

(2004) 05 P&amp;H CK 0013

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Regular Second Appeal No. 2120 of 1983

Sarupa and Others

APPELLANT

Vs

Subhash and Others

RESPONDENT

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**Date of Decision:** May 21, 2004**Acts Referred:**

- Hindu Succession Act, 1956 - Section 14(1)

**Citation:** (2004) 138 PLR 221**Hon'ble Judges:** Kiran Anand Lall, J**Bench:** Single Bench**Advocate:** Vikas Negi, for Avnish Mittal, for the Appellant; Rajesh Chaudhary, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Kiran Anand Lall, J.

Baru was the original owner of the suit land. After his demise, the land was inherited by his wife, Korde. Respondent No. 2. Sunehri is daughter of Korde and Baru. After Korde's death, Sunehri inherited this land on 6.10.1977. She sold it to the appellants vide sale deed dated 6.6.1980 for a sum of Rs. 1,03,000/-. Respondent No. 1. Subhash, filed a suit for pre-emption, claiming preferential right to this land, being son of Sunehri.

2. As the suit was contested by the appellants-vendees, trial was held in respect of the following issues:-

1. Whether the plaintiff has superior right of pre-emption?

2. Whether the sale price was actually fixed and paid in good faith? O.P.P.

3. If issue No. 2 is not proved, what was the market value of the land in dispute at the lime of sale? (onus of party).

4. Whether the suit is bad for partial Pre-emption? O.P.D.

5. Whether the suit is collusive, if so its effect? O.P.D.

6. Whether the plaintiff has no right of pre-emption as he consented to the sale as alleged in para No. 8 of the preliminary objections? O.P.D.

7. Whether the expenses of stamps and registration fee etc. have been spent by the defendants, if so to what amount? O.P.D.

8. Relief.

3. The trial court recorded findings in respect of all the issues in favour of Subhash-respondent and decreed the suit in his favour subject to payment of Rs. 1,16,425/- (including stamp and registration charges), less the 1/5th pre-emption money already deposited. Under issue No. 1, it was held that the impugned sale was governed u/s 15(1)(a) of the Punjab Pre-emption Act (to be referred as "the Act").

4. It was only the finding on issue No. 1 which was challenged, in first appeal, by the appellants, and the ground of challenge was that the sale was governed u/s 15(2) of the Act and not u/s 15(1) (a) of the Act and, therefore, respondent No. 1 was wrongly held to be having a preferential right of pre-emption. The first appellate court rejected the contention and upheld the verdict of the trial court that the sale was governed by Section 15(1) of the Act.

5. Feeling dis-satisfied with the verdict of first appellate court, the appellants came up in second appeal to this court.

6. I have heard arguments addressed by the learned counsel for the parties and have also carefully perused the record.

7. The contention of learned counsel for the appellants is that as Baru died prior to the coming into force of the Hindu Succession Act, 1956 (to be referred as "the 1956 Act"), his wife, Korde, inherited the suit land from him, as limited owner only and as such, on Korde's death, her daughter, respondent No. 2, would be deemed to have inherited the land as heir of her deceased father, Baru. Therefore, according to him, the finding of first appellate court that land was not inherited by her (Sunehri-respondent) through her father but as the direct heir of Smt. Korde, is wrong. Well, I do not find any merit in this contention. Baru died in the year 1946. Ex.P4 is the copy of mutation vide which his land i.e. suit land was mutated in the name of Smt. Korde. No doubt, upto that time i.e. in the year 1946, the 1956 Act had not come into force, and as such,, Korde had inherited the land, as limited owner only. But, later on, by virtue of Section 14 of the 1956 Act, she became its "absolute owner", by operation of law. Reference in this connection may be made to 1970 P.L.J. 149 Balwant Singh v. Mahabir Singh, wherein it was held that a widow who got land (as limited owner) on the death of her husband becomes absolute owner of it, on the coming into force of Section 14(1) of the Hindu Succession Act, 1956. This

judgment squarely applies to the facts of the case in hand, and supports the stand of Subhash-respondent that Korde had become absolute owner of the land, on the coming into force of Section 14(1) of the Hindu Succession Act, 1956, and on her death, her daughter Sunehri (vendor) inherited it from her, and being Sunehri's son, he (Subhash-respondent) has a preferential right to pre-empt the sale of this land, effected by Sunehri.

8. Learned counsel for the appellants relied upon 1970 P.L.J. 815 Karta Ram and Anr. v. Om Parkash, in which it was held that if a sale falls u/s 15(2)(a) of the Pre-emption Act, the application of Section 15(1) is excluded. It was further held that the language employed in Section 15(2)(a) is capable of no other interpretation as, it says that inspite of anything that has been mentioned in Section 15(1), where the sale has been made by a female and of property to which she has succeeded through her brother, then the right of pre-emption shall vest in her brother or brother's son. In other words, the right of pre-emption qua such a sale wilt not vest in anybody else, in spite of what has been stated in Sub-section (1) of Section 15 of the Pre-emption Act. This judgment, it may be stated, is of no use to the appellants because in it, sale involved was of such land which had been inherited by the female vendor through her brother, and therefore, it was held that the sale fell u/s 15(2) of the Act, and the right of preemption shall vest in her brother or brother's son whereas, in the instant case, as held above, land was inherited by Sunehri Vendor directly from her mother, Korde, after she had become its absolute owner by virtue of Section 14(1) of the Hindu Succession Act, 1956, and not through Baru, husband of Korde.

9. In the light of what has been discussed above, it is held that the finding of the courts below that the sale of suit land would be governed by Section 15(1) of the Act, and not by Section 15(2) of the Act, as Sunheri vendor had inherited the land directly from her mother. Korde, is correct, and the same is affirmed. Consequently, the appeal is dismissed, leaving parties to bear their own costs.