
(1962) 01 P&H CK 0043

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1110 of 1961

Sawan Singh and
Others

APPELLANT

Vs

Amar Nath

RESPONDENT

Date of Decision: Jan. 11, 1962

Acts Referred:

- Punjab Pre-emption Act, 1913 - Section 15

Hon'ble Judges: Shamsheer Bahadur, J

Bench: Single Bench

Advocate: B.S. Jawanda, for the Appellant; H.L. Sarin and K.K. Cuccria, for the Respondent

Final Decision: Dismissed

Judgement

Shamsheer Bahadur, J.

The question of law that falls for determination in this appeal is whether under the Punjab Pre-emption (Amendment) Act, 1960, a co-sharer can claim a pre-emptive right in respect of agricultural land which though at one time belonged to an occupancy tenant was at the time of sale vested in his widow as an absolute owner?

2. The facts giving rise to this litigation are not disputed and may be briefly set out, Chandi, widow of Kishan Singh, sold the suit land comprised of one fourth share of 76 Kanals and 8 marlas for a sum of Rs. 4,000/- by a registered sale-deed on 16th of December, 1959, to the four appellants Sawan Singh and others. The respondent Amar Nath brought a suit for pre-emption setting himself up as a co-sharer of Chandi and claimed pre-emption on payment of a sum of Rs. 1,000/- which, according to him, was the actual price paid for the land. The suit was decreed by the trial Judge in favour of the respondent who was required to pay the full price of Rs. 4,055/-. This decree has been affirmed in appeal preferred by the vendees, who have come in second appeal to this Court.

Whereas the decree was passed in favour of the plaintiff-respondent in pursuance of sub-clause (fourthly) of clause (b) of sub-section (1) of section 15 of the Punjab Pre-emption Act, which runs as under:-

The right of pre-emption in respect of agricultural land and village immoveable property shall vest-

* * * *

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,-

* * * *

Fourthly, in the other co-sharers";

the appellant vendees assert their right to defeat the pre-emptor on basis of clause (b) of sub-section (2) of section 15 which lays down that:-

Notwithstanding anything contained in sub-section (1),

* * * *

(b) where the sale is by a female of land or property to which she has succeeded through her husband.....the right of pre-emption shall vest,-

First, in the son or daughter of such female;

Secondly, in the husband's brother or husband's brother's son of such female.

3. The property was originally held by Kishan Singh as an occupancy tenant who died prior to the enforcement of the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953. All rights, title and interest of a landlord in an occupancy tenancy came to be extinguished under the Act and the tenant became a full fledged landlord free from all incumbrances. It is contended by the learned counsel for the appellants that though Chandi had become a full and absolute owner of the occupancy rights which once vested in her husband she had succeeded to them through him and under clause (b) of sub-section (2) the right of pre-emption does not in such a case vest in a co-sharer. On the other hand, Mr. Sarin, the counsel for the respondent, reiterates the contention which found favour with the two Courts below, that the suit land which was acquired by Chandi in pursuance of the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, ceased to be an estate of her husband and became her exclusive acquisition. The respondent Amar Nath being admittedly a co-sharer in the holding of Chandi, he is entitled to pre-empt in pursuance of sub-clause (fourthly) of clause (b) of sub-section (1) of section 15. In a Division Bench authority of this Court in Harnam Kaur v. Sawan Singh ILR 1959 Punj. 2333, it was held by Dulat and Mahajan JJ. that "where a widow governed

by custom succeeds to the occupancy rights left by her husband and she acquires ownership rights under Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, it cannot be said that what she acquires is as part of her husband's estate. The ownership rights are not accretion to the occupancy rights, when by operation of law such rights are annihilated. There can be no accretion to a thing that itself erases to exist. The acquisition is a fresh acquisition though the basis for it may be the possession of certain rights which came to the widow from her husband or by collateral succession or even otherwise."

4. In the instant case, Chandi no doubt succeeded to the rights of occupancy tenancy as the widow of Kishan Singh, but later these self same rights assumed a new character when their conversion into an absolute estate in her favour took place. This absolute estate is separate and distinguishable from the rights to which she had succeeded as a widow of Kishan Singh and to my mind clause (b) of sub-section (2) has no application for the simple reason that the suit property which is now an absolute estate of Chandi cannot be regarded as one to which she had "succeeded through her husband". The learned counsel for the respondent has further relied on Sukh Ram v. Lekh Ram ILR 1960 Punj. 47, which is another Division Bench authority of this Court (Bhandari C.J. and Falshaw J.). In the judgment delivered by Falshaw J., as the Chief Justice then was, it was said that though a widow entered into enjoyment of the occupancy rights in succession to her deceased husband, she only enjoyed a widow's estate, but the effect of her own conversion of these occupancy rights into a full ownership in accordance with the provision of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, is that she became an absolute owner of the land and was entitled to alienate it in any manner she liked. Reliance was placed on Narain Singh v. Mst. Sada Kaur 26 P.L.R. 164=I.L.R. 6 Lah. 134, where it was held by Broadway and Jai Lal JJ., that the widow acquired the occupancy rights for herself and not as representative of her deceased husband and her right to dispose of such self-acquired property was unlimited.

5. It seems to me that the facts of the present case are exactly similar to those set out in Sukh Ram v. Lekh Ram ILR 1960 Punj. 47 and Narain Singh v. Mst. Sada Kaur 26 P.L.R. 164=I.L.R. 6 Lah. 134. Chandi had acquired the occupancy rights for herself and it cannot be said that she succeeded to such rights through her husband.

In this view of the matter, this appeal must fail and is accordingly dismissed with costs.