

(2024) 12 J&K CK 0016

High Court Of Jammu And Kashmir And Ladakh At Jammu

Case No: CSA No. 30/1995

Sukhdev (Dead)

APPELLANT

Vs

Arun Prakash and Ors.

RESPONDENT

Date of Decision: Dec. 10, 2024

Acts Referred:

- Jammu and Kashmir Right of Prior Purchase Act, 1993 - Section 14 (a), 96

Hon'ble Judges: M. A. Chowdhary, J

Bench: Single Bench

Advocate: O. P. Thakur, M/S R. K. S. Thakur and Anandita Thakur, Ved Raj Wazir, M/S Abhishek Wazir and Razat Sudan,

Final Decision: Disposed Off

Judgement

JUDGMENTTAG-JUDGMENT

M. A. Chowdhary, J

01. The above titled three civil second appeals are sub-judice before this Court since the year 1995 against the concurrent Judgments passed by the

Trial Court as well as the First Appellate Court in three Suits filed by the original Appellant, who has since expired and his legal heirs have been

brought on record as Appellants herein. The original Appellant-Sukhdev had filed the aforesaid Suits before the Trial Court exercising his right under

the J&K Right of Prior Purchase Act, 1993.

02. The aforesaid Suits were filed before the Court of learned Sub Judge, Udhampur (Trial Court), which were dismissed vide three separate

Judgments, all dated 5th of August, 1989, against which the original Appellant had filed three Civil First Appeals before the learned District Judge,

Udhampur (First Appellate Court), which also dismissed the appeals vide common Judgment dated 30th of May, 1995.

03. Aggrieved of both the Judgments passed by the Trial Court as well as the First Appellate Court, the Appellants filed three Civil Second Appeals

before this Court which came to be dismissed vide Judgment dated 18th of May, 2005, holding the provision contained under Section 14 (a) of the

J&K Right of Prior Purchase Act, 1993 as ultra vires the Constitution. The Appellants, however, preferred a Special Leave Petition, against the

aforesaid Judgment passed by this Court, wherein the Apex Court, vide Order dated 19th of July, 2017, upset the Judgment passed by this Court and

remanded the matter to be decided on merits by this Court. This is how these appeals have, once again, come before this Court for their consideration

and decision.

04. During the pendency of these appeals before this Court, in view of the subsequent constitutional development with regard to the issuance of the

Jammu & Kashmir Reorganization Act, 2019, the J&K Right of Prior Purchase Act, 1993 was repealed in exercise of powers vested in Section 96 of

the Act, vide SO No. 3808 (E) of 2020 dated 26th of October, 2020. That being so, during the course of hearing of this case, the learned Counsel

appearing for the Respondents has raised an important preliminary question to be addressed before the appeals are decided on merits viz.

“whether these appeals, in view of the repealing of the J&K Right of Prior Purchase Act, 1993, can be continued or same have become

redundant”.

05. In the aforesaid backdrop, the parties, through their Counsel, are heard firstly on this aspect of the matter that whether in view of repealing of the

J&K Right of Prior Purchase Act, 1993, during the pendency of the appeals, proceedings can be continued or not.

06. Mr Ved Raj Wazir, the learned Senior Counsel, representing the Respondents, argued that these Civil Second Appeals cannot be heard by this

Court on merits any further, in view of the repealing of the J&K Right of Prior Purchase Act, 1993 on 26th of October, 2020 during the pendency of

these appeals, inasmuch as, the Appellants, now, have no right, whatsoever, with the repealing of the Act of 1993, as such, the appeals have become

redundant and are liable to be disposed of, accordingly. Learned Counsel for the Respondents contends that a pre-emptor, claiming the right to pre-

empt the sale on the date of the sale, must prove that such right continued to subsist till the passing of the decree of the First Court and that if the

Claimant loses that right or a vendee improves his right equal or above the right of the Claimant before the adjudication of the Suit, the Suit for pre-

emption must fail. The learned Senior Counsel, in support of his contentions, has relied upon the law laid down by the Apex Court in case titled

“Punyadeo Sharma & Ors. etc. v. Kamla Devi & Ors. etc.”, reported as 2022 LiveLaw (SC) 23, as well as by this Court in CFA No.

04/2019 titled “Roop Singh v. Pritam Singh & Ors.” and CR No. 32/2022 titled “Mohammad Jamal Parray v. Ghulam Qadir Mir

& Ors.” decided by the Co-Ordinate Benches.

07. Mr O. P. Thakur, the learned Senior Counsel, appearing on behalf of the Appellants, on the other hand, has vehemently argued that though the

J&K Right of Prior Purchase Act, 1993 was repealed in the year 2020 vide SO No. 3808 (E) of 2020 dated 26th of October, 2020, however,

Paragraph No. 06 of the SO in question provides that the repealing shall not affect the previous accrued right under the Act. He has also argued that

the reliance placed by the Respondents on the Judgment passed by the Apex Court in the case of Punyadeo Sharma & Ors. (supra) is misplaced,

inasmuch as, in view of the fact that the Apex Court in the said case was dealing with a matter wherein the Amending Act had made a provision with

regard to retrospective effect, while as, in the case on hand, in the repealing of the J&K Right of Prior Purchase Act, 1993, no such provision was

made that it shall have retrospective effect. So, as per the learned Senior Counsel, the right has accrued to the Appellants as Plaintiffs at the time of

the filing of the Suit as also at the time of the passing of the Decree by the Trial Court and even at the time the First Appellate Court had decided the

matter, as such, by settled legal position, in view of the right which had accrued to the Appellants as Plaintiffs at the time of filing of the Suit and at the

time of passing of the Decree by the Trial Court, the present Appeals filed, thereafter, cannot abate and are to be continued. Mr Thakur, while

rebutting the contentions made by the learned Counsel for the Respondents, has relied upon the Judgments passed by the Apex Court in cases titled

“Shyam Sundar & Ors. v. Ram Kumar & Anr.”, reported as 2001 Legal Eagle (SC) 938 and “Didar Singh etc. v. Ishar Singh

(dead) by LRs etc.”, rendered in CA Nos. 4823-4828 of 1984, along with other connected matters. He has also argued that the Judgments

passed by two Co-ordinate Benches of this Court, as relied upon by the other side, are per incuriam as per the law laid down by the Apex Court in

case titled “Sundeep Kumar Bafna v. State of Maharashtra & Anr.”, reported as 2014 Legal Eagle (SC) 230.

08. The Apex Court, in the case of Shyam Sunder & Ors. (supra), has held that if a pre-emptor has a right to pre-empt on the date of institution of

the Suit and on the date of the passing of Decree, the loss of such right subsequent to the Decree of the first Court would not affect his right or

maintainability of the Suit for pre-emption, with further clarification that a pre-emptor, after proving his right on the date of the filing of the Suit and on

the date of passing of the Decree by the first Court, has obtained a decree for pre-emption by the Court of first instance, such right cannot be taken

away by subsequent legislation during the pendency of the appeal filed against the decree, unless such legislation has retrospective operation.

09. In Punyadeo Sharma & Ors. (supra), while relying upon the law laid down in Shyam Sunder & Ors. (supra), the Apex Court held that the

entire pre-emption proceedings stand abated. In this Judgment, it was clearly observed by the Apex Court with regard to pre-emption law that if such

right of pre-emption has been taken away, all proceedings pending before any authority are to be abated, including the proceedings in any other Court,

including the constitutional Courts viz. the High Court and the Supreme Court. In Paragraph No.12, the Apex Court has held as under:

“12. In Shyam Sunder, the right of pre-emption was said to be maligned law. Such rights have been characterized as feudal, archaic and

outmoded. Such right of pre-emption has been taken away and all proceedings pending before any authority have been ordered to be abated including

proceedings in any other Court. Any other Court is wide enough to include the Constitutional Courts i.e. the High Court and the Supreme Court. Even

the 10% of the pre-emption amount which is required to be deposited was ordered to be deposited. Thus, keeping in view the object of the Statute, purpose to be achieved and the express language of the Amending Act, all proceedings of pre-emption under the Act pending before any authority under the Act or before any Court shall stand abated.â€

10. The two Co-ordinate Benches of this Court in Roop Singhâ€™s case (supra) and Mohammad Jamal Parrayâ€™s case (supra) have

reached to the same conclusion, while following the law laid down by the Apex Court in Punyadeo Sharma & Ors. (supra) and Shyam Sunder &

Ors. (supra). In Roop Singhâ€™s case (supra), the Co-ordinate Bench of this Court has held that a pre-emptor, claiming the right to pre-empt the

sale on the date of the sale, must prove that such right continued to subsist till the passing of the decree of the First Court and that if the Claimant

loses that right or a vendee improves his right equal or above the right of the Claimant before the adjudication of the Suit, the Suit for pre-emption must

fail. Another Co-ordinate Bench, in Mohammad Jamal Parrayâ€™s case (supra), also held that with the repeal of the J&K Right of Prior

Purchase Act, 1993, the right of pre-emption in favour of the Plaintiff stood abolished at a time when the Suit was pending and Decree was yet to be

passed in his favour, therefore, after the repeal of the J&K Right of Prior Purchase Act, 1993, the Suit of the Plaintiff cannot survive.

11. The contention of the learned Senior Counsel for the Appellants is that the Appellants, as Plaintiffs, had a right of prior purchase at the time of the

sale, filing of the Suit and even at the time of the passing of the Decree by the Court of first instance viz. the Trial Court, disregard of the fact that the

Suits were granted or rejected, as such, the repealing of the J&K Right of Prior Purchase Act, 1993, under which the Plaintiffs had claimed their right

in the Suits, cannot be said to have abated as the right to pre-emption has to be read in the context of the provisions of the J&K Right of Prior

Purchase Act, 1993 at the time of filing of the Suit and at the time of passing of the Decree by the Court of first instance. While buttressing this

contention, the learned Senior Counsel has vociferously argued the legal position is that the appeal is continuation of Suit and, therefore, the Appellate

Court is required to give effect to any change in law which has retrospective effect and since the Repealing Act had no retrospective effect, as such, the Suits filed earlier in point of time as also the Appeals filed, thereafter, against the Decrees passed in the Suits can be taken to the logical end, unmindful of the repealing of the J&K Right of Prior Purchase Act, 1993. The further contention of the learned Senior Counsel for the Appellants is that in a Suit for pre-emption, the Plaintiff is required to prove his right of pre-emption on three important dates viz. firstly, that the Claimant must possess right of pre-emption on the date of sale, secondly, on the date when the Suit is instituted and, thirdly, on the date of adjudication of the Suit. He has vehemently submitted that the dismissal of the Suits will not take away the rights of the Appellants, as Plaintiffs, and that the contention of the other side was misconceived in this respect.

12. The Constitution Bench of the Apex Court in the case of *Shyam Sunder & Ors.* (supra), which was a case relating to pre-emption, held that the legal position which emerges is that when repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of Suit or adjudication of the Suit, unless such a legislation is retrospective and a Court of appeal cannot take into consideration a new law brought into existence after the Judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of Suit.

13. The Apex Court in the case of *Didar Singh* (supra), while following the law laid down in the case of *Shyam Sunder & Ors.* (supra), had held that the Decree of pre-emption, if passed prior to the issuance of the notification declaring that no right of pre-emption shall exist in respect of sale of land, will not be affected.

14. Keeping in view the aforesaid discussion with regard to the legal position on the subject, the baseline which merits for consideration in the appeals on hand is as to whether the appeals filed by the Appellants against the concurrent Judgments of dismissal of Suits by the Trial Court and their upholding by the First Appellate Court, the same can be continued for hearing or not. It is worth mentioning that the Appellants, as Plaintiffs, had

pleaded a right of pre-emption in their Suits, however, their Suits were dismissed by the Trial Court. Therefore, the Right of the Appellants, as

Plaintiffs, had not fructified when the Decree was passed, dismissing the Suits, as such, it cannot be said that on the date of passing of the Decrees by

the Trial Court, the Appellants had a right in their favour and so was the case at the stage of First Appeals.

15. Since, the Co-ordinate Benches of this Court, as observed hereinabove, have already taken a view in the cases of Roop Singh (supra) and

Mohammad Jamal Parray (supra) holding that in cases the Suits are dismissed, therefore, at the time of passing of the Decree by the Trial Court,

the right of the Plaintiffs, as pre-emptors, got extinguished and was not there, so as to say that the Appellants had the right of pre-emption on the date

of the sale, on the date of the filing of the Suit and also on the date of passing of the Decree by the Trial Court. This Court, while following the

principle of precedent, does not take a different view, to the one taken by both the two Co-ordinate Benches in cases of Roop Singh (supra) and

Mohammad Jamal Parray (supra).

16. Having regard to the afore-stated enunciation of law on the subject and the facts and circumstances of the appeals on hand, it is held that in view

of the dismissal of the Suits of the Appellants by the Trial Court, the right to pre-emption did not survive as on the date of passing of the Decrees, as

such, with the repealing of the J&K Right of Prior Purchase Act, 1993, the appeals on hand cannot be continued for hearing and are liable to be

abated.

17. Viewed thus, these appeals are disposed of as having abated. Interim direction(s), if any subsisting, as on date, in any of these connected appeals,

shall stand vacated. No order as to costs.

18. Registry to place a copy of this Judgment on all the three connected appeals.

19. Records received from the Trial as well as the First Appellate Courts be sent back, along with copies of this Judgment.