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Doomamu Vs. Mehar Chand

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Court : Delhi

Decided On : Jun-18-1968

Reported in : 4(1968)DLT620

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

Acts : Punjab Pre-emption (Amendment) Act, 1964 - Sections 2

Appeal No. : Letters Patent Appeal No. 4 of 1967

Appellant : Doomamu

Respondent : Mehar Chand

Advocate for Pet/Ap. : S. Malhtora and; Chabildas, Advs

Judgement :

I.D. Dua, C.J.

(1) This Letters Patent Appeal from the judgment of a learned Single judge raises the question of the construction of section 15(2)(b) First of the Punjab Preemption Act 1 of 1913 (hereafter called the Act) as amended.

(2) Facts relevant for our purposes, as discernible from the Judgment of the learned Single Judge are that one half share of land measuring 61 kanals and 12 marlas situated in Tikka Jaunta, Mauza Pundar was sold by one Smt. Jhokbu in favor on one Mehar Chand and tohers for a sum of Rs 900 by means of a sale-

deed dated 6th September, 1963. Doomnu, claiming a superior right of pre-emption, instituted a suit turn pie-emption, out of which this appeal has arisen. The suit was resisted on various grounds and the pleas of the parties gave rise to four issues We are here concerned only with issue No. 1 which reads as under:- 'Whether the plaintiff is a step-son of the vendor and is a pint owner in the khata and as such has a superior right of pre-emption ?' The trial Court came to the conclusion that the plaintiff was the son of Smt. Jhokhu's husband from a previous wife and was, thereforee, nto covered by section 15(2)(b) First of the Act. In regard to the claim as a co-sharer also, the plaintiff's plea was negatived with the observation that no right of pre-emption has been conferred on a co-sharer by the Act when the sale is by a female. It may be pointed out that before us, the learned counsel for the appellant has very frankly dropped his client's claim of pre-emption on the basis of the status of a co-sharer and we are only concerned with the construction of section 15(2)(b) First of the Act

(3) Dissatisfied plaintiff took the matter on appeal to the Court of the learned Senior Subordinate Judge, who allowed the appeal and sent the case back for trial on the merits. This was done in view of the amendment of the Act by means of the Punjab Pre-emption (Amendment) Act 13 of 1964 which addd the words 'husband of the' between the words 'such' and 'female'' in Paragraph First of clause (bl of sub section (2) of section 15 It may be recalled that the sale sought to ba pre-empted had taken place in September, 1963 and even the suit in the trial Court had been instituted sometime in October, 1963, long before the amendment.

(4) The defendants feeling aggrieved came to the High Court on second appeal and the learned Single Judge, holding the amendment of 1964 nto to be retrospective in its operation, allowed the appeal and setting aside the judgment of the learned Senior Subordinate Judge, restored that of the Court of first instance. In the final result, the suit was dismissed.

(5) It is against this Judgment that the present Letters Patent Appeal has been preferred and the matter has been placed before us because a Full Bench of the Punjab and Haryana High Court has in Mtoi Ram v. Bakhwant singyh held the amendment in question to be retrospec. tive in its operation, the short question

which we are called on to decide in this appeal, thereforee, is whether the amendment of 164 is retrospective or merely prospective in its operation and was there it governs the present use.

(6) Sections 15 and 16 of the Act along with some toher provisions thereof were amended by the Punjab Pre-emption (Amendment)Act 10 of 1960 pursuant to a continuous demand from the public to modify that Act because village life had been very considerably affected owing to the resettlement of displaced persons hailing from different places and also because it was felt that the law of pre-emption was hampering private transfers of property to landless persons who were harassed by pre-emption suits after they had settled on the lands reclaimed by them Restrictions on the sale of immovable property was also felt nto only to be preventing developmental activities but was also considered to be inconsistent with the present democratic set up. Amendment was thus considered necessary in order to remove these serious detects. The amended Act. received the assent of the Governor of Punjab on 2nd February, 1980 and was first published in the Punjab Gazette, Extraordinary, on 4th February, 1960. In 1964, as observed earlier, the Act was again amended and the sole purpose of amendment was to insert the words 'husband of the' between the words 'such' and 'female ' occurring in Paragraph First of clause (b) of section15(2). It is ntoeworthy that this amendment was nto in terms made retrospective in its operation. The short question which arises for our consideration is whether this amendment governs the present suit for pre-emption instituted in October, 1963 seeking to pre-empt the sale made on 7th September 1963.

(7) Treating the question as rest integra, let us see how far the retrospective operation of this amendment is justified. At the very outset, one very important aspect may be ntoiced. The law-maker has, quite clearly, nto chosen in terms to make this amendment retrospective. It is equally obvious that the amendment does nto relate to a mere matter of procedure, which may, in certain circumstances, be presumed to operate retrospectively. On the toher hand, it deals with substantive rights and as such may nto be presumed, without unambiguous intendment, to be retrospective in its operation and may nto be too readily held to govern pending proceedings. Retrospective operation of such laws

tends to disturb feelings of security in past transactions and it is for this reason that the Legislature, as a matter of practice, almost invariably takes care to express in clear words its intention when a substantive provision of law is meant to operate retrospectively so as to impair existing rights under valid contracts affecting title to property, more particularly when it is designed also to control pending litigation in Courts of law. We may add that the Legislature is expected to be more careful in expressing such an intention in the clearest possible terms when the amended provision creates a right in derogation of the right of the owner to alienate his or her property and of the right of the lawful transferee of property to hold the same. The question, as observed earlier is, if retrospective operation of the amendment which concerns us can be necessarily implied. The only reason for this implication pressed before us is that the property which is the subject-matter of pre-emption under section 15(2)(b) First, having come to the female- vendor from her husband, the right of pre-empting such sale must necessarly have been intended by the amending Act 10 of 1960 to be confenand only on the offspring of such husband of the female vendor and that the amending Act No. 13 of 1464 merely rectified this inadvertent error. This argument is, in our opinion, based on insupportable assumptions There is ntohing in the statute to suggest that by the amending Act 10 of 1950, the Legislature had intended while enacting Clause First of section15(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 (2) 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 nto 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 vedor. The scheme of all the clauses of section15(2) does nto seem to us to be exactly similar, for quite obviously the daughter has been given the right to pre-empt only by clause First of section15(2)(b) and nto by the toher clauses of section 15(2). There seems to be ntohing absurd or shocking or obviously repugnant to the context or toherwise 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. The plain and ordinary meaning of the unamended clause in question does nto seem to us to lead to any manifast. contradiction of the apparent purpose of the enactment which can be gathered from the statute read as a whole, It is scarcely necessary to point oat that the law of pre-emption can by no means be said to be founded on any equitable considerations and there is, thereforee, no equity of the statute helpful to the appellant which may usefully be kept in view while construing the Act.

(8) It is argued on behalf of the appellant that the clause as amended in 1960, by oversight omitted to mention that the son or daughter seeking to pre-empt must be the off spring of the husband of the female vendor. We are unable to agree with this assumption on the legislative language which is plain and unambiguous. Ntohing relevant has been brought to our ntoice in the body of the statute or elsewhere which should induce us to hold that there was any omission by mere oversight or carelessness on the part of the draftsman which the Court would be entitled to supply by the process of construction. Carelessness on the part of the draftsman has nto to be too readily assumed and such remisness should be supportable on the legislative scheme which must be discernible on the statutory language of the enactment. We also find it samewhat difficult on the language, scheme and design of the statute to concede that the Legislature, on becoming aware of its own earlier clerical or inadvertent error, immediately proceeded retrospectively to rectify the same. It may be remembered in this connection that the lapse of four years between the amendment of 1960 and that of 1961. during which interval even fresh elections had been held in 1962, may also tend, to some extent, to detract from the cogency of the above suggestion.

(9) Let us now turn to the decision of the Punjab and A Haryana High Court in Mtoi Ram's case' the sole authority on which the appel- lant has relied in support of his argument. In that judgment, reference has been made to the following Statement of Objects and Reasons stated to have been added to the private member's Bill which eventually became the Punjab Act No. 18 of 1964 :- 'It apperas that the intention of the Legislature in enacting section 15(2) of the Punjab Pre emption (Amendment) Act, 1960 (Punjab Act No. 10 of 1960) was to vest the right of pre-

emption in the offshprings of the husband in regard to the property to which a female I ad succeeded through such husband, But this intention is nto clear from the words used in clause (b) of section 15(2). Antoher flaw in the provision is that the offsprings of the same husband through antoher wife are excluded by the wording used in existing provisions which seems to have resulted inadvertently.' The Bench deciding Mtoi Ram's case was of course conscious of the fact that the Statement of Objects and Reasons is nto a permissible aid in construing the true meaning and effect of the substantive provisions of the statute, but such a statement was considered to furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a statute. From this, it was concluded that there was a lacuna in Paragraph (First) of clause (b) of sub section (2) of section 15 and that the amending Act was intended to cure or remedy that defect. The submission which found favor with that Court may be reproduced in the words of the judgment : - 'It is submitted that though there is no express provision about the retrospective operation of Punjab Act 13 of 1964, it has to be construed by necessary and distinct implication. It is submitted that Punjab Act 13 of 1964 is remedial or a curative Act as is apparent from its objects and reasons, to which I would shortly advert. A curative Act is a statute passed to cure defects in a prior law and it is submitted that as the words 'in the son or daughter of such female' were capable of some uncertainty the words 'husband of the' were inserted between the words 'such' and 'female'. There is undoubtedly force and cogency in this argument'. A little lower down, the judgment proceeds :- 'A close analysis of paragraphs (First) and (Secondly) of clause (b) of subsection (2) of section 15 before the amendment introduced by Punjab Act No. 13 of 1964 would demonstrate that a son of the husband of a female vendor, though nto born from her womb, would be entitled to pre-empt, particularly when the husband's brtoher and even the son of the husband's brtoher of that female aie accorded the right of pre-emption. To reiterate, the right of 'pre-emption is accorded manifestly on the the principle of consanguinity, the property of the female vendor being that of her husband, and there is no reason why the step son should be excluded and the nephew of the husband included. From this alone it must be inferred that the Legislature had intended to include a step-son and consequently retrospective operation had to be given to the amending Act as such a construction appears to

be in consonance and harmony with the purpose and purport of the Act.' With all doe respect, we find it somewhat difficult to adopt this line of reasoning. The Statement of Object and Reasons accompanying a Bill, when introduced in any Parliament or Legislative Assembly, cannto be used to determine the true meaning and effect of the substantive provisions of the statute and they can be used only for the limited purpose of understanding the background and the antecedent state of affairs leading; up to the legislation. Such statement cannto be used as an and to the construction of the enactment. This is perhaps all the more so when the Bill is a private member's Bill. A statute, as passed by the Legislature, is the expression of the collective intention ' of the Legislature as a whole and any statement made by an individual member of the Legislature about the intention and Objects of the Act cannto be legitimately used to render that Act retrospective it the plain reading of the statutory language does nto support retrospective operation. This would perhaps be still more so when such a statement is contained in a private member's Bill after fresh elections to the Legislature concerned. Now, it has to be kept in view that the Legislature, when intending to prejudicially affect existing titles or to invalidate lawful contracts and nullify valid transactions by retrospective operation of a statute, dealing with substantive rights, is always expected to take good care to express its intention in clear, unambiguous and plain language and if it purports to cure or rectify an existing ambiguiry or, which has the effect of violating contractual obligations or disturbing vested lights, it, as a rule. takes effective precautions nto to leave the retrospective intent to mere implication, to be gathered by the nto too certain process of construction. Laws of this type must nto serve as traps for the honest purchasers of property acting bona fide on the plain and unambiguous statutory phraseology. Absence of clear expression of retrospective operation in regard to the amendment of 1964, seems to us to be almost conclusive against retrospective intendmEnt in this case.

(10) It is then said that the son and daughter mentioned in the unamedned clause in question must be held to include a step-son or a step.daughter, and that the amendment of 1964 only made express that was intended by necessary implication. Ibis argument does nto seem to fit in with the amendment of 1964 because the female vendor's step children may nto necessarily be the children of some toher woman from the lions only of her husband to whom she may have

succeeded in respect of the property sold and sought to be pre-empted The amendment of 1964 really incorporates a vital change by introducing the descent from the husband to whom the female ha? succeeded which in certain respects restricts, and in tohers, extends the right of pre-emption, granted by the express language used in the amendment of 1960. The amending Act of 1964 does nto seem to us to be a curative enactment in the sense of a legalising staute, as it is sometimes described, passed to cure defects in prior law or to validate proceedings, instruments or acts to 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. And then, we have also to remember that curative acts, like toher legislation, are also subject to the toher recognised rules of construction and to the generally accepted constitutional restrictions that they may nto be assumed to violate existing contractual obligations or effect prior vested rights.

(11) The argument of the Act of 1964 being a remedial statute and thereforee, to be presumed to be retrospective is equally difficult to sustain. All enactments, it may be pointed out, are intended to cure or remedy some defect in the existing legel position. Remediat statutes are, however, customarily contrasted with penal statutes, but generally speking, remedial statutes afford a remedy or improve or fact litate remedies already existing for the enforcement of rights and redress of injuries, and to effectuate that purpose, they are liberally construed. The liberal construction, however, is nto designed to- operate oppressively on the toher parties affected, by divesting vested rights, invading into perfected titles and violating contractual rights. Such statutes should also, in cur view, in common with toher statutes, be inter preted in the light of the legislative intent to formulate a rule which will work fairly to all the parties affected. It. is accordingly difficult to imply a retrospective operation of the Act of 1964 on the argument of its being a curative or remedial act. It is scarcely necessary to observe that, broadly considered, all laws are conceived or intended to cure or remedy some defect in the existing laws and for that reason alone, do nto, by necessary implication, demand retrospective oppration.

(12) At this stage, it would nto be out of place to observe that the Legislature could legitimately be assumed to be aware of the authoritative decisions laying down that a righ of pre-emption is considered as an aggressive right intended to disturb valid transactions and, thereforee, nto looked at with favor by the Cou'ts generally and that such a right has to exist at the time of sale, at the time of the suit and at the time of the decree subject to section 21A of the Act. Viewed in this back ground, the Legislature would in our opinion, have in the interests of certaintity, expressed its retrospective intendment in clear language rather then leave it to mere inference on which opinions may differ.

(13) We are nto unmindful of the fact that while interpreting statutes, some degree of implication or inference may be reported to for discovering the legislative intent because the Legisititure often speaks as plainly by inferences as in any toher manner and what is clearly implied from the express terms, is as much a part thereof and is as effective as that which is expressed. But in the case in hand, there does nto appear to us to be any cogent ground for imputing to the Legislature any retrospective intendment by implication. It has to be remembered that alienations lawfully effected and titles legelly created on the basis of the plain language of the law. as it existed between 1960 and 1964, are being sought by the appellant to be re opened and such an effect, if intended, has to be expressed by the Legislature in the clearest possible terms and cannto be too lightly sustained on mere implication.

(14) As a result of the foregoing discussion, we unhesitatingly uphold the judgment of the learned Single Judge and dismiss this appeal, but with no order as to costs.

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