

Baldeo Singh Vs. Ch. Hargyan Singh

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Court : Allahabad

Decided On : Nov-18-1932

Reported in : AIR1933All217; 145Ind.Cas.396

Appellant : Baldeo Singh

Respondent : Ch. Hargyan Singh

Judgement :

Mukerji, Ag. C.J.

1. This is a pre-emption appeal and raises an interesting point of law. The facts briefly are as follows: One Bholu sold his property to Baldeo Singh by a sale-deed, dated 1st October 1928. The plaintiff, Hargyan Singh, brought a suit to preempt this property on 4th September 1929. Prior to the institution of the suit the vendee, Baldeo Singh, in order to defeat the plaintiff's claim procured a gift in his favour of a share of property situated in the same khewat and same mahal as the property sold to him on 1st October 1928 by a deed of gift, dated 9th July 1929. As the deed of gift was not an indefeasible transfer, according to the rulings of this Court and within the meaning of Section 20, Agra Pre-emption Act, he hit upon another device to defeat the plaintiffs' claim. This was an exchange by which on 16th October 1929 he obtained a share in the same khewat and mahal in which the preempted property was situated. The plaintiff was a cosharer in the same mahal in which the property was situated, but had no share in the khewat. In order not to be outdone by the vendee the plaintiff obtained by an exchange, dated 23rd

October 1929. a share in the very khewat in which this property in suit was situated. Armed with these different transfers the parties went to trial and the Munsif, as the Court of first instance, dismissed the suit.

2. The lower appellate Court decreed the suit. The decree was granted mainly on the ground that if the defendant could by his purchase defeat the plaintiff's right to pre-empt, the plaintiff also should be allowed as a matter of equity to acquire property so as to defeat the defendant's power of resistance. In this view and having regard to the fact that the plaintiff was not only a cosharer in the mahal and khata but was also related within four degrees, the learned Judge decreed the claim. In this Court it has been contended and very rightly so, that the plaintiff by making a purchase subsequent to the institution of the suit could not improve his position. We think that this contention is correct. No authority has been produced on behalf of the respondent to controvert this argument. The Pre-emption Act does not mention cases in which the plaintiff's right may be defeated' but does not mention any case in which plaintiff's position may be improved by any act of his. The learned Counsel for the respondent however has taken his stand on entirely different circumstances. It was argued that Section 19, Pre-emption Act, had undergone a change by reason of the passing of Act 9 of 1929 (Local Legislature) and by the new law the acquisition of property on the part of the vendee after the institution of the suit for preemption could not defeat the plaintiff's claim. It appears that by Act 9 of 1929 which received the assent of His Excellency the Governor on 28th November 1929, and which received the assent of His Excellency the Governor-General on 27th January 1930, the following words were added as a proviso to Section 19:

Provided that no voluntary transfer made in favour of the vendee after the institution of a suit for pre-emption shall defeat any right which the plaintiff had at the date of such institution.

3. The question that arises for decision is whether this amended law was applicable to the present case. Our attention has been very properly drawn by the learned Counsel for the respondent himself to the case of Sheopujan Rai v. Bishnath Rai : AIR1930 All706 in which it was held by a Division Bench of this

Court that the amending Act had no retrospective effect, and therefore, it could not be given effect to where it came into ; force during the pendency of the second appeal. In this case, which is before us the Act came into force before the suit was decided. There is, therefore, nothing in Sheopujan's case which prevents us from applying the Act as amended to the case before us. The Munsif did not decide the suit till, the 14th February 1930 Before that date the amending Act had come into force. By the very language of Section 19 it is the date of the decree that was the crucial date and any rule and change in the law that came into existence before that date would be the law that would govern the suit. In this view, the defendant (vendee) could not. defeat the plaintiff's right such as had existed at the date of the institution of the suit by obtaining a voluntary transfer of property in his own favour. We are of opinion that, although the judgment appealed against is not sound, the decree is one which is correct and should be affirmed. We accordingly dismiss the appeal with costs.