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Court : Himachal Pradesh

Decided On : Jan-20-1949

Reported in : AIR1949HP31

Appellant : Shibia

Respondent : Jhaklu

Judgement :

Bennerji, J.C.

1. This is an appeal from a judgment and decree dated 18th Phagun, 2002, of the High Court, Nahan, reversing a judgment and decree of the District Judge, dated 14th Bhadon, . 2002, and thereby decreeing the suit. The plaintiff brought a suit for pre-emption, alleging that he had a better right than the defendant to acquire, by way of purchase, the suit property from the vendor. The defendant resisted the suit on the ground that he had purchased the property from the vendor and his mother. The property in suit had been given to the vendors by way of gift. The defendant further alleged that he was also a reversioner and as such his rights could not be challenged by the plaintiff. The learned District Judge dismissed the suit on the ground that the donor was still alive and, therefore, the donee could sell the property to the defendant or to any one else, the donee pleased.

2. On appeal, the learned Chief Justice found that the plaintiff and the defendants were no doubt Bandhu heirs, entitled to inherit in the absence of descendants of

the donee, yet the plaintiff was a nearer collateral than the defendant and, therefore, he had preferential right to pre-empt as against the vendee. He allowed the appeal directing that the plaintiff should deposit in the trial Court, on or about 30th April 1946, Rs. 300 for payment to the defendant vendees, Shibia or in default, the plaintiff's suit should stand dismissed.

3. The plaintiff, forthwith, deposited the amount. The defendant then appealed to the Raj Nyaya Sabha on 9th November 1946, and the Raj Nyaya Sabha directed that the fuller copy of the pedigree table should be produced within four weeks' time and both the parties agreed that the decision should rest upon such pedigree table admitted by them. The pedigree table, admitted, by both the parties, is before this Court. The defendant admits that he is a remoter reversioner than the plaintiff but his learned Counsel argues that in this case the property in suit was at first given as a gift by a limited owner to her daughter's son and the daughter and the son were the vendors and as such the question of degree of relationship of the parties in this suit does not arise.

4. In my opinion, this argument overlooks the decision of the Full Bench of Lahore High Court in *Lehna v. Thalcri* 32 P.R.1895 . According to that ruling, and the principle therein laid down, the daughter, Mt. Magnu, defendant 2, when she took the property, acted as a mere conduit for eventually transferring it to the real heirs, namely, the male descendants of her father, Bholer. So long as she lived and also so long as she had male heirs, the male descendants of Bholer would not be able to assert their right to property, but the latter are the real heirs to the property. It still remains their an-cesstral property and they can object to its alienation. No doubt their right to possession is postponed, but they are, unquestionably, entitled to succeed to the property in the event of Mt. Magnu's son, Rattan Singh, dying without heirs. In the circumstances, the next person to inherit the property is surely the plaintiff, the nearer reversioner. The plaintiff, in my opinion, is 'the person entitled to inherit the property in the event of vendor's death in order of succession,' He has a prior right to that of the defendant.

5. I am supported in this view by the principles laid down in the Privy Council case, *Sabz Ali Khan v Khairmahomed Khan* A.I.R1922 P.C.139). The effect of Section

16, Clause (a), Punjab Pre-emption Act, which has been adopted by Sirmur Darbar, is to confer the right of pre-emption in respect of agricultural land and village immovable property upon the whole line of the heirs of the vendor and not merely on the nearest heir at the time of the sale, but the priority of right between claimants (as is the case before me) is to be determined according to the order of succession. According to the order of succession in the present case, the plaintiff's claim is superior to that of the defendant.

6. The result is that this appeal fails. I shall advise the Chief Commissioner to dismiss this appeal and in the special circumstances of the case, to leave the parties to bear their own costs throughout.

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