# Lachhman Dass vs Jagat Ram & Ors on 20 February, 2007

## Equivalent citations: AIR 2007 SC (SUPP) 1169, 2007 (10) SCC 448, (2007) 1 WLC(SC)CVL 506, (2007) 1 CURLJ(CCR) 545, (2007) 2 LANDLR 58, (2007) 3 SCALE 349, (2007) 3 SUPREME 410, (2007) 4 MAD LJ 1122, (2007) 2 RECCIVR 300, (2007) 2 PUN LR 297

## Author: S.B. Sinha

## Bench: S.B. Sinha, Markandey Katju

```
           CASE NO.:
Appeal (civil)  5947 of 2002

PETITIONER:
Lachhman Dass

RESPONDENT:
Jagat Ram & Ors

DATE OF JUDGMENT: 20/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
```

J U D G M E N T S.B. Sinha, J.

Interpretation of the provisions of the Punjab Pre-emption Act, 1913 ('the Act', for short) is in question in this appeal which arises out of a judgment and order dated 30th May, 2001 passed by the High Court of Himachal Pradesh at Shimla in Regular Second Appeal No.38 of 1998 dismissing the appeal arising from a judgment and decree dated 15.11.1997 passed by the Additional District Judge (I), Una in Civil Appeal No.26/92/91affirming a judgment and decree dated 7.10.1991 passed by the Sub-Judge, 1st Class, Amb in Civil Suit No.211/85 RBT No.635/89 dismissing the Civil Suit filed by the appellant herein.

The fact of the matter is under :

> Respondent No.9-Desh Raj was owner of the suit property. Appellant (plaintiff) was a tenant in respect thereof. By reason of a deed of sale dated 27.4.1982, Desh Raj transferred the suit land in favour of Jagat Ram (Respondent No.1-Defendant No.2) and Gurbaksh Kaur, wife of Jagat Ram (Respondent No.2-Defendant No.2). Jagat Ram and Gurbaksh Kaur, in turn, by a registered deed of sale dated 11.10.1982 transferred their right and interest therein in favour of the appellant. Respondent

No.8-Chander Bala is the daughter of Respondent No.9-Desh Raj. Claiming a right of pre-emption in terms of the Act, she filed a suit for pre-emption impleading only the respondent Nos. 1 and 2 therein. A compromise was entered into by and between the parties in the said proceedings. A consent decree was passed on the basis thereof by the learned Subordinate Judge, stating :

"The case was taken up on 13.6.1983 on which date both the parties, conceded the rights of each other. The Defendant conceded that the plaintiff has a superior right of preemption. The Plaintiff admitted that the suit land was actually sold for Rs.30,000/- by the vendor the Defendant. The counsel for the Plaintiff paid Rs.24,000/- to the Defendant in the court and the remaining Rs.6,000/- has already been deposited in the court as 1/5th of the preemption amount."

Allegedly, she was put in possession of the said land in purported execution of the said decree of pre-emption. A deed of gift was executed by Defendant-Respondent No.1 on 24.1.1984 in favour of Respondent Nos.3 to 7 herein, who are sons and daughters of Respondent Nos.1 and 2. They applied for mutation of their names, which was granted in their favour by an order dated 28.1.1985. Assailing the said order of mutation as also the said consent decree, a suit was filed by the appellant herein. The said suit was dismissed. As indicated hereinbefore, the first appeal as also the second appeal preferred thereagainst have also been dismissed.

The original Defendant Nos. 3 to 7 only are before us.

Mr. Manoj Swarup, learned counsel appearing on behalf of the appellant would submit that as the appellant was not impleaded as a party in the said suit, the decree passed therein was not binding on him. In any event, the learned counsel would contend that collusion on the part of Defendant Nos.1 and 2 and Defendant Nos.8 and 9 is evident from the fact that immediately after passing of the decree in the said suit, a deed of gift was executed, the consent decree should have been set aside.

The Punjab Pre-emption Act confers a special right of pre-emption on the persons specified therein. Right of pre-emption has been defined in Section 4 of the Act to mean the right of a person to acquire agricultural land or village immovable property or urban immovable property in preference to other persons, and it arises in respect of such land only in the case of sales and in respect of such property only in the case of sales or of fore-closures of the right to redeem such property.

Section 5 of the Act provides that there would be no right of pre- emption in certain cases.

Section 6 of the Act states that a right of pre-emption exists in respect of village immovable property and in respect of agricultural land, but every such right shall be subject to all the provisions and limitations contained therein.

Section 10 of the Act prohibits a party to alienate any property claiming pre-emption.

Section 19 of the Act occurring in Chapter IV thereof provides for the procedure to claim pre-emption in the following terms :

> "19. Notice to pre-emptors. When any person proposes to sell any agricultural land or village immovable property or urban immovable property or to foreclose the right to redeem any village immovable property or urban immovable property, in respect of which any persons have a right of pre-emption, he may give notice to all such persons of the price at which he is willing to sell such land or property or of the amount due in respect of the mortgage, as the case may be.
>
> Such notice shall be given through any Court within the local limits of whose jurisdiction such land or property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupal or other public place of the village, town or place in which the land or property is situate."

Section 21 provides for suits for pre-emption.

The constitutionality of the provisions of the said Act came up for consideration before a Constitution Bench of this Court in Atam Prakash vs. State of Haryana & Ors. [(1986) 2 SCC 249], wherein Chinnappa Reddy, J. held :

> "In the first case, (Bhau Ram case), the right of pre-emption given to co-sharers was held to be a reasonable restriction on the right to hold, acquire or dispose of property conferred by Article 19(1)(f) of the Constitution. What has been said there to uphold he right of pre-emption granted to a co-sharer as a reasonable restriction on the right to property applies with the same force to justify the classification of co-sharers as a class by themselves for the purpose of vesting in them the right of pre-emption. We do not think that it is necessary to restate what has been said in that case. We endorse the views expressed therein. The right of pre-emption vested in a tenant can also be easily sustained. There can be no denying that the movement of all land reform legislations has been towards enabling the tiller of the soil to obtain proprietory right in the soil so that he may not be disturbed from possession of the land and deprived of his livelihood by a superior proprietor. The right of pre- emption in favour of a tenant granted by the Act is only another instance of a legislation aimed at protecting the tenant. There can be no doubt that tenants form a distinct class by themselves and the right of pre-emption granted in their favour is reasonable and in the public interest. We are, therefore, of the view that clause 'fourthly' of Section 15(1)(a), clauses 'fourthly and fifthly' of Section 15(1)(b) and clause 'fourthly' of Section 15(1)(c) are valid and do not infringe either Article 14 or 15 of the Constitution."

While upholding the validity of the provisions of the special Act, this Court struck down the right of pre-emption based on consanguinity, stating :

> "We are thus unable to find any justification for the classification contained in Section 15 of the Punjab Pre-emption Act of the kinsfolk entitled to pre-emption. The right of pre-emption based on consanguinity is a relic of the feudal past. It is totally inconsistent with the constitutional scheme. It is inconsistent with modern ideas. The reasons which justified its recognition quarter of a century ago, namely, the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession are today irrelevant. The list of kinsfolk mentioned as entitled to pre-emption is intrinsically defective and self-contradictory. There is, therefore, no reasonable classification and clauses 'First', 'Secondly' and 'Thirdly' of Section 15(1)(a), 'First', 'Secondly' and 'Thirdly' of Section 15(1)(b), clauses 'First', 'Secondly' and 'Thirdly' of Section 15(1)(c) and the whole of Section 15(2) are, therefore, declared ultra vires the Constitution."

Respondent No.9, thereafter, could not have claimed a right of pre- emption as a daughter of respondent No.8.

The fact that Appellant has purchased the suit premises was known to her. Appellant was in possession of the land. The execution of a registered deed of sale shall also be treated as a notice in terms of Section 3 of the Transfer of Property Act, 1882, which is in the following terms :

> "....."a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.
>
> Explanaion I. Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub- section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:
>
> Provided that (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder, (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II. Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in

actual possession thereof."

Despite such notice, the appellant was not impleaded as a party. His right, therefore, to own and possess the suit land could not have been taken away without giving him an opportunity of hearing in a matter of this nature. To hold property is a constitutional right in terms of Article 300-A of the Constitution of India. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold a property is claimed, the procedures therefor must be complied with. The conditions precedent therefor must be satisfied. Even otherwise, the right of pre-emption is a very weak right, although it is a statutory right. The Court, while granting a relief in favour of a preemptor, must bear it in mind about the character of the right, vis-`- vis, the constitutional and human right of the owner thereof.

The manner in which the purported consent decree was entered into by and between Defendant No.9 on the other hand and Defendant Nos. 1 and 2 is tell tale. Defendant Nos.1 and 2 having transferred their right and interest, could not have conveyed any right in the property of Defendant No.9. No such right existed in them.

In the consent decree no finding was arrived at as to on what basis the right of Defendant-Respondent No.9 was considered to be a superior right of pre-emption. Defendant No.9 out of the total consideration amount of Rs.30,000/-, deposited only 1/5th thereof, i.e., Rs.6,000/- in the Court. Respondent Nos.1 and 2 neither said to have claimed the said amount nor the rest of the amount of Rs.24,000/- could have been paid in their favour by Defendant No.9.

If the Defendant Nos. 1 and 2 only could not have accepted the said amount as a valid consideration of passing of a decree of pre-emption in favour of the Respondent No.9; the purported consent decree, in our opinion, was void ab initio. Moreover, in the aforementioned facts and circumstances of this case, the appellant was a necessary party therein. No decree, therefore, could have been passed in his absence. The parties to the said suit and, in particular, Defendant-Respondent Nos. 1 and 2, therefore, by suppression of material facts committed a fraud on the Court in obtaining the said decree. It may be true that collusion between Respondent No.9 and Defendant Nos.1 and 2 was required to be specifically pleaded, but in this case collusion between them is apparent on the face of the records. The circumstances obtaining in the case lead to only one conclusion that the parties were in collusion with each other for the purpose of obtaining the said decree.

Mrs. Rekha Palli, learned counsel for the respondent, therefore, may not be correct in contending that the appellant was not a necessary party. The contention of Mrs. Palli that even if the defendants were impleaded as party, he did not have any other defence, does not find favour with us.

We cannot speculate in regard to the nature of defence which could be raised in the suit. In any event in a case of this nature, where the appellant was a necessary party, in his absence the suit could not proceed and, therefore, the said question does not arise for consideration in this case.

In Shyam Sunder & Ors. vs. Ram Kumar & Anr. [(2001) 8 SCC 24], this Court opined :

> "....The main object behind the right of pre-emption, either based on custom or statutory law, is to prevent intrusion of a stranger into the family-holding or property. A co-sharer under the law of pre-emption has right to substitute himself in place of a stranger in respect of a portion of the property purchased by him, meaning thereby that where a co-sharer transfers his share in holding, the other co-sharer has right to veto such transfer and thereby prevent the stranger from acquiring the holding in an area where the law of pre- emption prevails. Such a right at present may be characterized as archaic, feudal and outmoded but this was law for nearly two centuries, either based on custom or statutory law. It is in this background the right of pre-emption under statutory law has been held to be mandatory and not mere discretionary...."

We have noticed hereinbefore that plaintiff was not a co-sharer of her father. She could not have claimed a right of pre-emption on the basis of consanguinity. Had, therefore, an opportunity of hearing been given, the plaintiff-appellant could have shown that she did not have any such right.

The impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. Respondents shall bear the cost of the appellant. Advocate's fee is assessed at Rs.5,000/-.