Supreme Court of India
Amarjit Kaur vs Pritam Singh & Others on 6 August, 1974
Equivalent citations: 1974 AIR 2068, 1975 SCR (1) 606
Author: K K Mathew
Bench: Mathew, Kuttyil Kurien

PETITIONER:
AMARJIT KAUR

Vs.

RESPONDENT:
PRITAM SINGH & OTHERS

DATE OF JUDGMENT06/08/1974

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
RAY, A.N. (CJ)

CITATION:
1974 AIR 2068 1975 SCR (1) 606
1974 SCC (2) 363
CITATOR INFO :
R 1975 SC2299 (232,607)
R 1977 SC2090 (1)
R 1980 SC1654 (2)
R 1985 SC 111 (9)
F 1989 SC1247 (24)
RF 1991 SC1654 (42,44)

ACT:
Practice and Procedure--Nature of appeal--How far appellate. Court can take into account matters which have come into existence after the passing of the decree appealed against.

HEADNOTE:
Section 3 of the Punjab Pre-emption (Repeal) Act, 1973. which came into force in April 1973, provides that don and from the date of the commencement of the Act, no court shall pass a decree in any pre-emption suit.
The 4th defendant sold his property to defendants 1 to1965 and the Plaintiff filed a suit claiming a right to pre-empt. The trial court and first appellate court held in plaintiffs favour. A second appeal to the High Court by that time the Act had come into force and the High Court the decision.
Dismissing the appeal to this Court,

HELD : An appeal is a rehearing and in moulding the relief to be granted in case on appeal, the appellate Court is entitled to take into account even facts and events which have come into existence after the passing of the decree appealed against. If the High Court were to confirm the decree allowing the suit for pre-emption, it would be passing a decree in a suit for pre-emption. for. when the appellate court confirms a decree it passes a decree of its own, and therefore, the High Court was right in allowing the appeal. [606D-F]
Lachweshwar Prasad Shukul v. Keshwar Lal Chaudhury, [1940] F.C.R. 84 Kristnama Chariviar v. Mangammal, [1902] 1. L. R. 26 Med. 91, at PP. 95-96, referred to.,

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 941, 1123, 1572, 1666, 1667, 1760, 1780 of 1973 and 8 of 1974. Appeals by. special leave from the judgment and order dated 22nd May/31st August, 22nd May/20th September/17th August/ 17th September, 1973 of the Punjab & Haryana High Court in R. S. As. Nos. 1095/71, 271/69, 11/68, 879/70, 899/11, 2015/70 and 1137 of 1973 respectively.

D.V. Patel, V. C. Mahajan, S. S. Khanduja, Janardhan Sharma, Ram Swarup, R. A. Gupta, Hardev Singh, Bupinder Singh, J. D. Jain,R. C. Kohli and S. C. Patel for appellants. Hardyal Hardy, 0. P. Sharma, S. K. Mehta, K. R. Nagaraja, M.Quamaruddin and Vinod Dhawan for respondents. The Judgment of the Court was delivered by MATHEW, J.-In these appeals, a common question of law arises for consideration and this judgment will dispose of all the appeals.

We will take up for consideration Civil Appeal No. 941 (N) of 1973. The appellant challenges the correctness of a decree passed by the High Court dismissing a suit for pre- emption. The plaint property belonged to defendant No. 4. He sold the same to defendants Nos. 1 to 3 by a sale deed dated July 29, 1965 and registered on October 14, 1965. The appellant who is the daughter of defendant No. 4 claiming that she has right to pre-empt,instituted the suit through her guardian. The trial court decreed the suit. Against the decree, an appeal was preferred by the vandees. That appeal was dismissed on July 17, 1971. An appeal was preferred to the High Court against this decree.

The Punjab Pre-emption (Repeal) Act, 1973 (Act 11 of 1973) received the assent of the Gavernor of Punjab on April 6, 1973 and was published in the Punjab Gazette on April 9, 1973. The High Court allowed the appeal and dismissed the suit holding that the provision of s. 3 of the above Act should govern the decision. The plaintiff appellant then applied for leave to file Letters Patent Appeal. That was dismissed.

Section 3 of the Punjab Pre-emption (Repeal) Act, 1973, provides:

"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 a decree in any suit for pre-emption".' The section, in effect, says that no court shall decree a suit for preemption after the coming into force of the Act. The question is, whether the appellate court, when it passes a decree, confirming the decree for pre--emption passed by the trial court or the lower appellate court, is passing a decree for pre-emption.

In Lachweshwar Prasad Shukul v. Keshwar Lal Chaudhury (1) it was held that once the decree passed by a court had been appealed against, the matter became sub-judice again and thereafter the appellate court has seisin of the whole case, though for certain purposes, e.g., execution, the decree was regarded as final and the courts below retained jurisdiction. The Court further said that it has been a principle of legislation in British India at least from 1861 that a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Civil Procedure Code on courts of original jurisdiction, that even before the enactment of that Code, the position was explained by Bhashyam Iyengar J. in Kristnama Chariviar v. Mangammal(2) in language which makes it clear that the hearing of an appeal is under processual law of this country in the nature of a re- hearing, and that it is on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.

As an appeal is a re-hearing, it would follow that if the High Court were to dismiss the appeal, it would be passing a decree in a suit for pre-emption. Therefore, the only course open to the High Court was to allow the appeal and that is what the High Court has done. In other words, if the High Court were to confirm the decree allowing the suit for pre-emption. it would be passing a decree in a suit for pre- emption, for, when the appellate court confirms a decree, it passes a decree of its own, and therefore, the High Court was right in,-allowing the appeal.

We, therefore, dismiss the appeal but, in the circumstances,' make no order as to costs. V. P. S. Appeal dismissed.

(1) [1940] F.C.R. 84.

(2) [1902] I.L.R. 26 Mad. 91, at pp. 95-96.