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(1972) 09 SHI CK 0003

High Court of Himachal Pradesh

Case No: L.P.A. No. 17 of 1969

Gopala and Others

APPELLANT

Vs

Ram Saran and Others

RESPONDENT

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Date of Decision: Sept. 22, 1972

Citation: (1973) 2 ILR HP 5

Hon'ble Judges: R.S. Pathak, C.J; Chet Ram Thakur, J

Bench: Division Bench

Advocate: P.N. Neg, for the Appellant; S. Malhotra and H.K. Bhardwaj, for the Respondent

Final Decision: Dismissed

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### Judgement

Chet Ram Thakur, J.

In this letters patent appeal the only question that falls for determination is whether a step-brother has also to be regarded as a brother for purposes of the second paragraph of Section 15(1) of the Punjab Pre-emption Act of 1913 as applied in Himachal Pradesh.

2. One Mohan had two wives, named Dulumbi and Surju. The Defendants Nos. 7 to 11 are the sons of Mohan from Dulumbi while Ram Saran is the son of Mohan from Surju. Defendants Nos. 7 to 11 sold 14 kanals and 6 marlas of land for Rs. 3,500 to Gopala, Dila Ram, Inder Ram, Kanshi Ram, Lashkari Ram and Hari Ram on May 6, 1964. A suit to preempt the sale was instituted by Ram Saran. The vendees resisted the right of Ram Saran Plaintiff to pre-empt the sale. The trial Judge, Hamirpur held that the Plaintiff being a step-brother of the vendors could be regarded as their brother and, therefore, had a right of pre-emption under the second paragraph of Section 15(1)(A), of the Punjab Pre-emption Act, 1913 (hereinafter referred to as the Act) and he accordingly decreed the suit on June 8, 1965.

3. The vendees came up in appeal to the Senior Subordinate Judge, Kangra at Dharamsala. He held that the word "brother" in the second paragraph of Section 15(1)(a), of the Act does not include "a half-blooded brother" and he accordingly

accepting the appeal dismissed the suit. Against this an appeal was filed to the High Court of Delhi, Himachal Pradesh, at Simla and the learned single Judge relying on *Jhandav v. Dharam Dass* (1969 DLT 121) decided that the legitimate sons born from different mothers but the same father are nothing but brothers and it would not be correct to say that for purposes of paragraph second of Section 15(1)(a) the expression "brothers" should be confined to sons, who are born from the same mother and have also the same father. The Appellant undoubtedly had the right of pre-emption, being a brother of the vendors and, therefore, he accepted the appeal with costs and decreed the suit of the Plaintiff on payment of Rs. 3,500 to the vendees who were ordered to deliver possession of the land to the Appellant.

4. After hearing the learned Counsel for the parties and giving our anxious consideration to the authorities placed by them before us, we are of the view that a brother includes a step-brother also.

5. The learned Counsel for the Appellant first relied upon a Division Bench authority of the Punjab and Haryana High Court, *Surjan Singh and others v. Harcharan Singh* AIR 1968 Pun 137 wherein it was held that:

The word "Brother" in Section 15(1)(a) secondly, means only "real brother" and does not include a "step-brother" or a "uterine-brother."

6. But this authority was overruled in *Moti Ram S/o Atma Ram and Ors. v. Bakhwant Singh and Ors.* AIR 1968 Pun 141, which is a Full Bench decision. In this case it has been laid down that:

The primary purpose of the restriction or pre-emption is to retain the property amongst the closest relatives of the vendor. With this view, the conferment of the right to purchase under the Pre-emption Act is based on the degree of relationship of the vendor with the person to whom the right is accorded, consanguinity being the test.

If the right of pre-emption was intended to be confined to full brothers alone, the restriction would have been specifically noted in the Act. When the father's brother's son has been given the right, there is no conceivable reason why a step-brother, who is nearer in consanguinity, should have been excluded. The correct perspective, therefore, is that a step-brother is a brother within the meaning of Section 15(1)(a), secondly, and is not excluded by the Legislature from exercising his right of preemption.

7. So in view of this latter authority the case *Surjan Singh and Ors.* (supra) does not assist the Appellant. It appears that the legislature has generally understood the expression "brother" to include "step-brother". For example, we find from the schedule of heirs in the Hindu Succession Act that a brother is an heir of category II, and the explanation appended thereto excludes a uterine-brother, but not a stepbrother, from the expression "brother". Step-brothers descend from a common

father although born from two different mothers, whereas uterine-brothers are from different fathers but from the same womb. Therefore, it is consanguinity or the relationship of blood in the male line which is to be taken into consideration for purposes of determination of an heir for succession. In so far as the right of pre-emption is concerned in that also the very object is that the property should not go outside the family. If brother's sons have been given the right to pre-empt the sale as would be evident from the second paragraph of Section 15(1)(a), then there is no reason why a step-brother who is nearer in blood relation to a stepbrother should not be included in the category of brother for purposes of this section under the Act.

8. The other authority relied upon is *Doomanu v. Mehar Chand* 1968 DLT 620 but this authority, it appears, has got no relevancy inasmuch as in the aforesaid case the only question that came up for consideration was as to whether the amendment of Section 15(2) of Punjab Pre-emption Act made by Section 2 of the Punjab Pre-emption (Amendment) Act, 1964 was retrospective or merely prospective in its operation. This authority had been cited before the learned single Judge also and he did not rely on this authority for the reasons, as stated above.

9. The third authority is [Gulraj Singh Vs. Mota Singh](#). In this case also the point that fell for consideration of their Lordships of the Supreme Court was whether the words "son or daughter" of such female vendor in Section 15(2)(b) of the Punjab Preemption Act (1913) as amended by Act 10 of 1960 means only legitimate son or legitimate daughter of the female vendor and will not include illegitimate son or daughter, and their Lordships held in that case that❖

In the absence of an express provision to the contrary the normal rule of construction of the words "child", "son" or "daughter" occurring in a statute is to include only legitimate children i.e. born in wedlock. There is no such express provision in Section 15. In construing these words it is not open to the court to travel beyond the statute or to resort to the line of heirs as intestate succession under the Hindu Succession Act or for the matter of that, to any other system of Common Law or statute applicable to the vendor.

10. Therefore, this authority is also of no assistance to the Appellant.

11. *Sant Singh v. Sucha Singh* 1963 CLJ 63 also does not assist the Appellant.

12. *Banta Singh and Anr. v. Smt. Harbhajan Kaur and Ors.* 1969 PLR 862 is also not applicable to the facts of the present case because in that case it was the question of right of pre-emption claimed by a niece or a grand-daughter and it was held that "on which the Plaintiff based her right to preempt the property, no right of pre-emption was bestowed upon a niece or a grand-daughter. She was no doubt the daughter of one of the vendors but she was the niece of the other three male-vendors and grand-daughter of one Smt. Khern Kaur who was also one of the vendors and it was further held according to this authority that according to the rule

laid down by the Full Bench in Moti Ram and Ors. v. Bakhwant Singh and Ors. 1967 PLR 1041 she was entitled to pre-empt only that share in the suit property which belonged to her father. But here the case is quite different".

13. The last case cited by the learned Counsel for the Appellant is [Shri Chaman Singh and Another Vs. Srimathi Jaikaur](#), In that case the point for consideration was whether the Amendment Act of 1964 should be given retrospective effect which by Section 15(2)(b), first paragraph gave the right to the step-daughter to pre-empt the sale of the property received by the widow from her husband and their Lordships held:◆

In view of the first paragraph of Clause (b) of Section 15(2), step-daughter of a widow is entitled to exercise her right of pre-emption to the property received by the widow from her deceased husband. This was so even before the amendment of Section 15 in 1964 and at any rate whatever doubts existed they were removed by the Amendment Act of 1964 which must be given retrospective effect.

14. On the contrary the learned Counsel for the Respondents has placed reliance on Letters Patent Appeal No. 4 of 1969, decided on 31-7-1970 and Letters Patent Appeal No. 5 of 1969 decided on 17-7-1970. The former is a case which is now reported as Jhandav v. Dharam Dass 1969 DLT 121, which has been referred and relied upon by the learned single Judge in his judgment. He has held that:

Whether one takes the meaning of the word "Brother" in ordinary parlance or the dictionary meaning or the meaning given in various legal dictionaries, the word brother is comprehensive enough to include a half-brother and a brother born to a common father though from different mothers cannot be described otherwise than as a brother.

15. In the latter case the lands were sold by Shakuntla daughter of one Hardyal Singh and Lal Singh filed a suit for possession by pre-emption. He was also the son of Hardyal Singh from a different wife and the question in that case was also whether Lal Singh being a half-brother of Shakuntla was entitled to pre-empt u/s 15(2)(1) of the Punjab Pre-emption Act, 1913. The learned single Judge relying on his earlier decision in R.S.A. 104/67 held that Lal Singh was a brother of Shakuntla within the meaning of the said section of the aforesaid Act. This case was taken in Letters Patent Appeal and which is now reported as Jhandav v. Dharam Dass and the decision was upheld in the Letters Patent Appeal. Therefore, the ratio in both the cases is the same, as already stated above.

16. Section 15 of the Act mentions the persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property. In the first instance where the sale is by a sole owner, the right is given◆

Firstly, in the son or daughter or son's son or daughter's son of the vendor;

Secondly, in the brother or brother's son of the vendor;

Thirdly, in the father's brother or father's brother's son of the vendor;

Fourthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;

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

Firstly, in the sons or daughters" or sons" sons or daughters" sons of the vendor or vendors;

Secondly, in the brothers or brothers" sons of the vendor or vendors;

Thirdly, in the other co-sharers;

Fifthly,...

17. From the plain reading of the section it would, therefore, be apparent that the intention of the legislature is to retain the property within the family. If the legislature intended to exclude the half-brother from exercising the right of preemption then it should have specifically made a provision for such exclusion. Firstly, in the case of sale by a sole owner, the right has been given to the son and the daughter and the son's son and then the right has been given to the brother and the brother's son of the vendor and then to the father's brother or father's brother's son and, lastly, to the tenant. If the right has been given to the brother's son then it cannot be understood why a half-brother or a step-brother from the same father should be excluded from pre-empting the sale. Whatever may be the dictionary meaning of the word "brother", for purpose of the Act, a step-brother must be included within the meaning of the word "brother". The Punjab authorities as reported in 1968 Punjab and the authority as reported in 1969 DLT 121, fully support this view that a half-brother or a step-brother is included within the meaning of brother for purposes of the Act. Therefore, we hold that the present Appellant is a "brother" of the vendors and he has got a right of pre-emption and hence, the judgment and decree passed by the learned single Judge are hereby affirmed and the result is that the appeal fails and is hereby dismissed.

18. As the case has been" decided on a legal point, therefore, the parties are left to bear their own costs throughout.

R.S. Pathak, C.J.

19. I agree.