

(1969) 02 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Regular Second Appeal No. 1493 of 1967

Balbir Singh and others

APPELLANT

Vs

Jagrup Singh

RESPONDENT

Date of Decision: Feb. 12, 1969**Acts Referred:**

- Hindu Succession Act, 1956 - Section 18

Hon'ble Judges: D.K. Mahajan, J**Bench:** Single Bench**Advocate:** S.K. Goyal, for the Appellant; Naginder Singh, for the Respondent**Final Decision:** Allowed

Judgement

D.K. Mahajan, J.

This second appeal must succeed in view of the Full Bench decision of this Court in Moti Ram and others v. Bakhwant Singh and others¹. The Full Bench decision over-ruled the Division Bench decision in Surjan Singh v. Harcharan Singh. The Courts below relied upon this decision in decreeing the plaintiff's suit. The vendees and the pre-emptor are related as follows:

2. The lard in dispute was sold by Gurnam Singh, real brother of Jagrup Singh to his step-brothers Balbir Singh and others. The sale was pre-empted by Jagrup Singh. In view of the Division Bench decision in Surjan Singh's case, the suit was decreed. The vendees' defence is that their status is equal to that of the vendor. In view of the Full Bench decision, there is no distinction between a full-brother and a half-brother for the purpose of pre-emption law. Therefore, the status of the pre-emptor is equal to that of the vendees. It is a fundamental rule of pre-emption law that a pre-emptor can only succeed if his right is superior to that of the vendees. In view of the Full Bench decision, it cannot be held that the right of the pre-emptor is superior to that of the vendees.

3. Mr. Naginder Singh, who appears for the pre-emptor Jagrup Singh, has urged that section 18 of the Hindu Succession Act shows that Jagrup Singh is preferential heir vis-a-vis the vendees so far as Gurnam Singh's estate is concerned. It is no doubt true that this is so, but in so far as the pre-emption law is concerned, this superiority has no meaning, as already stated, in view of the Full Bench decision.

4. Mr. Naginder Singh next contended that the Full Bench decision has laid down a wrong proposition of law and I should refer the case to a larger Bench. In my opinion, that is not necessary, because I would be certifying this case as a fit one for a Letters Patent appeal and this matter Mr. Naginder Singh can reargue before the larger Bench if his appeal is admitted and heard.

5. For the reasons recorded above, this appeal is allowed, the judgments and decrees of the Courts below are set aside and the plaintiff's suit is dismissed. There will be no order as to costs.