(9) As the petitioner was entitled to be heard in the revision petition and he had not been served with the date of actual hearing, on which the case was heard and disposed of, the order passed by the learned Single Judge is counter to the aforesaid Rule 8 and hence inoperative against the petitioner. Section 369, Criminal Procedure Code cannot be a bar for setting aside such an order and for the case being reheard.

(10) In the result, I allow the petition and direct that the case be reheard. The revision petition to come up for hearing next week.

K.S.K.

FULL BENCH

Before Prem Chand Pandit, R. S. Narula, Bal Raj Tuli, S. S. Sandhawalia and C. G. Suri, JJ.

KARTA RAM AND ANOTHER,—*Appellants.*

versus

OM PARKASH,—*Respondent.*

Letters Patent Appeal No. 377 of 1966.

October 26, 1970.

Punjab Pre-emption Act (I of 1913)—Section 15(2)(a)—Hindu Succession Act (XXX of 1956)—Sections 15 and 16—Hindu widow dying intestate leaving no son or daughter—Property inherited by sisters of her husband—Such sisters selling the property—Son of one of the vendors filing suits for pre-emption—Section 15(2)(a), Pre-emption Act—Whether applicable—Inheritance by the sisters—Whether 'through' their brother—Son of either of the sisters—Whether has no right to pre-empt—Sales falling under section 15(2)(a), Pre-emption Act—Applicability of section 15(1) to such sales—Whether excluded.

Held, that in section 15(2)(a) of the Punjab Pre-emption Act, 1913, the word used is "through", which is of wide amplitude. By the use of this word in the section, succession from brother, both direct and indirect, has been included by the legislature. The purpose of introducing sub-section (2) (a) of section 15 in the Pre-emption Act is that if female sells property to which she has succeeded through her brother, then the right of pre-emption should vest in her brother or brother's son, so that the property may remain in the same family from where it has come and not go to strangers. Even such female's own son does not have a right to pre-emption,

because after marriage she has gone in another family to which that property never belonged. Moreover, according to Rule 3 of section 16 of Hindu Succession Act, 1956, the devolution of the property of the intestate on the heirs referred to in clause (*b*) of sub-section (1) of section 15 of the Act is to be in the same order and according to the same rules as would have applied if the property had been the husband's and he had died intestate in respect thereof immediately after the intestate's death. Hence when a Hindu widow dies intestate leaving no son or daughter and her property is inherited by her husband's sister, the sale effected by the sisters will be governed by section 15(2) (*a*) of the Punjab Pre-emption Act and the son of any of the sisters will not have the right to pre-empt the sale.

(Paras 11 and 16)

Held, that if a sale falls under section 15(2) (*a*) of the Punjab Pre-emption Act, the application of section 15(1) is excluded. The language employed in section 15(2) (*a*) is capable of no other interpretation. It says that inspite of anything that has been mentioned in section 15(1) where the sale has been made by a female and of property to which she has succeeded through her brother, then the right of pre-emption shall vest in her brother or brother's son. In other words, the right of pre-emption *qua* such a sale will not vest in anybody else, inspite of what has been stated in sub-section (1) of section 15 of the Pre-emption Act. The language of the statute being clear and capable of no other interpretation, it is idle to suggest that in the absence of the persons who have a right of pre-emption under sub-section (2) (*a*) of section 15, other persons referred to in sub-section (1) of section 15 of the Pre-emption Act would also have a right to pre-empt.

(Para 19)

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Bal Raj Tuli on 14th May, 1970 to a Full Bench for decision owing to the importance of various questions of law involved in the case. The case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice Prem Chand Pandit, the Hon'ble Mr. Justice R. S. Narula, the Hon'ble Mr. Justice Bal Raj Tuli, the Hon'ble Mr. Justice S. S. Sandhawalia and the Hon'ble Mr. Justice C. G. Suri on 26th October, 1970.

Letters Patent Appeal under Clause X of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice Harbans Singh dated the 26th day of July, 1966 passed in R.S.A. 861 of 1965 reversing that of Shri Mohan Lal Jain, Additional District Judge II Ambala Camp at Karnal dated the 26th May, 1965 (granting Mula plaintiff a decree for recovery of 1/2 share of the land in dispute and tube-well sunk therein by the vendee on the condition of his depositing a sum of Rs. 5268.14 Ps. in court for payment to the vendee on or before 26th July, 1965 and restoring that of Shri Tarlochan Singh, Sub-Judge Ist Class Panipat dated 7th December, 1964 and dismissing the plaintiffs' suit.

D. N. Aggarwal and B. N. Aggarwal, Advocates for the Appellants.

U. D. Gaur, and Rameshwar Sharma, Advocates, for the Respondent.

JUDGMENT OF THE FULL BENCH

Pandit, J.—The following pedigree table will be helpful in understanding the facts of this case :—

Ram Dia

Sugan Chand (Son) =Mukhtiari (widow)	Ashrafi Devi (vendor) (Daughter)	Bohti (daughter) (vendor)
	(Mula) (son) Plaintiff-pre-emptor	

(2) Ram Dia was the occupancy tenant of the land in dispute. On his death the occupancy rights were inherited by his son Sugan Chand. When Sugan Chand died, these rights were mutated in the name of his widow Mukhtiari in March, 1935. On the enforcement of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (Punjab Act VIII of 1953), the occupancy tenants became owners of the land, with the result that Mukhtiari's occupancy rights also were enlarged into absolute ownership. She died in 1957 after the Hindu Succession Act, 1956, (hereinafter referred to as the Act) had come into force. By virtue of the provisions of the Act, Sugan Chand's sisters, Asharfi Devi and Bohti, inherited the property left by Mukhtiari. In October, 1963 both these sisters sold the property and that sale led to a suit for pre-emption by Mula and Karta Ram. The former claimed pre-emption on the ground that he was the son of Asarafi Devi and the latter alleged himself to be a tenant of the land in dispute on the date of sale. Karta Ram, however, was not proved to be a tenant and that is not a matter of controversy any longer in this appeal. Mula's claim was rejected by the trial Court, but on appeal the learned Additional District Judge, Ambala, decreed it to the extent of Ashrafi Devi's 1/2 share in the land in dispute. The vendee then instituted a second appeal in this Court and Mula plaintiff filed cross-objections to the effect that his suit should have been decreed in its entirety. Harbans Singh J. heard the appeal and came to the conclusion that Mula had no right to pre-empt the sale. He, consequently, accepted the appeal and dismissed the suit as also the cross-objections filed by Mula.

(3) The plaintiffs then filed a Letters Patent appeal and it came up for hearing before Mehar Singh, C.J. and B. R. Tuli J. During the course of arguments before the Bench, one of the questions that was canvassed was that Mula plaintiff was entitled to pre-empt the entire sale and not only the half share belonging to his mother Ashrafi Devi. There was, however, a decision of the Full Bench of this Court reported as **Moti Ram and others** v. **Bakhwant Singh and others**, (1) wherein it was held—

> "that pre-emptor cannot claim the entire property sold on the basis of relationship when it is found that he is not related to one or more of the vendors. The right of pre-emption is generally limited to the extent of the pre-emptor's right. A pre-emptor is not bound to claim the whole when his right of pre-emption extends only to a part. A pre-emptor is entitled to pre-empt in case of joint sale the share of the vendor or vendors through whom he claims his right."

The learned Judges thought that this authority needed re-consideration by a larger Bench and that is how this appeal has been placed before us.

(4) The first point that needs consideration is whether the sale in the instant case falls under section 15(2) (a) of the Punjab Pre-emption Act, 1913, (hereinafter called the Pre-emption Act), as contended by the vendee, because then the right of pre-emption would vest only in the brother or brother's son of the vendor. Section 15(2) (a) of the Pre-emption Act reads—

> "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 son ;

(1) I.L.R. 1968 (1) Pb. & Hrya. 104=1967 P.L.R. 1041.

(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 ;"

This sub-section will apply only if it could be shown that Ashrafi Devi and Bohti had succeeded to the suit land through their brother or father.

(5) It is common ground that when Mukhtiari became the owner of this property on the enforcement of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, the same would be treated as her self-acquired property (see in this connection **Sawan Singh and others** v. **Amar Nath**, (2). It is again undisputed that when she died in 1957, both Ashrafi Devi and Bohti inherited this property under the provisions of section 15(1)(b) of the Act. Now the question for consideration is whether it can be said that they had succeeded to this property through their brother Sugan Chand. It may be stated that even if they succeeded through their father Ram Dia, that would not make any difference so far as the rights of the pre-emptor were concerned, because in that eventuality also section 15(2)(a) of the Pre-emption Act would be applicable and plaintiff Mula would have no right of pre-emption.

(6) The case set up by the vendee was that Ashrafi Devi and Bohti were admittedly the sisters of Sugan Chand, and they had inherited the property of Mukhtiari as the heirs of the latter's husband namely Sugan Chand. Consequently, they succeeded to this property through their brother, with the result that the case was covered by section 15(2) (a) of the Pre-emption Act.

(7) The position taken by the pre-emptor, on the other hand, was that the property which was inherited by Ashrafi Devi and Bohti was of Mukhtiari and they succeeded not because they were the heirs of their brother Sugan Chand, but because they were independently heirs to Mukhtiari under section 15(1) (b) of the Act. If they happened to be the sisters of Sugan Chand, that did not matter. The stock of descent, under the Act, was Mukhtiari herself. Previous to the enforcement of the Act, she could be considered to be a conduit pipe under the customary law and succession to her would be deemed to be to her husband Sugan Chand. After the

(2) 1963 P.L.R. 821.

coming into force of the Act, however, that position of law had changed and she could no longer act as a conduit pipe and succession would be traced to her directly.

(8) Sections 15 and 16 of the Act deal with the rules of succession in case of female Hindu. Their relevant portions are —

"15.(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband ;

(b) secondly upon the heirs of the husband ;

(c) thirdly, upon the mother and father ;

(d) fourthly, upon the heirs of the father ; and

(e) lastly, upon the heirs of the mother.

(2) * * * * * *

16. The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely :—

Rule 1—* * * * *

Rule 2—* * * * *

Rule 3—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of subsection (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

(9) The property in the instant case, as already mentioned above, was of Mukhtiari and she had died intestate without leaving any son, daughter or husband. The same, consequently, devolved upon the heirs of her husband Sugan Chand under section 15(1) (b) of the

Act. It was agreed that Ashrafi Devi and Bohti had succeeded to the property, because they were the sisters of Sugan Chand who was the husband of Mukhtiari. Have they not then succeeded to the property **through** their brother Sugan Chand ? It is true that they had succeeded to Mukhtiari, because they were the heirs of her husband. But at the same time one cannot lose sight of the fact that they would not have been the heirs of Mukhtiari's husband, if they were not his sisters. They have thus obviously succeeded to the property **through** their brother Sugan Chand.

(10) It is partinent to mention that the word used in section 15(2) (a) of the Pre-emption Act is "through" which means—"by means of", "on account of", "by the instrumentality of", "of agency", "by reason of" etc. This word "through" is, therefore, of wide amplitude. As I look at the matter, by the use of the word "through" in section 15(2) (a) of the Pre-emption Act, succession from the brother, both direct and indirect, has been included by the legislature. Both these vendors, in my opinion, have succeeded to the property of Mukhtiari through the instrumentality of their brother Sugan Chand. They would not have got the property if they were not his sisters. The said property devolved on them on account of or by reason of this very relationship.

(11) According to Rule 3, reproduced above, the devolution of the property of the intestate on the heirs referred to in clause (b) of sub-section (1) of section 15 of the Act was to be in the same order and according to the same rules as would have applied if the property had been the husband's and he had died intestate in respect thereof immediately after the intestate's death.

(12) Applying this rule to the facts of the present case, it would mean that the devolution of the property of Mukhtiari on the heirs of her husband Sugan Chand would be in the same order and according to the same rules as would have applied if the property had been of Sugan Chand and he had died intestate in respect thereof immediately after Mukhtiari's death. By this provision of law, on Mukhtiari's death the property would be deemed to be that of her husband Sugan Chand and it would be taken as if he had died intestate in respect thereof, with the result that the said property would devolve on his sisters under Entry II of Class II heirs in the Schedule of the Act. By virtue of this Rule 3, therefore, the property in the instant case after Mukhtiari's death will, by a fiction of law, be deemed to be that of her husband Sugan Chand and on his dying intestate it will

devolve upon his sisters, Ashrafi Devi and Bohti, who were his heirs as mentioned in section 8(b) of the Act.

(13) While dealing with the effect of a deeming provision in law, Lord Asquith of Bishopstone in **East End Dwellings Co. Ltd. v. Finsbury Borough Council**, (3) observed—

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

(14) This dictum was approved by the Supreme Court in **M. K. Venkatachalem, I.T.O. and another** v. **Bombay Dyeing and Manufacturing Co. Ltd** (4).

(15) Reading the provisions of section 15(1)(b) along with Rule 3 in section 16 of the Act, there is, in my view, no escape from the conclusion that both Ashrafi Devi and Bohti succeeded to the property in dispute **through** their brother Sugan Chand and that being so, section 15(2)(a) of the Pre-emption Act would apply and the right of pre-emption regarding the sale in question would vest in the brother or the brother's son of the vendor. The plaintiff would thus have no right of pre-emption.

(16) The purpose of introducing sub-section (2)(a) of section 15 in the Pre-emption Act was that if a female sold property to which she had succeeded through her brother, then the right of pre-emption should vest in her brother or brother's son, so that the property may remain in the same family from where it had come and not go to strangers. Even such female's own son would not have a right of pre-emption, because after marriage she had gone in another family to which that property never belonged.

(3) 1952 A.C. 109 at page 132.
(4) A.I.R. 1958 S.C. 875.

(17) I would, therefore, hold that the learned Single Judge was right in observing that the sale in question would be covered by the provisions of section 15(2)(a) of the Pre-emption Act, because the vendors had succeeded to the property of Mukhtiari through their brother Sugan Chand who was her husband and that being so, plaintiff Mula had no right of pre-emption.

(18) It was then argued by the learned counsel that even if the case was covered by section 15(2)(a) of the Pre-emption Act, there being no person having a right of pre-emption under that sub-section, plaintiff Mula, who was the son of one of the vendors, would have a right of pre-emption under section 15(1)(c) of the Pre-emption Act, the relevant portion of which says—

"(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest—

(a) * * * * * * *

(b) * * * * * * *

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly—FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendors;

* * * * * *

* * * * * *

According to the learned counsel, in such sales the first and the foremost right is given to the person and relations mentioned in section 15(2)(a) and failing them the persons mentioned in sub-section (1) of section 15 of the Pre-emption Act were also entitled to pre-empt.

(19) There is no merit in this contention. The view taken by this Court consistently is that if a sale falls under secton 15(2)(a) of the Pre-emption Act, the application of section 15(1) is excluded. In my opinion, the language employed in section 15(2)(a) is capable of no other interpretation. It says that inspite of anything that has been mentioned in section 15(1), where the sale has been made by a female and of property to which she was succeeded through her brother, then the right of pre-emption shall vest in her brother or brother's son. In other words, the right of pre-emption **qua such a**

sale will not vest in anybody else, in spite of what has been stated in sub-section (1) of section 15 of the Pre-emption Act. The language of the statute being clear and capable of no other interpretation, it is idle to suggest that in the absence of the persons who have a right of pre-emption under sub-section (2) (a) of section 15, other persons referred to in sub-section (1) of section 15 of the Pre-emption Act would also have a right to pre-empt.

(20) The persons mentioned in sub-section (1) of section 15 of the Pre-emption Act in such a case have no right of pre-emption is now well settled so far as this Court is concerned. See in this connection **Debi Ram and another** v. **Smt. Chembeli and another,** (5) (Shamsher Bahadur J.), **Santa Singh** v. **Hazara Singh and others**, (6) (D. K. Mahajan J.) **Surjit Singh** v. **Nazir Singh and another** (7) (Harbans Singh J.), **Jai Singh** v. **Mughla and others**, (8) (Mahajan and Narula JJ.) and **Mohinder Singh and others** v. **Balbir Kaur and another**, (9) (Tek Chand J.). Learned counsel could not cite even a single authority taking a contrary view.

(21) In view of what I have said above, plaintiff Mula would have no rights of pre-emption.

(22) In this view of the matter, no other question falls for determination in this case. The result in that the appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.

Narula, J.—I entirely agree and have nothing whatever to add.

Tuli, J.—I also agree and have nothing to add.

Sandhawalia, J.—I agree.

Suri, J.—I agree.

(5) I.L.R. 1963 (2) Pb. 233=1963 P.L.R. 500.
(6) 1965 P.L.R. 132.
(7) I.L.R. (1966)1 Pb. 257=1965 P.L.R. 1108.
(8) 1967 P.L.R. 475.
(9) 1968 P.L.R. 752.

K. S. K.

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