

inder Singh Vs. Gulzara Singh and anr.

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Court : Delhi

Decided On : Jun-25-1968

Reported in : AIR1969Delhi154; 4(1968)DLT660

Judge : I.D. Dua, C.J.,; S.K. Kapur and; T.V.R. Tatachari, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#); Punjab Pre-emption Act, 1913; Punjab Pre-emption (Amendment) Act, 1960 - Sections 13, 15, 15(1) and 17; Hindu Succession Act - Sections 8 and 9; Punjab Alienation of Land Act, 1900 - Sections 3(4), 14, 23, 24 and 29

Appeal No. : L.P.A. No. 9 of 1967

Appellant : inder Singh

Respondent : Gulzara Singh and anr.

Advocate for Def. : C.L. Lakhanpal and ; Chhabildas, Advs.

Advocate for Pet/Ap. : T.C. Chitkara and; M.G. Chitkara, Advs

Judgement :

S.K. Kapur, J.

1. By registered sale deed dated July 26, 1963, Kartar Singh sold 6 Kanals and 4 Marias of land being a share in joint land, in favor of Gulzara Singh and Wattan

Singh respondents herein for a consideration of Rs. 2,500/-. On January 15, 1964, Inder Singh instituted a suit for possession of the said land by pre-emption. Inder Singh plaintiff founded his claim on a superior right of pre-emption over the vendees, Gulzara Singh and Wattan Singh. The following pedigree table brings out the relationship of Kartar Singh vendor, Inder Singh plaintiff and Gulzara Singh and Wattan Singh vendees:

DHARAM SINGH

_____ | _____

|||

Narain Singh Inder Singh Kishan Singh

| (Plaintiff- |

| pre-emptor) Kartar Singh

| _____ (Vendor)

_____ | _____

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Gulzara Singh Wattan Singh

(Vendees)

2. The trial Court decreed the suit on July 21, 1965, and an appeal in the Court of District Judge against the trial Court's decision also failed. The vendees filed a second appeal in this Court which was allowed by S.N. Shankar, J. on September 21, 1967, Inder Singh plaintiff filed a Letters Patent Appeal against the judgment of S. N. Shankar, J. which was, by order dated April 5, 1968, referred to a Bench of three Judges and that is how this Letters Patent Appeal has come before us for disposal.

3. Since the sale in this case was in respect of a share out of the joint land by one of the co-sharers, the short question that falls for determination is the Interpretation of Section 15 (1)(b) clause Thirdly of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913) as amended by Punjab Act No. 10 of 1960, the question being whether the plaintiff, who is the father's brother of the vendor, has a superior right of pre-emption over the vendees, who are the vendor's father's brother's sons. The learned Single Judge on the Interpretation of the said section 15 (1) (b) decided that the father's brother of the vendor did not have a superior right of pre-emption over the vendees and all the relations mentioned in Section 15 (1) (b) Thirdly had equal right to pre-empt. The learned Single Judge observed:

'No separate and independent rights of pre-emption have been conferred on the two classes or groups of persons specified in paragraph Thirdly to Clause (b) of Sub-section (1) of Section 15 of the Act and this provision has necessarily to be read subject to Section 13 of the Act which provides the mode in which the joint right of pre-emption conferred by the Act could be exercised,'

The controversy, therefore, centres round the point that whereas Inder Singh plaintiff claims that he has a superior right of pre-emption over the vendees, the latter maintain that they have an equal right of pre-emption with the plaintiff and consequently the plaintiff's suit is not maintainable. It is the common ground that only if the plaintiff's right is held to be superior to that of the vendees, the Letters Patent Appeal should succeed.

4. The learned Single Judge in coming to the aforementioned conclusion was mainly influenced by Section 13 of the said Act as conferring a joint right on each class or group of persons in section 15. It is appropriate to read Section 15 as it stands after amendment by Act No. 10 of 1960 -

'15. (1) The right of pre-emption in respect of agricultural land and village Immoveable property shall vest-

(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;

Fourthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;

(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' 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, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof;

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

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

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

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

Fourthly, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(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 brothers's son of such female.' Another amendment was introduced in 1964 in Section 15, paragraph First of clause (b) of Sub-section (2) and the words 'husband of the' were introduced between the words 'such' and 'female' but that amendment is nto material for the purposes of the case at hand. The learned counsel for both the parties had recourse to the legislative history, to which I shall refer later, as supporting their respective points of view, but divorced from the legislative history the plain reading of Section 15, to my mind, appears to lead to no other conclusion than that the father's brother has a superior right of pre-emption over father's brother's sons of the vendor. To what extent, if at all, the history of the enactment can or does alter the plain meaning of the Section is a different question and I will refer to it later. Courts may take recourse to the legislative history as well as to the intention of the Legislature but bearing always in mind that the intention is best expressed in the words used. In finding out the legislative intent the Courts cannto speculate and thus trespass into the field of legislation. Resort may be had, and in fact Courts are in some cases bound to do so, to ascertain the mischief left unprovided for in the old law and sought to be remedied by the new statute. That course is adopted to find out the intention of the Legislature in the statutes penned obscurely, but principally a law must be interpreted by the words of the statute itself. The words must be read in their ordinary sense, though they may be modified only to avoid an absurdity or incongruity. Law reports abound with decisions that the Courts can go no further and I propose to adhere to that well-recognised rule.

I find it difficult to attribute a more expansive quality to the statute than the words used reasonably admit. In sec- corporation 15 (1) (b) Thirdly the word 'or' has been used between two classes of pre-emptors and if I were to hold that they have been given a joint right of preemption, I must of necessity read the word 'or' as 'and'. I am nto unmindful of the statutes in which sometimes the Courts do read the word 'or' as 'and' and vice versa but there must be some strong reason to do so. For instance, such substitution may have to be made to give effect to the obvious intent of the Legislature and to effectuate the policy intended to be laid down by a given statute. The normal rule of construction, however, remains that the words must be given their primary meaning and, thereforee, unless I am compelled by the scheme of the Act indicating an obvious intent of the Legislature to adopt a contrary rule, I must read 'or' as 'or' and nto go to the extreme limit of interpretation. The question then is: does the scheme of the Act enjoin me to do so: The learned Single Judge felt bound, as I have said, to read the word 'or' as 'and' because of Section 13 wherein a provision has been made that

'whenever according to the provisions of this Act a right of pre-emption vests in any class or group of persons the right may be exercised by all the members of such class or group jointly, and, if nto exercised by them all jointly by any two or more of them jointly, and, if nto exercised by any two or more of them jointly, by them severally'

From this, the learned Single Judge deduced that all the categories mentioned in the clause under consideration formed a class or group jointly entitled to a right of pre-emption. Apart from the fact that the language of Section 13, as discussed hereafter, accords with the interpretation placed by me on Section 15, Section 17 (b), if it is to be given effect to, also revolts against such an interpretation. It seems to me that Section 17(b), which was mainly relied upon by the learned counsel for the appellant, really dies nto fit in with the language of Section 15 as amended for the persons mentioned in Section 15 as the pre-emptors do nto 'claim as heirs' but claim as conferees of a right under the statute. Section 15 was amended, as I have said, by Punjab Act No. 10 of 1960, but Section 17 (b) remained untouched though it does appear that when amending the Pre-emption Act in 1960, the Legislature did direct its attention to Section 17 as well and omitted Clauses (c)

and (d) thereof. I have really not been able to appreciate as to what was the object of the Legislature in retaining clause (b) of Section 17 in this form as it deals with the share which the pre-emptors will get in the property pre-empted 'if they claim as heirs'. Clause (b) of Section 17 could fit in with the scheme of the unamended Section 15 which conferred rights on 'persons in order of succession, who, but for such sale would be entitled on death of the vendor to inherit the land or property sold'. The unamended Section 15 read-

'15. Subject to the provisions of Section 14 the right of pre-emption in respect of agricultural land and village immovable property, shall vest

(a) where the sale is by a sole owner or occupancy tenant or in the case of land or property jointly owned or held, is by all the co-sharers jointly, in the persons in order of succession who, but for such sale would be entitled on the death of the vendor or vendors, to inherit the land or property sold;

(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 lineal descendants of the vendor in order of succession;

Secondly, in the co-sharers, if any, who are agnates in order of succession;

Thirdly, in the persons, not included under firstly or secondly above, in order of succession, who but for such sale would be entitled on the death of the vendor to inherit the land or property sold; ** ** **'

5. Even if I were to adhere to the principle announced in various decisions that effort should be made to attribute some meaning to every provision in the Act it strengthens the opinion that I have expressed, namely, that the father's brothers have been treated as having a superior right over the father's brother's sons of the vendor. To give effect to Section 17 (b) I must read the words 'if they claim as heirs' as 'if they are heirs'. Even then the same result follows. Take a case falling under Section 15 (1) (a). The right under Section 15 (1) (a) First has been conferred on 'the son or daughter or son's son or daughter's son of the vendor'. If they were to be held to possess equal right of pre-emption then in case of Hindus

at least it will be impossible to work out the proportion in which they will get the pre-empted property. I am thinking of a case where a son, a daughter and a son's son, governed by the Hindu Succession Act, file a suit for pre-emption claiming an equal right. In that event, all of them must get the property pre-empted because they have a joint right, yet under Section 17 a son's son, unless he is a son of a predeceased son, will have no right to inherit the property in the event of the vendor's death and consequently will be excluded under Section 17. Similar would be the situation if a son of a living daughter and a son of the vendor file suits. A similar anomaly would also arise in the case of pre-emption by brother and brother's son of the vendor under Section 15(1)(a) Secondly.

In giving the above illustrations I am quite alive to the fact that in construing the provisions of Section 15 of the said Act I am not expected to determine the class of persons entitled to pre-empt by reference to order of priority under Hindu Succession Act to inherit for the said Act applies to other than Hindus also. But at the same time it applies to Hindus as well and the illustrations demonstrate the artificiality of the argument in favor of joint right to classes mentioned in the clause under consideration. Section 13, in my opinion, presents no impediment in coming to the conclusion that in Section 15 (1) (b) Thirdly father's brother of the vendor has a superior right to pre-empt over his father's brother's son. The words 'class' or 'group' in the Section has reference to the whole of Section 15 and when applied to Section 15 (1) (b) Thirdly mean 'father's brothers' as one class and 'father's brother's sons' as another class. It is Section 15 which must control Section 13 because before Section 13 is applied one has to see on whom has the right to pre-empt been conferred.

It was argued by the learned counsel for the respondents that priority of classes or groups had been determined by use of the expressions, First, Secondly and so forth and, therefore, each paragraph in Sections 15 (1) (a) and 15 (1) (b) must be so construed as to confer a joint right on each class or group mentioned in each paragraph. I do not agree. Each paragraph deals with categories 'groups' of persons entitled to pre-empt and use of the word 'or' then creates inter se priority amongst the pre-emptors in each paragraph.

It was then suggested on behalf of the respondents that pre-emption is a piratical right and therefore the interpretation sought to be placed on behalf of the respondent must be held to accord more in conformity with the intention of the Legislature, namely, to give that right jointly to the heirs who would have otherwise succeeded to the property. The right may be piratical but I am unable to appreciate as to why an expansive quality should be attributed to the statute when choice has to be made between the pirates. Even otherwise, no such intention of the Legislature is discernible from the statute. For instance, I see no reason why, if the Legislature intended to give joint rights, has the widow been excluded from the category of persons entitled to pre-empt.

6. In *Hira v. Bir Singh* 1968-70 Pun Lr 571, R. S. Sarkaria, J., while interpreting Section 15 (1) (b) of the said Act, decided that all the persons grouped under each paragraph of the various subsections in, Section 15 had an equal right of pre-emption. In the opinion of the learned Judge the other construction would reduce to silence the provisions of Sections 13 and 17 with great respect to the learned Judge, I am unable to subscribe to that view. Section 13 is really rendered nugatory because, as I have said, it deals with the exercise of right by 'all the members of such class or group jointly'. Each of the expressions or categories for instance 'father's brothers' on the one hand and 'father's brother's sons' on the other in Section 15 (1) (b) Thirdly constitutes a 'class' or 'group' within Section 13. Similarly, each of the expressions or categories in Section 15 (1) (a) First to Thirdly and in 15 (1) (b) First and Secondly as also in 15 (1) (c) First to Thirdly constitutes a class or group. Again, each of the expressions or categories, namely, 'tenants' and 'co-sharers' mentioned in Section 15 (1) (a) Fourthly, Section 15 (1) (b) Fourthly and Fifthly, and in Section 15 (1) (c) Fourthly constitutes a class or group. Thus Section 13 is not rendered nugatory at all. As regards Section 17 also, I am unable to agree that on the interpretation placed by me on Section 15, it will be rendered otiose. That can be illustrated even from a case where the pre-emptors are brother and brother's son of the vendor under Section 15 (1) (b) Secondly, which was the provision under consideration by R. S. Sarkaria, J. In case of such pre-emptors governed by Hindu Succession Act, brother will exclude the brother's son by virtue of the provisions in Sections 8 and 9 of the Hindu Succession Act read with Section 17 (b) of the Punjab Pre-emption Act. If the

construction other than the one placed by me is to be adopted while the brother and the brother's son will have a joint right under Section 15 (1) (b) Secondly, the brother's son will not be able to exercise his right under Section 17 (b) -- not being an heir at all. Thus Section 17 (b) will in such a case have the effect of taking away the right conferred on the brother's son under Section 15. On the other hand, the Interpretation placed by me completely squares, with Section 17 (b). All these reasons induce me to hold that the use of the word 'or' creates various alternatives and fixes a preferential order among the persons grouped under a particular class,

7. In the result, it must be held that the plaintiff had a superior right of preemption over the vendees and was entitled to succeed. The appeal is, therefore, allowed with the result that Inder Singh plaintiff's suit is decreed. In the circumstances, however, I leave the parties to bear their own costs.

8. I. D. Dua, C.J.: I am in complete agreement with the reasoning and conclusion of my learned brother Kapur, J. and would merely add a few words.

9. A statute is a solemn enactment of the State acting through its Legislature. It is accordingly permissible to assume that the Legislature is aware of the rules of statutory construction and of the relevant judicial decisions. Again, normally speaking, the Courts do not lightly assume that the Legislature has made a mistake and if there is some defect in the phraseology used by it, the Court, as a general rule, does not take upon itself the extra-judicial duty of aiding the defective phrasing by rewriting the Act. The plain meaning of unambiguous words legitimately claims prima facie preference at the hands of the court in the task of discovering the legislative design and intent, for, the language used is the true depositor of such design and intent, though the field of research for such discovery extends to the whole statute considered in the background of its purpose and object, and is not confined to a part of it in isolation. To clear and unambiguous language, the Court is rarely, if ever, entitled to add words in order to evolve a scheme which may be supposed to carry out some unexpressed intention of the law-maker, for, that is more of a legislative than of a judicial function. In the case in hand, by construing the word 'or' as 'or' in clause Thirdly of Section 15 (1) (b) of the Punjab Pre-emption Act, would neither lead to any absurdity nor to any

ambiguity or contradiction: nor would it in any way frustrate, defeat or obstruct the object or purpose which, on the plain reading of the statute as a whole, is, clearly discoverable. And then, merely construing the word 'or' as 'and,' would scarcely be enough. To uphold the respondent's contention, one would have to add a lot more to the existing phraseology of Section 15 (1) (b) Thirdly, as indeed this clause would have to be virtually redrafted, which seems to me to be beyond this Court's competence, and even if it were so competent for this Court to do in some exceptional circumstances, the present is not shown to be such a case. It may be pointed out that before the referring Bench, as is clear from the referring order dated 5-4-68, the respondent's case, as argued by his counsel, was that all persons mentioned in Section 15 (1) (b) Thirdly had been clothed separately with the right of pre-emption and that it was not a joint right to be exercised by them all jointly.

This merely serves to show that even the respondent is not quite clear about the statutory scheme or design.

10. In regard to the effect of Section 17, apart from the important fact that Section 15 does not in terms create any right of pre-emption claimable in the capacity of heirs, I am also extremely doubtful if the rule of succession governing the possible pre-emptors, clothed with the right of pre-emption under the Punjab Pre-emption Act (Hindus, Muslims and Christians etc.), justifies the assumption as obliquely suggested on behalf of the respondent that persons clothed with the right of pre-emption by the various clauses of Section 15 are those who are entitled to succeed simultaneously to the vendor irrespective of the remoteness of the degree of their relationship. At the bar, at least, no serious attempt has been made to properly and fully develop this aspect.

11. Finally, if due to unprecise statutory phrasology and somewhat obscure statutory scheme, I have to assume some mistake or omission on the part of the draftsman, I would much rather be inclined to consider it more likely that clause (b) was inadvertently retained in Section 7 in 1960 than that it was purposefully retained after thoughtful deliberation by the draftsman so as to govern cases covered by Section 15 (1) (b) Thirdly as amended. I have been induced to prefer

this view for two reasons. First, because the claim of preemption is not in terms retained in the persons entitled to pre-empt in their capacity as heirs, as was the case before the amendment of 1960, and secondly because I also find the continued retention in the Act of sections 3 (4), 14, 23, 24, 29 and the concluding clause of S. 9 in spite of the repeal of the Punjab Alienation of Land Act, 1900 and of a Full Bench decision of the Punjab High Court in *Uttam Singh v. Kartar Singh*, (FB) having declared these provisions to be void and nugatory as far back as June, 1953. The Legislature, for reasons best known to it, has not cared for all these years to weed out these unconstitutional provisions, although more than once the Act has been amended.

12. With these words, I wholly agree with the order proposed by Kapur, J. I have not considered it necessary to repeat the facts of the case as they are fully stated in the referring order dated 5-4-1968 and also in the order of Kapur, J.

T.V. Tatachari, J.

13. I agree.

14. Appeal allowed.

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