are a few cases where suits have been decreed and the decrees have become final, no appeals having been filed against those decrees. The decrees will be binding inter-parties and the declaration granted by us will be of no avail to the parties thereto.\024

11. In Mahant Braham Dass\022s case (supra) it was noted as follows:

\023The question then is whether he is a co-sharer. It is seen that at one time he was co-sharer but subsequently, brothers effected by mutual consent partition and the vendee/appellant\022s vendor Jai Singh was in separate possession and enjoyment of the property. Therefore, the mere mention in para 3 that he is a co-sharer is not independent of the right to vicinage. It would appear that the pleading was made on the basis that the respondent is not the real brother of the vendor of the appellant and on the basis thereof he claimed to be the co-sharer. Therefore, Mr. G.K. Bansal, learned counsel for the respondent, sought to place reliance on the judgment of this Court in Bhikha Ram v. Ram Sarup (1992 (1) SCC 319) where a Bench of three Judges of this Court held that a co-sharer has a right of pre-emption under clause \021Fourthly\022 of Section 15(1)(b) which was not declared ultra vires in Atam Prakash v. State of Haryana (1986(2) SCC 249) and, therefore, he was entitled to seek pre-emption. It is true that independent of right of kinship, if there is any right as co-sharer, in other words, on the date when the alienation was made if the vendor of the appellant had remained in joint possession and enjoyment without any partition, he would become a co-sharer with the respondent independent of the right of kinship. But if the joint enjoyment is by virtue of the unity in possession and enjoyment as members of the joint family property then it is not an independent right of co-sharer but as a member of the joint family or coparcener.\024

12. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

13. As was noted in Atam Prakash Case (supra), the decision was applicable to pending suits and appeals. As noted above, the view was re-iterated in Mahant Braham Dass case (supra).

14. A few factual aspects as evident from the order of the trial Court which projects the case of the parties need to be noted:

\023But learned counsel for the defendants has argued that since it has been stated by the plaintiff that he is cultivating the land separately, so the plaintiff is not a co-sharer in the suit land. But this arguments of the learned counsel for the defendants, is not maintainable because the plaintiff has stated that the property in dispute was a joint property with the vendors and himself. So, on this ground the plaintiff has superior right of pre-emption over the suit land\024.

15. In view of what has been stated by this Court in Atam Prakash Case (supra) and Mahant Braham Dass case (supra) the inevitable result is that the appeal deserves to succeed which we direct. The judgment of the High Court restoring the judgment and decree of the trial Court is set aside. The first Appellate Court had taken the correct view. It is stated that certain amounts have been deposited by the respondent with the trial Court. The said Court shall permit withdrawal of the amount deposited by the respondent on a proper application being made.

16. The appeal is allowed. There will be no order as to costs.

JUDIS