

Girdhari Vs. Jawala and ors.

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Court : Rajasthan

Decided On : Dec-17-1956

Reported in : AIR1957Raj203

Judge : Bapna, J.

Acts : Alwar State Pre-emption Act, 1946 - Sections 6 and 15; [Constitution of India](#) - Articles 14 and 19(1)

Appeal No. : Second Appeal No. 133 of 1951

Appellant : Girdhari

Respondent : Jawala and ors.

Advocate for Def. : S.B.L. Saksena, Adv.

Advocate for Pet/Ap. : B.K. Bhargava, Adv.

Disposition : Appeal allowed

Judgement :

Bapna, J.

1. This is a second appeal by the vendee defendant in a suit for pre-emption.

2. It was alleged lay the respondent Jawala that Girdhari appellant purchased a guara from Jai Dayal and Hardayal for Rs. 26/8/- on 10th September, 1941. The property is situated in village Hamidpur, Tehsil Behror, District Alwar. The basis of the right of pre-emption was said to be that

1. the guara of the plaintiff was situated close to that sold, and

2. the pre-emptor was nearer in relationship to the vendors.

3. The defendant denied the fact of the sale as also the right of the respondent to obtain the property by pre-emption.

4. The suit was at first dismissed, but under a particular legislation by the former Alwar State, which applied to this suit as well, it was restored, and ultimately a decree was passed by the Munsif, Alwar, on 14th November, 1950, on the ground that the plaintiff had a right of pre-emption both on account of his being a near relation of the vendor as also on account of the plaintiff's guara being contiguous to the guara sold. The same judgment was upheld on appeal.

5. In this second appeal learned counsel for the vendee appellant contended that the right of pre-emption granted by the Alwar State Pre-emption Act (7 of 1946) on the basis of relationship was an unreasonable restriction on the right to hold and dispose of property, and was not enforceable, after the passing of the Constitution. It was also contended that the right of pre-emption based on ownership of contiguous property does not arise according to the Alwar Act in respect of sales of village immovable property.

6. Both these contentions are correct. Section 15 of the Alwar State Pre-emption Act which relates to village immovable property does not speak of the right of pre-emption on the ground of ownership of the adjoining property. Such right has, however, been allowed in the case of urban immovable property. It is conceded that the present suit relates to village immovable property. The second ground of pre-emption upheld by the two Courts is, therefore, not correct.

7. As to the first ground, it has been held by this Court in more than one case Siremal v. Kantilal, AIR 1954 Raj 195 (A); Behram v. Phusa, AIR 1955 Raj 144

(B), that the preferential right to purchase allowed to collaterals based merely on relationship with the vendor is not a reasonable restriction on the right to acquire, hold and dispose of property granted by Article 19(1)(f) of the Constitution. An said in the case of Panch Gujar GAUR Brahmans v. Amarsingh, AIR 1954 Raj 100 (FB) (C), right of pre-emption is a weak right, and must subsist not only on the date of the suit, but also on the date of the decree. The present right based on relationship is obviously a personal right, and not a right which may run with the land. That personal right became void. It is also hit by Article 14 of the Constitution, as observed in Siremal v. Kantilal (A).

8. The appeal is, therefore, allowed, the judgment and decree of the two Courts are set aside, and the suit of Jawala respondent is dismissed. There will be no order as to costs.

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