

Jhanua Vs. Dharam Dass

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Court : Delhi

Decided On : Nov-27-1968

Reported in : 5(1969)DLT121

Judge : S.N. Andley, J.

Acts : Punjab Preemption Act, 1913 - Sections 15(1)

Appeal No. : Regular Second Appeal No. 104 of 1967

Appellant : Jhanua

Respondent : Dharam Dass

Advocate for Pet/Ap. : M.R. Gupta,; Ramesh Chand and; K.G. Sud, Advs

Judgement :

S.N. Andley, J.

(1) This second appeal raises the interesting question whether a father's half-brother is the father's brother within the meaning of section 15 I (e), Thirdly, and the husband's brother within the meaning of section 15(2)(b). Secondly, of the Punjab Pre-emption Act, 1913. The trial Court held that such a half-brother was entitled to pre-empt, while the lower appellate Court held that he was not.

(2) The plaintiff in the suit is Jhanda son of Zilam He filed the suit out of which this appeal arises for pre-emption against Dharam Das to whom the lands in dispute had been sold by Jodha and Bhauni, sons of Rosa. and by Shivju, wife of the said Rosa. Rosa was also a son of Zalam but from a different wife. It was alleged in the plaint that the land in suit had been sold by Jodha, Bhauni and Shivju, hereinafter collectively referred to as 'vendors', for an ostensible sale price of Rs. 1,500.00 which was not actually paid nor fixed in good faith and that the market value of the said land was not more than Rs. 1,000.00. It was also pleaded in paragraph 3 of the plaint that the plaintiff Jhanda was also a co-sharer of the vendors. The trial Court framed the following issues :-

1. Whether the plaintiff has a superior right of pre-emption?. 2. Whether the sale price has been fixed in good faith and actually paid?. If not what is the market price of the land at which the sale is pre-emptible?. 3. Relief.

(3) Issue No. 2 does not arise for determination because, as it appears from the judgment of the lower appellate Court, the plaintiff's counsel conceded that the sale price had been fixed in good faith and actually paid. Upon issue No. 1 no clear finding was given by the trial Court as to whether the plaintiff was a co-sharer, as alleged. But the trial Court held that even though the plaintiff was a half-brother of the said Rosa, he had a right to pre-empt. Accordingly, a decree for possession by way of pre-emption was passed by the trial Court.

(4) In appeal, the question whether the plaintiff appellant was a co-sharer or not was not urged and the lower appellate Court gave a decision only on the question whether the plaintiff, being the half-brother of the said Rosa, could claim pre-emption. The lower appellate Court came to the conclusion 'that a brother and a half blooded brother cannot be considered to be on the same footing as far as right of pre-emption is concerned' and, upon that conclusion. allowed the appeal and dismissed the suit.

(5) In this second appeal Mr. M. R. Gupta, learned counsel for the appellant, who was the plaintiff, wanted to contend that the appellant's claim to pre-empt should be considered also from the point of view as to whether he was a co-sharer or not and he urged that even if I am against the appellant on the main question in the

appeal the appeal should be remanded back for a finding by the trial Court upon the question as to whether the appellant could claim pre-emption as a co-sharer. In view of the fact that the claim of the appellant based upon his being a co-sharer was merely urged in the plaint and was not even urged before the lower appellate Court, I do not find any justification in this prayer and I reject the same.

(6) The only question therefore, that is left to be decided is whether as a father's brother of Jodha and Bhauni and husband's brother of Mt. Shivju, the appellant could claim pre-emption under section 15(1)(c). Thirdly, and section 15(2)(b), Secondly, of the said Act. The appellant claims that this question is now concluded by a Full Bench of the Punjab High Court in the case the decision of which is reported in 1967 (Lxix) Punjab Law Reporter 1041 (Mtoi Ram v. Bakhwant Singh) where it has been held that a step brother is a brother not having been excluded by the Legislature from exercising his right of pre-emption. On the other hand, the contention on behalf of the learned counsel for the respondent is that I am bound by the decision of a Full Bench of this Court, reported in 1968 DLT 620 (Doomnu v. Mehar Chand) where the aforesaid Full Bench of the Punjab High Court has been dissented from and it has been held that a step son is not a son as mentioned in section 15(2)(b) First, of the said Act and it is urged that on a parity of reasoning a father's brother or a husband's brother cannot include his half-brother.

(7) The Punjab Full Bench case was a case where section 15(1)(c) Secondly and Section 15(2)(b) First fell to be considered. The opening part of section 15(1) provides that the right of pre-emption in respect of agricultural land and village immovable property shall vest in the various persons mentioned in the various clauses thereof, Clause (e) provides that where the sale is of land or property owned jointly or is made by all co-shares jointly, the right of pre-emption will be Secondly in the brothers or brother's sons of the vendors. In as much as one of the vendors was a female, sub-section (2) (b) of section 15 also had to be considered. This sub-section as it stood before the Punjab Pre-emption Act, 1984 is as follows :

'NtoWITHSTANDINGanything contained in sub-section (1), (b) where the sale is by a female of land or property to which she had 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 ; 124 Secondly, in the husband's brother or husband's brother's son of such female.'

By the aforesaid Act of 1964 paragraph First in clause.- (b) of sub-section (2) of section 15 was amended to read :-

'FIRST,in the son or daughter of such husband of the female'. The effect of the amendment was that whereas formerly it was 'the son or daughter of such female' who had the right of pre-emption, the amendment gave the right to pre-empt to the son or daughter of such husband of the female.'

(8) The learned Judges came to the following conclusions:-

(1)In the statute law of pre-emption there is no distinction made between a brother and a half-brother and a step brother is a brother not having been excluded by the Legislature from exercising his right of pre-emption ; and (2) that the amendment introduced by the said Punjab Act of 1964 has made clear what may have been somewhat uncertain or ambiguous before and in the circumstances of the case the amendment has to be given retrospective effect.

(9) The Full Bench of this Court was dealing with the case of a step son who had filed a suit for pre-emption against his father's second wife and the case concerned itself with section 15(2) (b). First of the said Act. The aforesaid Full Bench decision of the Punjab High Court was dissented from by this Court and the question which was decided by this Court is stated by the learned Chief Justice in these words :-

'THEshort question which we are called upon to decide in this appeal, therefore, is whether the amendment of 1964 is retrospective or merely prospective in its operation and whether it governs the present case.'

Upon this question, this Court came to the following conclusions: -

(1) 'There is nothing in the statute to suggest that by the amending Act 10 of 1960, the Legislature had intended while enacting clause First of section 15(2)(b) to confer the right of pre-emption only on the son or daughter of the husband of the female vendor. It is true that in clause (a) and clause (b) Secondly of sub-section (?) of section 15, the right of pre-emption has been confined to some of the blood relations of the male predecessor to whom the female in question has succeeded in respect of the property sold. which is the subject matter of the right of pre-emption. But this does not necessarily suggest that the son or daughter of the female vendor mentioned in clause First of section 15(2)(b) is also necessarily intended to mean the son or daughter of the husband of the female vendor.....There seems to be nothing absurd or shocking or obviously repugnant to the context or otherwise grossly unreasonable which would impel this Court judicially to conclude that the Legislature had presumably intended something different from what the plain language of section 15(2)(b) First means or conveys.'

(2) 'It is scarcely necessary to point out that the law of preemption can by no means be said to be founded on any equitable' considerations and there is, therefore, no equity of the statute helpful to the appellant which may usefully be kept in view while construing the Act.'

(3) 'Absence of clear expression of retrospective operation in regard to the amendment of 1964, seems to us to be almost conclusive against retrospective intent in this case.'

(4) The amending Act of 1964 does not seem to us to be a curative enactment in the sense of a legalising statute, as it is sometimes described, passed to cure defects in prior law or to validate proceedings, instruments or acts of public and private administrative authorities which, in the absence of such an Act, would be void for want of conformity with existing legal requirements, but which would have been valid if the statute had so provided at the time of enacting.'

(10) The Full Bench of this Court, therefore, came to the conclusion that the Punjab Pre-emption (Amendment) Act of 1964 was not retrospective in operation and, upon the language of section 15(2)(b) First came to the conclusion that a 'step son' was not included in the expression 'son'.

(11) In this appeal, I am concerned with the interpretation of section 15(1)(c) Thirdly and section 15(2)(b) Secondly. The former talks of 'father's brothers or father's

brother's sons of the vendors', while the latter talks of 'the husband's brother or husband's brother's son of such female' and these have not been affected by the said Punjab Pre-emption (Amendment) Act, 1964, The question, therefore, is whether the plaintiff-appellant can fall in the category of father's brother in so far as Jodha and Bhauni are concerned and in the category of husband's brother in so far as Shivju is concerned, and ultimately, the question is whether the plaintiff-appellant can be said to be a brother of Rosa even though the two were born of different mothers. While the Punjab Full Bench has definitely come to the view upon a construction of section 15 and other provisions of the said Act as existing even prior to the afore-said amendment of 1964 of the Punjab Act that a 'half-brother' is included in 'brother', this Court in its aforesaid Full Bench decision has not dissented from that view because this Court was concerned only with section 15(2)(b) First and not Second. The dissent expressed by this Court, as I understand it, is with respect to what the learned Chief Justice has been pleased to describe as the short question, quoted above, as to the retrospectivity of the aforesaid Amendment Act.

(12) Since the law of pre-emption is not founded on any equitable considerations, the Court has to ascertain the meaning of the statute. therefore, I have to ascertain whether the appellant can be said to be the father's brother of Jodha and Bhauni and the husband's brother of Mt. Shivju. In construing the relevant clauses of section 15, I have to take one thing into consideration, namely, that unlike section 15(2)(b) First where the claim to pre-emption is through 'such female', the claim to pre-emption under section 15(1)(c) Thirdly and section 15(2)(b) Secondly is derived through the father and the husband respectively. It is, therefore, as if the appellant were claiming the right of pre-emption against Rosa himself in which case the question will be whether the appellant is the brother of Rosa within the meaning of section 15(1)(a) Secondly which vests the right of pre-emption 'in the brother or brother's son of the vendor.'

(13) I have no hesitation in coming to the conclusion that in ordinary parlance a brother would include a half-brother born of different mother. Webster's New International Dictionary, Second Edition, gives the following meaning to Brother :-

'A male person..... ..considered in his relation to another person..... .. having the same parents (whole brother), or one parent only in common (half-brother).'

Stroud's Judicial Dictionary, Third Edition, says this about Brother :- 'A gift to 'brothers' includes the half-blood ; and so with regard to every other degree of relationship.

'I think that, in general, when a man speaks of his brothers and sisters he speaks of them, not with reference to the definition of the word in the dictionary, but as a class standing in the same relation to one or both of his parents in which he himself stands. Though the half-blood are not descended from both the same parents, they are as it is said in Terms de la Ley, demy sangue after a sort, brothers brothers by the father's side, brothers by one mother'; and however others might describe them or they might designate themselves. I think that, if required to give a precise description of the nature and degree of the relation subsisting between them, they, in ordinary parlance, would be called and would call themselves, brothers.' Bouvier's Law Dictionary (1914 Edition) Volume I, defines Brother to be a person 'who is born from the same father and mother with another or from one of them only. Brothers are of the whole blood when they are born of the same father and mother, and of the half-blood when they are the issue of one of them only when they are the children of the same father and mother, they are called brothers german; when they descend from the same father but not the same mother, they are consanguine brothers ; when they are the issue of the same mother, but not the same father, they are uterine brothers. A half-brother is one who is born of the same father or mother, but not of both.....'.

(14) Whether one takes the meaning of the word 'brother' in ordinary parlance or the dictionary meaning or the meaning given in various legal dictionaries, the word 'brother' is comprehensive enough to include a half-brother and a person born to a common father though from different mothers cannot be described otherwise than a brother. I do not find anything in section 15 or in any of the provisions of the said Act to come to the conclusion, as contended for by the respondent that the word 'brother' as used in section 15 of the said Act means only a brother having both parents in common.

(15) As I understand the Full Bench decision of this Court, the decision that was arrived at was because of the plain language of section 15(2) (b) First where the claim for pre-emption was through a female and the Full Bench came to the conclusion that what was to be considered was only whether the pre-emptor was a son or daughter of such female. Upon that understanding of the said decision, I am not precluded from coming to the conclusion that a 'brother' includes a 'half-brother'. I, therefore, hold that even though the appellant was a half-brother of the father of Jodha and Bhauni and the husband of Shivju, he is entitled to pre-empt under section 15(1)(c) Thirdly and section 15(2) (b) Secondly of the said Act.

(16) I, therefore, allow the appeal but in the circumstances of the case, I leave the parties to bear their respective costs.

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