

Supreme Court of India

Ramjilal & Ors. Etc vs Ghisa Ram Etc on 24 January, 1996

Equivalent citations: JT 1996 (2), 649 1996 SCALE (2)401

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

RAMJILAL & ORS. ETC.

Vs.

RESPONDENT:

GHISA RAM ETC.

DATE OF JUDGMENT: 24/01/1996

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

AHMAD SAGHIR S. (J)

G.B. PATTANAIAK (J)

CITATION:

JT 1996 (2) 649 1996 SCALE (2)401

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted in the SLP. Substitution allowed. These appeals were referred to a larger Bench by order of this Court made on 10th May, 1994. The facts in C.A. No.4017 are sufficient for disposal of these appeals.

The facts are that on July 16, 1979, certain lands situated in Kutiyana Tehsil & District Sirsa were sold by Mathri, Dilawar and Santosh Kumar to the appellants by registered sale deed dated June 16, 1979. The respondent filed Suit No.581/80 in the Court of Sub Judge, Ist Class, Sirsa under Section 15(l)(b) of the Punjab Pre-emption Act, 1913 on July 18, 1980 for preemption of the land from the appellants on the premise that the lands originally belonged to one Shri Ram who died in the year 1944. His widow Dhapan had remained in possession as Widow's Estate. She cannot be said to have inherited the property through her husband. She had no right to sell the lands to the appellants as she remained limited owner. Therefore, being a co-owner of Shri Ram, the respondent is entitled to preemption of the lands sold by Dhapan to the appellants. Accepting the contention of the

respondent, the trial Court decreed the suit. On appeal, it was confirmed. Second appeal was dismissed. Thus these appeals by special leave. Section 14(1) of the Hindu Succession Act, 1956 enlarges the widows' estate known to sastric law; removed the fetters on possession and blossom into an absolute right to the widow.

Pending appeals, the Haryana Pre-emption Amendment Act, 1995 (Act No.10 of 1995) came into force w.e.f July 7, 1995. The question arises: whether the respondents are entitled to pre-emption. This controversy was considered by this Court in *Karan Singh & Ors. v. Bhagwan Singh (Dead)* by L.Rs. & Ors. [C.A. @ SLP (C) Nos.14362 & 14372 of 1986] decided on 24th January, 1996 by a Bench of which two of us [K.Ramaswamy & G.B. Pattanaik, JJ.] were members. Therein, it was held that the appeal was continuation of original proceedings. When the appellate court has taken up the whole case, the entire controversy would be at large and the issue would be open for reconsideration. Thus the whole case is at large. For the purpose of pre-emption, the right and remedy must be available not only on the date of the sale but also on the date of the suit as well as on the date when the decree is made and is finally to be affirmed or need to be modified at the time of the disposal of the appeal. Since the appeal is a continuation of the original proceedings, the right and the remedy should continue to subsist till this Court decides the controversy, if the appeal is presented and is pending disposal. Since the statute had intervened and the Act has taken away the right of pre-emption of the co-owners and confined the right and remedy to be only in favour of the tenants, the respondents have lost their right of preemption. In other words, co-owners' right of pre-emption has been taken away by amendment to the Act.

Consequently, the respondents have lost the right, pending the appeals. This Court under Section 57 of the Indian Evidence Act shall take judicial notice of all the laws in force in the territory of India. The Court would take judicial notice of the Acts of State Legislature and the Parliament. Accordingly, taking notice of the change in law the right and remedy to the respondent have been lost. As a result, the suit for pre-emption is not maintainable.

The main appeal as well as connected appeals are accordingly allowed. Consequently, the suits stand dismissed. But, in the circumstances, without costs.