

Sadhu Singh And Anr. vs Dharam Dev And Ors. on 31 July, 1980

Equivalent citations: AIR1980SC1654, (1981)1SCC510, 1980(12)UJ802(SC), AIR 1980 SUPREME COURT 1654, 1981 (1) SCC 510

Author: V.R. Krishna Iyer

Bench: O. Chinnappa Reddy, R.S. Pathak, V.R. Krishna Iyer

JUDGMENT

V.R. Krishna Iyer, J.

1. The short and single point raised by Shri Harbans Singh, learned Counsel appearing for the appellants, in this appeal by special leave is that the decree for preemption passed against the appellant is on insatiable in view of Section 3 of the Punjab Pre-emption (Repeal) Act, 1973 which reads thus:

SECTION 3 :

Bar to pass decree in suit for pre-emption on and from the date of commencement of the Punjab Pre-emption (Repeal) Act, 1973 no Court shall pass in a decree in any suit for pre emption.

2. The section is plain and its meaning unambiguous that there is a statutory mandate against passing a decree for enforcement of a right of preemption in the state of Punjab, The only point here is as to whether a decree already passed by the trial Court, challenged in appeal after the Act was passed and affirmed on appeal would fall within the mischief of Section 3 while the case pends in the High Court; We think that Section 3 interdicts the passing of a decree even in appeal. For one thing a decree challenged in appeal is re-opened and the appellate hearing is a re-hearing of the whole subject matter and when a decree is passed in appeal the first decree merges in the appellate decree and it comes within the scope of Section 3. The decision of this Court in "Official liquidator v. R. Desikachar" directly covers the situation.

3. Necessarily, we have to allow the appeal and dismiss the suit, but in the circumstances no costs.