

in the plaint or memorandum by the plaintiff. The minimum Court-fees payable is Rs 10. It is also provided that when relief sought is with reference to property, such valuation would not be less than the value of the property as calculated in the manner provided in Section 7(v) of the Court-fees Act, where the suit relates to land assessed to land revenue and the settlement is not permanent, the Court-fees is 10 times the land revenue and the jurisdiction value is 30 times the land revenue; but in a suit for declaration, both the value for purposes of jurisdiction and Court-fees have to be the same. As the value for jurisdiction is fixed at 30 times, the value for purposes of Court-fees will thus be 30 times in a suit under section 7(iv) (c) relating to agricultural land. That being so, the order of the Court below, that the stamp on the plaint is insufficient is correct. However, the order is erroneous in so far as the Court-fees is being claimed on the mortgage money, that is Rs 50,000.

For the reasons recorded above, I modify the order of the trial Court to this extent that the *ad-valorem* Court-fees will be payable on the basis of 30 times the amount of land revenue assessed on the land. The parties are directed to appear in the trial Court on 16th of May, 1966.

B. R. T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and H. R. Khanna, J.

KAHLA SINGH AND OTHERS,—*Appellants*

versus

RAJINDER SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 265 of 1965.

April 21, 1966.

Punjab Pre-emption Act (I of 1913) as amended by Act of 1960 S. 15(2)—Property gifted to a female by her father, brother or husband—Whether can be said to be property to which the female has succeeded through her father, brother or husband.

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Held, that where a female gets property by gift from her father, brother or husband, it cannot be said that the property is of a kind to which the female has succeeded through her father, brother or husband as the case may be and the provisions of sub-section (2) of section 15 of the Punjab Pre-emption Act, would not get attracted to the sale of such property by the female.

Appeal under Clause 10 of the Letters Patent from the decree of the Hon'ble Mr. Justice Harbans Singh, dated the 24th day of August, 1965, passed in R. S. A. No. 1518 of 1964.

ANAND SARUP AND B. S. BINDRA, ADVOCATES, for the Appellants.

H. R. SODHI, RAM SARUP, YOG RAJ AND DALJIT SINGH, ADVOCATES, for the Respondents.

JUDGMENT

KHANNA, J.—Where a gift is made of property in favour of a female by her father, brother or husband, can it be said to be property to which the female has succeeded through her father, brother or husband as the case may be under sub-section (2) of section 15 of the Punjab Pre-emption Act (No. 1 of 1913) (as amended by Act 10 of 1960), is the question which arises for determination in this Letters Patent Appeal filed by Kahla Singh and 11 other defendant-vendees against the judgment and decree of learned Single Judge whereby he dismissed the regular second appeal of defendant-vendees against the decision of the District Judge, Patiala, modifying that of the trial Court.

The brief facts of the case are that Bhagwan Singh and 15 others, who are related to each other and some of whom are females, sold land in dispute measuring 1,160 Bighas situated in village Galoli in District Patiala, in favour of Dayal Singh and 13 others as per registered sale-deed, dated 13th May, 1959, for an ostensible consideration of Rs. 1,16,000. Rajinder Singh and his two daughters. Surinder Kaur and Shavinder Kaur, brought suit for possession of the land in dispute by pre-emption on the allegation that they were co-sharers in the property in dispute. There was some controversy about the price paid. The trial Court decreed the suit on payment of Rs. 99,557. On appeal the learned District Judge enhanced the amount, on payment of which the plaintiffs were to get possession of the property, from Rs. 99,557 to Rs. 1,03,040. On second appeal the amount on payment of which the suit had been ordered to be decreed, was not challenged. Submission

was, however, made that the sale in so far as it related to the share of female vendors was covered by sub-section (2) of section 15 of the Punjab Pre-emption Act, and as the plaintiffs were merely co-sharers and not the heirs mentioned in sub-section (2) of section 15, the sale to the extent of the share of female vendors was not pre-emptable. The above submission did not find favour with the learned Single Judge. He, accordingly, dismissed the appeal filed by the vendees.

In Letters Patent Appeal Mr. Anand Sarup on behalf of the appellants has argued, as he did before the learned Single Judge, that the sale, in so far as it related to the share of female vendors in the property in dispute, is covered by sub-section (2) of section 15 of the Punjab Pre-emption Act which reads as under :—

“(2) Notwithstanding anything contained in sub-section (1),—

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest,—

(i) if the sale is by such female, in her brother or brother's sons;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors;

(b) where the sale is by a female of land or property to which she had succeeded through her husband, or through her son in case the son has inherited the land or property sold from his father, the right of pre-emption shall vest,—

First, in the son or daughter of such female;

Secondly, in the husband's brother or husband's brother's son of such female.”

According to Mr. Anand Sarup, as the female vendors got their share in the property in dispute by gift from their father, brother or husband it should be held that the property was such to which the female vendors succeeded through their father, brother or husband as the case may be and, therefore, *qua* the share of the female vendors, the plaintiffs have no superior right of pre-emption. In our opinion the above contention is not well-founded. The word “succeeded”, as used in the above sub-section, indicates that the property is such as a female gets on the death of relatives mentioned

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therein. The word clearly conveys the idea of succession and not of transfers *inter vivos* including gifts. As observed on page 1230 of the Law Lexicon by Aiyar, 1940 Edition.—

“The word ‘succession’ is a word of technical meaning, and refers to those who by descent or will take the property of a ascendent. It is a word which clearly excludes those who take by deed, grant, gift, or any form of purchase or contract.”

The word “succession” has a definite connotation in the context of Indian enactments and has been taken to relate to devolution of property on the death of a person. Reference in this connection may be made to Indian Succession Act and Hindu Succession Act both of which enactments deal with devolution of property after the death of last holder. As against that, the subject, of gifts and other *inter vivos* transfers like sales and mortgages are dealt within the Transfer of Property Act. There can, therefore, be no hesitation to reject the contention that succession would include transfer by gift. We, accordingly, hold that where a female gets property by gift from her father, brother or husband, it cannot be said that the property is of a kind to which the female has succeeded through her father, brother or husband as the case may be. Sub-section (2) of section 15 of the Punjab Pre-emption Act, in the circumstances, would not get attracted to the sale in dispute.

The appeal, consequently, fails and is dismissed, but without costs.

D. FALSHAW, C.J.—I agree.

B. R. T.

CRIMINAL MISCELLANEOUS

Before R. S. Narula, J.

CHANDRA PRAKASH AGARWALA,—*Petitioner*

versus

S. G. BOSE MULLICK AND ANOTHER,—*Respondents.*

Criminal Writ No. 24-D of 1966.

April 22, 1966.

Constitution of India (1950)—Art. 352—Notification proclaiming grave emergency not using the words that the President is “satisfied” that grave emergency exists—Whether valid—Defence of India Act (LI of 1962)—Ss. 3 and 44—Scope of—Defence of India Rules (1962)—Rule 30(1)(b)—Whether ultra vires S. 3(2)(4) of the Defence of India Act.