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On this conclusion, the court-fee is payable under section 7(ix) and not under section 7(v) of the Act.

Mehar Singh, J.

This revision application is accepted, order of the trial Judge reversed, and it is found that the plaintiffs are liable to pay court-fee on the mortgage amount of the prior mortgage under section 7(ix) of the Court Fees Act. They are allowed two months from today to make up the court fee in the trial Court. There is no order in regard to costs in this application.

R.S.

APPELLATE CIVIL.

Before Gurdev Singh, J.

GURBACHAN SINGH,—*Appellant.*

versus

BHAGWATI AND OTHERS,—*Respondents.*

Regular Second Appeal No. 624 of 1965.

1965

September, 27th.

Punjab Pre-emption Act (I of 1913)—S. 15—Land acquired jointly by two sisters by gift from their mother—One sister selling her one-half undivided share in the land—Other sister—Whether entitled to pre-empt the sale.

Held, that clause Fourthly of sub-section (1) of section 15 of the Punjab Pre-emption Act, 1913, which vests the right of pre-emption in the co-sharers of the vendor, applies to both male and female co-sharers. Sub-section (2) of section 15 will supersede the provisions of sub-section (1) only in those cases where the female vendor acquired the land by inheritance from her father, brother, son or husband. Where two sisters jointly acquired land from their mother by gift, and one of them sells her undivided one-half share therein, the other sister will be entitled to pre-empt the sale by virtue of clause Fourthly of sub-section (1) of section 15 as sub-section (2) of that section does not apply in such a case.

Regular Second Appeal from the decree of the Court of Shri Mohan Lal Jain, Additional District Judge II, Ambala, camp at Karnal, dated the 27th day of April, 1965, affirming with costs that of Shri Roshan Lal Lamba, Sub-Judge, 1st Class, Panipat, dated the 26th March, 1964, granting the plaintiff a decree for possession by pre-emption of the land in dispute on payment of Rs. 17160.83 paisa and that the plaintiff would himself pay the mortgage

money whenever she wanted to redeem the land from the previous mortgagee and further ordering that the pre-emption money less the amount already deposited in Court would be deposited within six months from the date of the order, i.e., 26th March, 1964, failing which the pre-emption suit would stand dismissed and leaving the parties to bear their own costs.

J. N. SETH, ADVOCATE, for the Appellants.

R. L. SHARMA, ADVOCATE, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—This is a defendant's second appeal directed aginst the appellate judgment and decree of Shri Mohan Lal Jain, Additional District Judge, Karnal, dated 27th April, 1965, upholding the decree for pre-emption obtained by Shrimati Bhagwati respondent No. 1 from the trial Court on 26th March, 1964. Gurdev Singh, J.

The property in dispute is agricultural land measuring 72 Kanals 8 Marlas, being undivided half share of the land which is jointly owned by the pre-emptor Shrimati Bhagwati, respondent No. 1 and her sister Shrimati Bohti. This entire property was acquired by these two sisters by means of a gift deed made in their favour by their mother Shrimati Nihali on 19th July, 1960, long after the Hindu Succession Act, 1956, had come into force. On 30th May, 1962, Shrimati Bohti sold her undivided one-half share in the entire land measuring 144 Kanal 16 Marlas to the appellant Gurbachan Singh and respondents 2 to 4 for a consideration of Rs. 16,000. A few days later, on 12th June, 1962, her sister Shrimati Bhagwati, the plaintiff-respondent, is stated to have entered into an agreement (Exhibit D. 2) with the appellant Gurbachan Singh and other co-vendees to sell her one-half undivided share of the property for Rs. 11,500. Under that agreement, the sale deed was to be executed by the 5th of November, 1962. Shrimati Bhagwati respondent, however, did not stick to this agreement, and not only refused to complete the sale of her share of the land, but on the other hand on 21st February, 1963, brought the suit out of which this appeal has arisen for possession of the other half of the property (72 Kanals 8 Marlas), which her sister Shrimati Bohti had earlier sold away to the appellant and others on 30th May, 1962. She claimed superior right of pre-emption on the

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plea that she was a co-sharer in the land. Though she challenged that the sale in favour of the appellant and others was not for Rs. 16,000, but only for Rs. 12,000, it appears that later this plea was not pressed. The appellant and his co-vendees while resisting Shrimati Bhagwati's claim pleaded that she had no right to pre-empt the sale, she was estopped from filing the suit and that they could not be dispossessed without being compensated for the improvements that had been made by them since the sale was effected in their favour. The trial proceeded on the following issues:—

(1) Has the plaintiff a right to pre-empt the sale ?

(2) Is the plaintiff estopped from filing the suit ?

(3) Have the defendants made any improvements ? If so, of what value ?

(4) Relief ?

The learned Subordinate Judge ,after due consideration of the evidence produced before him, found no substance in any of the defence pleas, and deciding all the issues against the defendant-vendees decreed the claim of Shrimati Bhagwati on payment of Rs. 17,160.83 nP. In appeal against this decree, the right of Shrimati Bhagwati to pre-empt the sale was disputed, and it was further urged that she had waived her right of pre-emption. The learned Additional District Judge found that there was no waiver and under section 15(1) of the Punjab pre-emption Act, as recently amended, Shrimati Bhagwati had the right to pre-empt the sale. Accordingly, the decree of the trial Court was upheld. Hence this second appeal.

The contentions raised by Shri J. N. Seth, appearing for the appellant, are that the plaintiff having waived her right was not entitled to pre-empt the sale, and in any case she had no right of pre-emption under sub-section (2) of section 15 of the Punjab Pre-emption Act as recently amended, as the alienation was made by a female, namely her sister, and she is not recognized as one of the persons in whom the right to pre-empt vests in case of such an alienation. So far as the first contention is concerned, it

is concluded by concurrent finding of fact recorded by the Courts below. On due consideration of the evidence they have found that the appellant was not a consenting party to the sale and she never waived her right to pre-empt it. This finding of fact cannot be reopened in second appeal. Even otherwise, I do not find anything wrong with it. Shri J. N. Seth, could not point out any material on the record to prove that the plaintiff was a consenting party. On the other hand, the plaintiff's case from the very beginning has been that she did not even have the notice of the sale made in the appellant's favour by her sister. This finds circumstantial support from the fact that though by the sale, which is the subject matter of this suit, her sister had sold her undivided share of the property for Rs. 16,000, twelve days later she is alleged to have executed an agreement to sell the other undivded half share of that very land only for Rs. 11,500. It is not disclosed why she was willing to part with her share of the property at a discount of about Rs. 5,000. Certainly, it is not a case where the value of half of the property fell so low within a period of hardly twelve days. It appears to me that when she is alleged to have entered into an agreement to sell her share of the property to Gurbachan Singh, she did not even know that her sister had sold her share for Rs. 16,000. In these circumstances, there was no question of her having waived the right to pre-empt and there is no occasion to apply the plea of estoppel against her to non-suit her.

The plea that the appellant had no right of pre-emption under the existing law has also, in my opinion, no merit. The sale sought to be pre-empted was no doubt made by the appellant's sister Shrimati Bohti and was thus a sale of agricultural land by a female. The provision with regard to the right to pre-empt sale of agricultural land and village immovable property under the Punjab Pre-emption Act as amended by Act X of 1960, is contained in section 15 of that Act. Sub-section (1) thereof enumerates the persons in whom the right of pre-emption vests in respect of such land. Under clause (b) of that sub-section it is provided that where the sale is of a share out of a joint land or property and is not made by all the co-sharers jointly, the right of pre-emption shall vest in the following persons in the order given below:—

> "First, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors.

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Secondly, in the brothers or brother's sons of the vendor or vendors;

Thirdly, in the father's brothers or father's brother's sons of the vendor or vendors;

Fourthly, in the other co-sharers;

Fifthly, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof."

The plaintiff-respondent claimed the right of pre-emption under clause Fourthly, which vests the right of pre-emption in the co-sharers of the vendor. It is to be noticed that sub-section (1) under which this clause occurs does not refer to the sale made by a female or a male, but merely to a sale by a co-sharer. Unless there is something in the section itself, this clause has to be read as applicable to both male and female co-sharers.

Sub-section (2) on which reliance is placed on behalf of the appellant 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 has 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."

Shri J. N. Seth, has contended that since this sub-section refers to the sale made by a female, the right of pre-emption in respect of a sale made by a female, whether as a co-sharer or sole owner has to be determined under this provision and not under sub-section (1) of section 15 of the Act. Developing the argument, he urged that the appellant could not claim the right to pre-empt the sale as under sub-section (2) of section 15 she is not one of the persons in whom the right of pre-emption vests under this provision of law, which does not refer to a sister having a right to pre-empt a sale, irrespective of the fact whether the property which is sold had come into the hands of the female vendor through her father or brother or husband. In the alternative, he argues that the property in dispute was orginally held by the parties' father, and it was from him that their mother obtained it by succession and later passed it on by means of a gift in equal shares to both the sisters. This, according to Mr. J. N. Seth, was clear evidence of the fact that the property had come into the hands of the vendor Shrimati Bohti through her father and thus the right to pre-empt the sale vests under clause (a) of sub-section (2) of section 15 in the son or the daughter of the vendor Shrimati Bohti and not in her sister. This argument, in my opinion, is fallacious. In the first instance, as has been pointed out by the learned counsel for the respondent, there is nothing on the record to prove how the property in dispute came into the hands of Shrimati Nihali, mother of Shrimati Bohti and Shrimati Bhagwati. In the second instance, even if it be assumed that Shrimati Nihali got this property on the death of her husband, by operation of the Hindu Succession Act, 1956. she had become full owner of the same before she gifted it away to her two daughters Shrimati Bohti and Shrimati Bhagwati. Thus, at the time she parted with the property in favour of her daughters, she was the full owner of the same and the vendor Shrimati Bohti as well as Shrimati Bhagwati, obtained this property not by means of inheritance or succession through any male relation such as father or brother, but through their mother. In these circumstances, sub-section (2) of section 15 would have no applicability and cannot govern the right of pre-emption in respect of the sale made by Shrimati Bohti.

It is true that the opening words of sub-section (2) of section 15 "notwithstanding anything contained in sub-section (1)" do provide that this sub-section will supersede

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the provisions of sub-section (1) and wherever it applies the provision embodied in sub-section (1) of section 15 shall be excluded, but that does not mean that if it is not covered by this sub-section (2) of section 15, then no person has a right of pre-emption in respect of the sale made by a Hindu female of the property which she had either acquired herself or which had come into her hands through a person other than father, brother or husband. As has been pointed out earlier, sub-section (1) of section 15 does not make any distinction between a sale made by a female or a male and talks only of sales made by a sole owner, co-sharer or joint owner of agricultural property. I find no justification for interpreting this provision so as to exclude the sale executed by a female sole owner of the property, co-sharer or joint owner, and, in my opinion, the claim of Shrimati Bhagwati falls within this sub-section being a co-sharer.

The decision in *Debi Ram and another* v. *Shrimati Chembeli and another* (1), cited on behalf of the appellant does not in any way advance his contention as it merely lays down that the words "notwithstanding anything contained in sub-section (1)" as used in sub-section (2) of section 15 of the Punjab Pre-emption Act indicate that whatever is stated in sub-section (2) would prevail over the rights recognised in sub-section (1). At the same time it was observed by Shamsher Bahadur J., in that case:—

> "Sub-section (2), it would be noted, deals with the sale of the properties belonging to females to which they have succeeded either paternally or through their husbands".

The case with which his Lordships was dealing was one in which it was found as a fact that the property that had been sold by the female had come into her hands through her husband. The situation in the case before us is, however, entirely different. Here, the property in the hands of the vendor Shrimati Bohti had come to her not through her father, brother, son or husband, but through her mother, and that too not as a result of inheritance or succession, but under a gift deed executed in her favour jointly with her sister Shrimati Bhagwati, respondent. In such circumstances, sub-section (2) of section 15 is not

(1) I.L.R. (1963) 2 Punj. 233=65 P.L.R. 500.

applicable as it does not cover property which a female vendor acquires otherwise than by succession through her father, brother, husband or son and the right to pre-empt the sale has to be determined in accordance with the provisions of sub-section (1) of that section. It cannot be disputed that under the latter provision Shrimati Bhagwati, being co-sharer, was competent to pre-empt the sale.

As a last resort, Shri J. N. Seth, attempted to argue that even though the property had come into the possession of Shrimati Bhagwati, under a gift deed, the circumstances indicated that it was in the nature of acceleration of succession, thus attracting the provisions of sub-section (2) of section 15. Again, I do not find any substance in this submission. There is clear evidence on the record, including the statement of Shrimati Bhagwati, D.W. 5, that besides the land which was gifted by her mother, she possessed a house. That house was not gifted along with the land. From this it is clear that the gift in favour of Shrimati Bohti and Shrimati Bhagwati was not of the entire estate held by Nihali, but only a part thereof. In such circumstances it could not operate as acceleration of succession. It was a pure and simple gift under which Shrimatis Bohti and Bhagwati, obtained half share each of the agricultural land is, accordingly, dismissed with costs.

For all these reasons, I do not find anything wrong with the decree under appeal, and affirm the same. The appeal is, accordingly, dismised with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

AMRIK SINGH,—*Petitioner*

versus

B. S. MALIK AND OTHERS,—*Respondents*

Civil Writ No. 2587 of 1964

1965

September, 28th.

Punjab Gram Panchayat Act, 1952 (IV of 1953) as amended by Punjab Act XXVI of 1962—Ss. 13-B and 13-C—Gram Panchayat Election Rules (1953)—Rules 44 and 45—Single election