Supreme Court of India
Krishna vs State Of Haryana on 12 July, 1994
Equivalent citations: 1994 AIR 2536, 1994 SCC (4) 703
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
KRISHNA

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT12/07/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1994 AIR 2536 1994 SCC (4) 703
JT 1994 (5) 477 1994 SCALE (3)100

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- The law of pre-emption is, historically speaking, a product of custom of the Mohamedan world. It came to be enforced here after the advent of Mohamedan rule. To start with it was accepted as a part of custom and was applied by the courts, particularly in Northern India, accordingly. It received statutory recognition in Section 22 of Hindu Succession Act, 1956. But this Court has regarded this right as archaic, feudal and weak in character.

2.In most of our States the law of pre-emption does not exist as at present. Even the Punjab Pre-emption Act of 1913 (as amended in 1960) has ceased to be a law in the State of Punjab. But in the State of Haryana, as well as in a part of walled city of Delhi, it still prevails. In the present batch of writ petitions and appeals whatever is left of this law after the decision by the Constitution Bench in Atam Prakash v. State of Haryana', has been assailed as violative of Article 14 of the Constitution and of Article 19(1)(f) as it was before its omission.

3.As the aforesaid attempt has been made despite the decision in Atam Prakash1, it should be known as to what was decided in that case. Reference to that judgment shows that it relied on three earlier Constitution Bench renderings - these being in Bhau Ram v. Baij Nath Singh 2; Sant Ram v. Labh Singh 3 and Ram Sarup v. Munshi4. In Bhau Ram case 2 this Court was concerned, inter alia, with the constitutionality of Section 16 of the Punjab Pre-emption Act, 1913, which conferred right of pre-emption in respect of urban immovable property on co-sharers also. The Constitution Bench did not uphold the contention that this restriction offended Article 19(1)(f) of the Constitution. This is what was stated in this regard in (AIR) para 11.

> "We have no doubt that a law giving such a right imposes a reasonable restriction which is in the interest of general public. If an outsider is introduced as a co-sharer in a property it will make common management extremely difficult and destroy the benefits of ownership in common. The result of the law of pre-emption in favour of a co-sharer is that if sale takes place the property may eventually come into the hands of one co- sharer as full owner and that would naturally be a great advantage.....

4.Sant RaM3 Bench referred approvingly to Bhau RaM2 decision. In Ram Sarup4 this Court had examined the validity of Section 15(1)(a) of the Punjab Pre-emption Act, 1913 before its amendment in 1960. It was noted in para 16 that the objects behind conferring right of pre-emption were 5 in number. In para 19 it was thereafter stated that the ground, namely, that the next in succession should have the chance of retaining the property, has a nexus and the same has rendered the restriction reasonable and in the 'interest of general public. It was pointed out In para 21 that a successor like a son would have legitimate expectation of succeeding to the property - an expectation founded on and promoted by the consciousness of the community. The very strong sentimental value that is attached to the continued possession of family property was also taken note of in holding that restriction on the right of free alienation imposed by Section 15(1)(a), limited as it was to be small class of near relations of vendors was neither unreasonable nor against the interest of general public.

5.Atam Prakash case' had examined the constitutionality of Section 15(1)(a) of the Punjab Pre-emption Act as amended in 1960. Clause (b) as amended conferred the right of pre- emption in its sub-clause "Fourthly" on "other co-sharers". The Constitution Bench, after referring to Bhau Ram case 2 upheld that right and took the view that it was founded on a valid 1 (1986) 2 SCC 249 AIR 1986 SC 859 2 AIR 1962 SC 1476 1962 Supp 3 SCR 724 : 1962 Jab LJ 676 3 AIR 1965 SC 3 14 :(1964) 7 SCR 756 : 1964 All LJ 852 4 AIR 1963 SC 553 : 65 Pun LR 531 classification and did not infringe either Article 14 or 15 of the Constitution; its constitutionality qua Article 19(1)(f) having already been upheld in Bhau Ram case2. (See para 10).

6.In view of the aforesaid we cannot agree with the contention advanced by Shri Pandey that Atam Prakash case' needs reconsideration because it based its decision on Bhau Ram case2 which had dealt with the constitutionality of Section 16 and not with Section 15(1)(b). This aspect of the matter has no relevance inasmuch as Section 16 also had conferred the right of pre-emption on co-sharers, which had been upheld as constitutionally valid for reasons noted above. Not only this, Ram Sarup case4 too had regarded this restriction qua co-sharers as reasonable.

7.The mention in the written submission that there is no definition of co-sharer does not provide any reason to reconsider four Constitution Bench decisions because the lack of definition of co-sharer has no material bearing inasmuch as from what has been stated in Ram Sarup case4 it is apparent that the word co-sharer has to be taken as interchangeable with co-owner. As to who would be co-owner would depend upon who would have succeeded to the property, that is, on the line of succession. Another point mentioned in the written submission is that though a sister can have such a claim, a brother cannot, and so, the same results in discrimination. This argument is misconceived inasmuch as under the aforesaid Hindu Succession Act, both brother and sister are Class II heirs and both of them are in Entry 11 result of which is that because of what has been provided in Section 11 of the Act, such heirs share the property equally.

8.Another point urged is that the right of co-sharer may not be allowed to be claimed by a stranger merely because he had purchased the property sometime back from a co-sharer. This submission cannot also be accepted because though the purchaser in question was initially a stranger, he having stepped into the shoes of the co-sharer has to be taken as a co-sharer. The objection which applies qua stranger ceases to have any significance after he has acquired the right of the co-sharer. No objection regarding acquisition of a co- sharer's property having been taken earlier, the stranger cannot be treated differently from other co-sharers afterwards. In such a situation he has himself to be taken as a co-sharer. It is because of this that what was stated by a two-Judge Bench of this Court in Bhoop v. Matadin Bhardwaj5, in para 7 relating to the object of conferring the right of pre-emption on a cosharer - the same being exclusion of strangers from acquiring interest in immovable property - would have no application when the stranger has acquired the status of a co-sharer.

9.The last contention is that the view taken by a two- Judge Bench in Dorab Cawasji Warden v. Coomi Sorab Warden6 being different from the one taken in aforesaid decisions the same needs reconsideration and these cases may be referred to a larger Bench to spell out the meaning and scope of 5 (1991) 2 SCC 128 6 (1990) 2 SCC 117 : JT (1990) 1 SC 199 sub-clause "Fourthly" of Section 15(1)(b) of the Act. Reference to Cawasji6 decision shows that that case was concerned with the right conferred by the second paragraph of Section 44 of the Transfer of Property Act, 1882. Therefore what was stated in that case regarding the right of a member of an undivided family cannot be said to have any connection with the meaning to be given to the expression "other co-sharers" appearing in sub-clause "Fourthly". This is more so because a three-Judge Bench of this Court has well explained its meaning in Bhikha Ram v. Ram Sarup7 by overruling what was held in Jagdish v. Nathi Mat Kejriwal8.

10.In view of the above, the challenge to the constitutionality of subclause "Fourthly" of clause (b) of sub-section (1) of Section 15 of the Punjab Pre-emption Act, 1913 as amended in 1960 has no force. As to a stranger being clothed with this right, we have held that he too can claim such a right, after hehas acquired a co-sharer's interest.

11.The aforesaid being the legal position, Writ Petitions (C) Nos. 386 and 465of 1991 along with connected Civil Appeal Nos. 3150 and 3151 of 1991 are dismissed, as the right of pre-emption in the suits concerned was claimed by a sister, a co-sharer. Writ Petition (C) No. 1126 of 1991 is also

dismissed, as the person to claim the aforesaid right is a co-sharer. Appeals arising out of SLP (C) Nos. 218 and 16040-43 of 1992 too are dismissed as the suitor, though a stranger, could claim right of pre-emption, because of purchase of interest of co-sharer by him earlier. Writ Petition (C) Nos. 274, 284 and 313 of 1994 as well are dismissed, as claim for pre-emption in these cases is by a co-sharer. SLP (C) Nos. 6050 and 6051 of 1994 meet the same fate as a co-sharer (daughter-in-law) claimed this right.

12.In the facts and circumstances of the cases, all the parties herein are left to bear their own costs.