Supreme Court of India
Kanta Rani C Kanti Devi & Anr vs Rama Rani on 8 February, 1988
Equivalent citations: 1988 AIR 726, 1988 SCR (2) 895
Author: E Venkataramiah
Bench: Venkataramiah, E.S. (J)

PETITIONER:
KANTA RANI C KANTI DEVI & ANR.

Vs.

RESPONDENT:
RAMA RANI

DATE OF JUDGMENT08/02/1988

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
OJHA, N.D. (J)

CITATION:
1988 AIR 726 1988 SCR (2) 895
1988 SCC (2) 109 JT 1988 (1) 270
1988 SCALE (1)264

ACT:

Civil Procedure Code, 1908: Order 22 Rule 3-Pre-emption suit-Whether legal representatives of a tenant entitled to be brought on record.

Punjab Pre-emption Act, 1913: Section 15-Whether right to pre emption conferred on tenant by customary law heritable or not-Whether any distinction between right of pre-emption arising under Statute law and customary law-When right of tenancy heritable every incidental right thereto heritable.

HEADNOTE:
%

The property in dispute was sold by its original owner to the respondent. Claiming that there was a local custom under which the tenant in occupation of a building had a right of pre-emption, the tenant of a portion of the property filed a suit for pre-emption and valued the portion at Rs.10,000. The suit was opposed by the respondent contending that there was no such customary law and that in case the decree was passed, the plaintiff should be asked to pay Rs.20,000, as consideration.

During the pendency of the suit, the plaintiff-tenant

died and the appellants, his legal representatives filed an application under Order 22, Rule 3 of Civil Procedure Code, for being brought on record in place of the original plaintiff and for permission to prosecute the suit further. The respondent, opposed the application contending that the right of pre-emption, even if it existed, was only a personal right of the tenant and was not heritable, and consequent on his death the right to sue did not survive, and therefore the suit was liable to be dismissed.

Aggrieved by the aforesaid order, the respondent filed a revision petition before the High Court, which allowed the same following a Full Bench decision of that Court in Chandrup Singh and Anr. v. Data Ram and Anr., [1985] Punjab Law Reporter 771, that a statutory right of pre-emption resting only on blood relationship created by s. 15(1) of the Punjab Pre-emption Act, 1913 was not a heritable one and did not devolve on the heirs on the death of the pre-emptor before the grant of

896

the decree in the suit, and declared that the suit instituted by the tenant had abated on his death.

Allowing the appeal,

^

HELD: While a right of pre-emption does not give right to an interest in immovable property, the right of tenancy itself was heritable and, therefore, every right attached to the said right of tenancy or incidental to it should ordinarily be heritable. There can be no distinction between the right of pre-emption arising under the statutory law and the customary law. [900F, H]

In the instant case, the plaintiff had acquired the said right of pre-emption under customary law by virtue of right of tenancy which he had in the portion of the property in his possession and had instituted a suit for enforcing that right. The fact that the pre-emptor had died at the trial stage cannot make any difference. [900G]

The right to sue therefore survived on the death of the plaintifftenant in favour of the appellants, who were his legal representatives, and they were entitled to be brought on record in substitution of the original plaintiff-tenant under Order 22, Rule 3 of the Civil Procedure Code. [902B-C]

The trial court was directed to bring the appellants on record as legal representatives of the deceased-plaintiff and to dispose of the suit on merits. [902C]

Chandrup Singh and Another v. Data Ram and Another, [1982] Punjab Law Reporter 771, over-ruled.

Hazari & Ors. v. Neki & Ors ., [1968] 2 S.C.R. 833, followed.

Wajid Ali & Anr. v. Shaban & Ors., I.L.R . 31 Allahabad 623, approved.

Muhammad Husain v. Niamet-un-nissa and Ors., I.L.R. 20 Allahabad 88, distinguished.

Faqir Ali Shah v. Ram Kishan & Ors., 133 P.R. 1907,

referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 453 of 1988.

From the Judgment and Order dated 5.3.1984 of the Punjab and Haryana High Court in Civil Revision No. 3411 of 1983.

E.C. Agarwala for the Appellants.

G.K. Bansal for the Respondent.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The two short questions involved in this case are (i) whether the right of pre-emption conferred on a tenant by a customary law is heritable or not and (ii) whether on the death of such a tenant, who had filed a suit for pre-emption his legal representatives can continue the suit.

The property in dispute which is a double storied building situated in the town of Jagadhri, District Ambala, Haryana originally belonged to one Om Prakash. Kishan Chand was in possession of a part of the said property as a tenant. Om Prakash sold the entire property including the portion occupied by Kishan Chand to the respondent for a sum of Rs.23,000 under a registered sale deed dated 11.7.1980. It is alleged that in the town of Jagadhri there was in force a customary law under which a tenant in occupation or a building had a right of pre-emption. Aggrieved by the sale of the property in his occupation as a tenant, Kishan Chand filed a suit for pre-emption in the Court of the Sub-Judge, II Class, Jagadhri in Civil Suit No. 131 of 1980 on 26.8.1980 stating that the value of the portion of the property occupied by him was Rs. 10.000. The respondent denied that there was such a customary law conferring a right of pre-emption on a tenant in force in the town of Jagadhri and that in the event of a decree being passed in the suit the plaintiff should be asked to pay a sum of Rs.20,000 by way of consideration. During the pendency of the suit, Kishan Chand died on 8.8.1983. An application was filed under Order 22, Rule 3, Civil Procedure Code by the appellants, who were the legal representatives of Kishan Chand to bring them on record in the place of the original plaintiff, Kishan Chand and to permit them to prosecute the suit further. The respondent opposed the said application contending that the right of pre-emption, even if it existed, was only a personal right of Kishan Chand and was not heritable and, therefore, the appellants were not entitled to be brought on record as the legal representatives of Kishan Chand. It was further contended by the respondent that the suit was liable to be dismissed on the death of Kishan Chand as the right to sue did not survive. The trial court allowed the application made under Order 22, Rule 3, Civil Procedure Code holding that the right of pre-emption was heritable and the right to sue survived on the death of the plaintiff in favour of his legal representatives. Aggrieved by the order passed by the trial court, the respondent filed a revision petition under section 115, Civil Procedure Code before the High Court of Punjab & Haryana in Civil Revision No. 3411 of 1983. Before the High Court, the respondent relied on a Full Bench decision of the High Court of Punjab & Haryana in

Chandrup Singh and Another v. Data Ram and Another, [1982] Punjab Law Reporter 771 in which it had been held that a statutory right of pre-emption resting only on blood relationship created by section 15(1) of the Punjab Pre-emption Act, 1913 (1 of 1913) (hereinafter referred to as 'the Act') (as it was in force in Haryana) was not a heritable right and did not devolve on the heirs on the death of the plaintiff-pre-emptor before the grant of the decree in the suit. Though the learned Judge, who heard the revision petition, was of the view that the above Full Bench decision ran counter to the decision of the Supreme Court in Hazari & Ors. v. Neki & Ors., [1968] 2 S.C.R. 833 he allowed the petition following the Full Bench decision on the ground that the said decision was bindig on him and declared that the suit instituted by Kishan Chand had abated on his death.

We have gone through the decision of this Court in Hazari's case (supra) and also the Full Bench decision of the High Court of Punjab & Haryana in Chandrup's case (supra). The facts in Hazari's case (supra) were these. The plaintiff, who was the father's brother of one Dhara Singh instituted three suits for pre-emption of the lands sold by Dhara Singh under three sale deeds on the ground that he had a superior right of pre-emption on the basis of his relationship with the vendor as against the purchasers under section 15(1)(a) of the Act. The suits were decreed by the trial court. The purchasers took the matter in appeal before the 1st Appellate Court and those appeals were dismissed, but in one of the appeals there was a slight modification in the amount which the plaintiff had to pay to the purchasers. The purchasers filed three second appeals before the High Court against the judgments and the decrees of the 1st Appellate Court and the plaintiff also preferred a second appeal before the High Court in one of the cases against the increase made in the price of the land by the 1st Appellate Court. While the second appeals were pending in the High Court, the plaintiff died. After his death application were moved under Order 22, Rule 11 of the Civil Procedure Code to bring the legal representatives of the deceased plaintiff on record. All the four second appeals were heard and dismissed by the High Court. The purchasers having failed in the Letters Patent Appeals filed before the Punjab & Haryana High Court against the decrees passed in the second appeals, filed three appeals before this Court by special leave. It was contended before this Court by the purchasers that on the death of the plaintiff, the right to sue came to an end and his legal representatives were not entitled to claim any benefit under the decrees in question. Rejecting the above contention this Court observed at page 836 of the Report thus:

> "In support of these appeals, learned counsel put forward the argument that the right of pre- emption claimed by Neki deceased plaintiff was a personal right which died with him upon his death and the legal representatives of Neki were not entitled to be granted a decree for preemption. The argument was that the statutory right of preemption under the Punjab Act was not a heritable right and no decree for pre-emption should have been passed by the lower court in favour of the legal representatives as representing the estate of Neki. We are unable to accept the argument put forward by the appellants. It is not correct to say that the right of pre-emption is a personal right on the part of the pre-emptor to get the re-transfer of the property from the vendee who has already become the owner of the same. It is true that the right of pre- emption becomes enforceable only when there is a sale but the right exists antecedently to the sale, the foundation of the right being the avoidance of the inconveniences and disturbances which would arise from the introduction of a

> stranger into the land. The correct legal position is that the statutory law of pre-emption imposes a limitation or disability upon the ownership of a property to the extent that it restricts the owner's right of sale and compels him to sell the property to the person entitled to pre-emption under the statute. In other words, the statutory right of preemption though not amounting to an interest in the land is a right which attaches to the land and which can be enforced against a purchaser by the person entitled to preempt."

In reaching the above conclusion this Court while accepting the contention that the right of pre-emption under section 15(1)(a) of the Act did not create an interest in the land was, however, of the view that the right did not abate on the death of the plaintiff during course of the proceedings in court. This Court referred to the decision of the Punjab & Haryana High Court in Faqir Ali Shah v. Ram Kishan & Ors., 133 P.R. 1907 and the decision of the Allahabad High Court in Wajid Ali & Anr. v. Shaban & Ors., I.L.R. 31 Allahabad 623. In the latter decision, namely, the Wajid Ali's case (supra) the High Court of Allahabad had held that where a right of pre-emption existed by custom as recorded in the village Wajib-ul-arz, the right having once accrued did not of necessity lapse by the death of the pre- emptor before making a claim, but descended along with the property in virtue of which it subsisted to the heir of the pre-emptor. It is significant that in that case the High Court of Allahabad had taken the view that the right of pre- emption which had accrued in favour of the pre-emptor would descend along with the property in virtue of which it subsisted to the heir of the pre-emptor, even when the death of the pre-emptor had taken place before he made a claim for pre-emption. The Full Bench of the High Court of Punjab & Haryana which heard Chandrup's case (supra) after noticing the decision of this Court in Hazari's case (supra) distinguished the said decision observing thus:

> "21. To conclude, on the particular language of the statute, on principle, and on the weight of precedent, it is held that the purely statutory right of pre-emption, resting wholly on blood relationship alone under section 15(1) of the Punjab Pre-emption Act, is not a heritable right and does not devolve on the heirs on the death of the plaintiff-pre-emptor before the grant of the decree in the suit. The answer to the question posed at the very outset is thus rendered in the negative."

We find it difficult to agree with the decision of the Full Bench of the High Court of Punjab & Haryana in the above case.

While it may not be disputed that a right of pre- emption does not give rise to an interest in immovable property, in the instant case the plaintiff had acquired the said right of pre-emption under the customary law by virtue of the right of tenancy which he had in the portion of the property in his possession. It cannot be disputed that the right of tenancy itself was heritable and, therefore, every right attached to the said right of tenancy or incidental to it should ordinarily be heritable. There can be no distinction between a right of pre-emption arising under the statute law or such a right arising under customary law. The other reason given by the Full Bench in order to distinguish the decision of this Court in Hazari's case (supra) namely that the pre-emptor had died at the stage of second appeal in the said case while the pre-emptor had died in the case before the Full Bench at

the stage of trial also does not appeal to us. The view expressed in Muhammad Husain v. Niamet-un-nissa and Ors., I.L.R. 20 Allahabad 38 that under Mohammadan law applicable to the Sunni sect if a plaintiff in a suit for pre-emption had not obtained his decree for pre-emption in his life time the right to sue did not survive to his heirs is not relevant for purposes of this case. It is true that the said decision was noticed by this Court in Hazari's case (supra) but this Court did not express any opinion on the correctness of the above position. In the case before us the right of pre-emption is claimed not on the basis of Mohammadan law but under customary law by the heirs of a tenant who was in possession of the property in question and who had instituted a suit for enforcing the said right of pre-emption. It is appropriate to refer to the following passage in Faqir Ali's case (supra) which is extracted in Hazari's case (supra) at page 837:

> "While, therefore, there is good reason why voluntary transfers should not pass a right of pre-emption as regards properties previously sold, those reasons do not apply to transfers by inheritance. As regards transfers by inheritance, the general principle should apply that the right of pre-emption passes with the land.
>
> Mr. Grey laid great stress on sections 13 and 16 of the Punjab Laws Act urging that the father was the person on whom the notice had to be served, and that it was he who had the right to sue and that the right was thus a personal one that could not be inherited by the son. The right was no doubt a personal one in the father based on his land, but I can see no reason why such right cannot be inherited by the son. If the father had waived or otherwise disposed of his right this would no doubt be binding on the son, as the father was representing the whole estate.
>
> Where, however, the father has done nothing of the kind, but has simply taken no steps in the matters, there seems to me no reason why the son should not step into the shoes of his father and take the same action as the father could have done. The son inherits the other causes of action belonging to his father and why not this one? Nor do I see why the son cannot come in under section 16, simply alleging that no notice as required by section 13 was served on his father."

Hence the fact that the pre-emptor had died in the present case at the trial stage cannot make any difference. We are, therefore, of the view that the decision of the Punjab & Haryana High Court in Chandrup's case (supra) is inconsistent with the decision of this Court in Hazari's case (supra) and has to be overruled. We accordingly overrule it. We hold that the right to sue in the present case survived on the death of Kishan Chand in favour of the appellants who were his legal representatives and they were entitled to be brought on record in substitution of the original plaintiff Kishan Chand under Order 22 Rule 3 of the Civil Procedure Code. The appeal is accordingly allowed, the order of the High Court is set aside and the order of the trial court is restored. The trial court is directed to bring the appellants on record as the legal representatives of the deceased-plaintiff and to proceed to dispose of the suit on merits.

N.P.V. Appeal allowed