APPELLATE CIVIL

Before D. K. Mahajan and R. S. Narula, JJ.

JAI SINGH,—*Appellant*

versus

MUGHLA AND OTHERS,—*Respondents*

Regular Second Appeal No. 667 of 1966

January 24, 1967.

Punjab Pre-emption Act (I of 1913)—S. 15(1) and (2)—Respective applicability of—Sales by females—Categories in which can be divided—Provision of Pre-emption Act applicable to each—Sale by widow succeeding to 'life estate' under custom and becoming full owner under section 14 of Hindu Succession Act—Whether pre-emptible under sub-section (1) or sub-section (2) of section 15—Interpretation of Statutes—Two interpretations possible—One which preserves fundamental right should be adopted—Provisions relating to right of pre-emption—Whether to be construed strictly.

Held, that sub-section (2) of section 15 of the Punjab Pre-emption Act starts with a non-obstante clause, and therefore, the provisions of sub-section (1) have to be read subject to sub-section (2). If a case falls within both the sub-sections, it is sub-section (2) which would apply to it, irrespective of the fact that it could also be covered by sub-section (1).

Held that, the cases of sales by females, shall fall into three categories, viz.:—

(i) where sale was effected by a female limited owner before the coming into force of the Hindu Succession Act.

(ii) where a female owner succeeded to a limited estate but sold the property after the limited estate merged into the full ownership or the proprietary estate, consequent upon the coming into force of the Hindu Succession Act; and

(iii) where a female succeeds to property of her husband, father or brother, as the case may be, as a full owner, in cases when the succession opens out after the coming into force of the Hindu Succession Act.

There is no difficulty at all in deciding the question relating to the rights of pre-emption in cases of categories (i) and (iii) mentioned above. In the case of the first category, the unamended section 15 would apply as it stood prior to the passing of the Punjab Act 10 of 1960. In the cases falling in the third category, it is sub-section (2) of section 15 of the Pre-emption Act, as it stands today,

that shall decide the fate of the litigation. Sales falling in the second category shall be deemed to be on the same footing as the sale of self-acquired property by a female, on account of the doctrine of merger.

Held, that a widow who originally succeeded to some land or property through her husband as a limited owner under the Hindu Law, is not deemed to have "succeeded" to the absolute and full ownership of the estate in the said land or property, which she acquires under section 14(1) of the Hindu Succession Act, on the coming into force of the said provision, by the merger of her lesser estate into the greater one, within the meaning of clause (b) of sub-section (2) of section 15 of the Punjab Pre-emption Act, and that, therefore, a sale of such absolute estate by her after the coming into force of the Hindu Succession Act, is pre-emptible under sub-section (1), and not under sub-section (2) of section 15.

Held, that if section 15 is capable of two interpretations, it would be preferable to construe the section in such a way as to preserve to the vendor and the vendees their fundamental right guaranteed under Article 19(1)(f) of the Constitution of India to acquire, hold and dispose of property. The right of pre-emption is undoubtedly a restriction on the aforesaid fundamental right, though it is no doubt saved by Sub-Article (5) of Article 19 of the Constitution. Nevertheless, the right of pre-emption, being piratical in nature, must be strictly construed so as not to confer on any person a right of pre-emption which is otherwise destructive of the fundamental right of property, which right has not been specifically conferred on the intended pre-emptor by the legislature.

Case referred by the Hon'ble Mr. Justice Harbans Singh to a larger Bench, for decision of the important questions of law involved in the case, on 14th September, 1966, *and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice, D. K. Mahajan, and the Hon'ble Mr. Justice R. S. Narula, on 24th January,* 1967.

Second Appeal from the decree of the Court of Shri S. C. Goyal, Additional District Judge, Karnal, dated the 17th day of May, 1966, *affirming that of Shri Tarlochan Singh, Sub-Judge 1st Class, Panipat, dated the 8th September,* 1965, *granting the plaintiff a decree for possession by pre-emption of the land in suit against the defendant on payment of Rs.* 5,700 *which would include costs of registration and stamp expenses (less Zar Panjam) already deposited in the Court within one month from 8th September,* 1965, *failing which the suit of the plaintiff would stand dismissed with costs.* The *lower appellate court left the parties to bear their own costs.*

G. C. Mittal and T. N. Dutta, Advocates, for the Appellants.

N. C. Jain and S. K. Goyal, Advocates, for the Respondents.

JUDGMENT OF THE DIVISION BENCH

Narula, J.—In this regular second appeal, which is directed against the judgment and decree of affirmance, passed by the Court

of Shri Sarup Chand Goyal, Additional District Judge, Karnal, on May 17, 1966, upholding the decree of the trial Court, dated September 8, 1965, for possession in exercise of the plaintiff's right of pre-emption on payment of Rs 5,700, the only question which calls for decision is, whether a widow is deemed to have "succeeded through her husband" within the meaning of clause (b) of sub-section (2) of section 15 of the Punjab Pre-emption Act (1 of 1913) (hereinafter referred to as the Pre-emption Act) to land of property which she originally got prior to April 1, 1956, as a life estate under the Hindu Law, on the death of her husband after the coming into force of the Hindu Succession Act (30 of 1956) (hereinafter called the Succession Act), and after she has become full owner of the said land or property by operation of sub-section (1) of section 14 of the Succession Act.

I may first summarise the facts which have given rise to this question.

The land in question belonged to one Nihala, who was married to Shrimati Nimbo, respondent No. 6, to whom I will refer in this judgment as the vendor. Nihala had a brother, named Shibha, whose son is Mughla, plaintiff respondent, who will be called "pre-emptor" by me in this judgment. On the death of Nihala, the land in question was mutated by Exhibit P. 2 on November 15, 1943, in favour of the vendor (Shrimati Nimbo, respondent No. 6). She got this property as a Hindu widow and there is no dispute that she was the limited owner thereof. On the coming into force of the Succession Act, the vendor became the full owner of the land by operation of sub-section (1) of section 14 thereof. On June 16, 1964, the vendor sold the agricultural property in question to Jai Singh, defendant-appellant, and Ram Singh and others, defendant-respondents Nos. 2 to 5. These vendees were defendants Nos. 1 to 5 in the trial Court, and will be referred to by me in this judgment as the "vendees". The sale was in consideration of payment of Rs. 5,000 and was evidenced by a deed scribed on June 16, and registered on June 20, 1964. Mughla pre-emptor, who as stated above is the son of the brother of the husband of the vendor, filed a suit for possession of the agricultural property in question. The vendees contested the suit on the ground that they were tenants in the land, and the pre-emptor had no right of pre-emption. The trial Court framed nine issues from the pleadings of the parties: but we are concerned in this appeal with issue No. 1 only, which was in the following terms:—

> "Whether the plaintiffs have got a preferential right of pre-emption?"

By judgment, dated September 8, 1965, the Court of Shri Tarlochan Singh, Subordinate Judge, 1st Class, Panipat, found all the issues in favour of the pre-emptor and decreed the suit. The appeal of the vendees against the decree of the trial Court, was dismissed by the Additional District Judge, Karnal, on May 17, 1966, without any order as to costs. Not satisfied with the decree of the first appellate Court, one of the vendees filed the present second appeal. By order, dated September 14, 1966, Harbans Singh, J., referred this case to a larger Bench, on the ground that two plausible views were possible on the question of law, which directly arises in this case, and since this question is likely to arise frequently, and the learned Judge would have been inclined to grant leave to appeal to the Letters Patent Bench, irrespective of his decision on the point, he thought it more appropriate if the matter could be decided authoritatively by a larger Bench in the very first instance. This is how the matter came up before us.

The fate of the suit of the pre-emptor depends on the answer to the question referred to in the first sentence of this judgment as the judgment of the first appellate Court has not been assailed before us or even sought to be supported before us on any other point. It was fairly and frankly admitted by learned counsel for both sides that if this case falls in section 15(2)(b) of the Pre-emption Act, the pre-emptor is entitled to succeed; but that the pre-emptor must fail if the case falls under clause (a) of sub-section (1) of that section. The relevant parts from section 15 of the Pre-emption Act are quoted below :—

> "15. (1)(a) the right of pre-emption in respect of agricultural land and village immovable property shall vest where the sale is by a sole owner,
>
> First, in the son of daughter or son's son or daughter's son of the vendor;
>
> Secondly, in the brother or brother's son of the vendor;
>
> Thirdly, in the father's brother or father's brother's son of the vendor;
>
> Fourthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;
>
> (b) * * * *

(c) * * * *

(2) Nothwithstanding 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;

(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."

There is no doubt that the sale in this case was by a sole owner, as it is nobody's case that anyone other than the vendor had any right, title or interest in the property in question on the date of its sale. But sub-section (2) of section 15 starts with a non-abstents clause, and, therefore, the provisions of sub-section (1) have to be read subject to sub-section (2). If a case falls within both the sub-sections, it is sub-section (2) which would apply to it, irrespective of the fact that it could also be covered by sub-section (1). The question then boils down to this. Though the vendor was the sole owner of the property in question on the date of the sale, did she "succeed to the property "sold by her" through her husband"? The first appellate Court while deciding this question in favour of the re-emptor, observed as follows:—

"The other contention, which was vehemently pressed by the learned counsel for the appellants is that Shrimati Nimbo

had succeeded to life estate on the death of her husband in the year 1943, and that the same had been converted to full ownership on the enforcement of Hindu Succession Act, 1956. According to the contention of the learned counsel for the appellant Shrimati Nimbo would be deemed to have acquired the land herself and that she cannot be regarded to have succeeded to it through her husband. He cited *Sawan Singh and others* v. *Amar Nath* (1), decided by Mr. Justice Shamsher Bahadur. In paragraph 3 of the judgment, it was observed by his Lordship that 'in the instant case, Chandi no doubt succeeded to the rights of occupancy tenancy as the widow of Kishan Singh, but later these rights assumed a new character when their conversion into an absolute estate in her favour took place. This absolute estate is separate and distinguishable from the rights to which she had succeeded as a widow of Kishan Singh and to my mind, clause (b) of sub-section (2) of section 15 of the Punjab Pre-emption Act has no application for the simple reason that the suit property which is now an absolute estate of Chandi, cannot be regarded as one to which she had succeeded through her husband.' A Letters Patent Appeal was filed by the vendees against the judgment of the single Judge, but the same was dismissed. The Letters Patent Appeal is reported in *Sawan Singh alias Sarwan Singh and others* v. *Amar Nath* (2).

The facts of the case in dispute are distinguishable because here the suit is not in respect of occupancy rights and her Shrimati Nimbo had acquired the ownership under the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953. In the authority cited above the husband of Chandi had only occupancy rights in the land while in the present case, Nihala, husband of Shrimati Nimbo, was owner of the land, to which Shrimati Nimbo succeeded as his widow. It is of little consequence, if her life estate was enlarged on account of the enforcement of the Hindu Succession Act and she became a full owner like that of her husband. She would still be regarded to have succeeded to this land through her husband and as such under section 15(2)(b) of the Punjab

(1) 1962 P.L.R. 349.
(2) 1963 Current Law Journal 431.

Pre-emption Act, the plaintiff being the son of the brother of the husband of the alienor has a superior right of pre-emption. The finding of the lower Court is upheld."

After hearing learned counsel for the parties at length, and giving our most careful consideration to the matter, we are of the opinion that the Court below was in error in holding that the vendor had "succeeded" to the property in question "through her husband". The learned counsel for the respondents has laid stress on the meaning of the word "through" in sub-section (2) of section 15, and argued that all that the use of the said word implies is, that the female vendor must have got the property by means, by reason, or by the agency of her husband. He then emphasised that reference in sub-section (2) of section 15, is not to the interest in property, which is the subject-matter of sale, but to its *corpus* which is apparent from the use of the expression "land or property" in the provision. Adding to these two arguments a third one, to the effect that "succeeded" in the relevant provision means having been an heir, Mr. N. C. Jain contended that on the facts of this case, it being admitted that the property originally belonged to the husband of the vendor, that she was the heir to the husband, that she got the specific property as such heir, by virtue or and means of the husband, nothing more requires to be seen for bringing the case within clause (b) of sub-section (2) of section 15 of the Pre-emption Act. Mr. N. C. Jain, the learned counsel for the Pre-emptor, then referred to paragraph 176 of Mulla's Hindu Law (thirteenth edition) wherein a widow's estate is defined and it is stated that a widow or a limited heir is not a tenant-for-life, but is the owner of the property inherited by her, subject to certain restrictions on alienation, and subject to its devolving upon the next heir of the last full owner upon her death, and that the whole estate is for the time being vested in her, and she represents it completely, and has argued that all that section 14(1) of the Hindu Succession Act has done is to remove those restrictions or fetters which had been placed on her rights of ownership of the property by the original concepts of the Hindu Law. According to Mr. Jain, it cannot be held that the vendor has succeeded to the property through the Hindu Succession Act, or through anyone other than her husband.

The fallacy in the argument of the learned counsel for the respondents is that he does not see the difference between what was inherited by the vendor or to what she succeeded through her

husband, which was merely a life estate, on the one hand and what she sold to the vendees, on the other. What is to be pre-empted is the sale. From that point of view, what has to be decided is whether the vendor succeeded to the property sold by her through her husband or not. The second fallacy in the argument of Mr. Jain is that he seems to think that everyone, who owns some property, must of necessity have succeeded to it through someone. Onwers do not succeed to self-acquired property. What has happened in the eye of law by the coming into force of sub-section (1) of section 14 of the Succession Act is that the lesser estate of the widow has merged into the larger estate created by law. On such merger, the erstwhile life estate ceases to exist and is inextricably mixed up with the absolute ownership of the property. What the vendor sold to the vendees, were her rights of absolute and full ownership in the property in question. To those rights she never succeeded through her husband. She secured those rights by operation of law on the coming into force of section 14(1) of the Succession Act. What she originally inherited merged with what she got under the law, resulting in absolute dissolving of the erstwhile life estate. In Stroud's Judicial Dictionary, Volume III, at page 1781, "merger" is defined as follows:—

> "Whenever a greater estate and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated, or, in the law phrase, is said to be merged, that is, sunk or drowned in the greater."

In Corpus Juris Secundum, Volume 57, at page 1068, "merger" is explained in the following words:—

> " 'Merger' is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; and an absorption of swallowing up so as to involve a loss of identity and individuality.
>
> In law it is the absorption or extinquishment of one estate or contract in another. It is said that merger is an operation of law not depending on the intention of the parties."

In Aiyar's Law Lexicon (1940 edition) at page 809, "merger" is defined as below:—

> "Merger is the destruction or 'drowning' by operation of law of the less in the greater of two estates coming

together and vesting without any intervening estate in one and the same person in the same right."

What was once the life estate of the vendor to which she succeeded through her husband, had thus been annihilated on the 1st of April, 1956, on the coming into force of the Hindu Succession Act, by the same being merged with the greater estate created by the operation of law. It was by operation of section 14(1) of the Succession Act, that the vendor became the full owner of the property in question. What she held on the date of sale, had not, therefore, been inherited by her from anyone, but had been bestowed on her by the Succession Act. In this view of the matter, sub-section (2) of section 15 has no application to the case.

Mr. N. C. Jain then argued that in so holding, we were ignoring the fact that sub-section (2) had been introduced into section 15 of the Pre-emption Act by Punjab Act 10 of 1960, consequent upon and subsequent to the passing of the Succession Act. This does not appear to be wholly incorrect, but even under the unamended section 15, there was a statutory explanation in the following words:—

"In the case of sale by a female of land or property to which she has succeeded on a life tenure through her husband, son, brother or father, the word 'agnates' in this section shall mean the agnates of the person through whom she has so succeeded."

The newly introduced sub-section (2) had to be brought into section 15 of the Act to provide for cases in which females would inherit absolute estates from their husbands, fathers or brothers, as the case may be, after the coming into force of the Succession Act. The fact, therefore, that sub-section (2) was introduced into section 15 in 1960, does not in any manner deter us from holding what we have held above. Divided chronologically, the cases of sales by females, shall fall into three categories, viz:—

(i) where sale was effected by a female limited owner before the coming into force of the Succession Act;

(ii) where a female owner succeeded to a limited estate but sold the property after the limited estate merged into the full ownership or the proprietary estate, consequent upon the coming into force of the Succession Act; and

(iii) where a female succeeds to property of her husband, father or brother, as the case may be, as a full owner, in cases when the succession opens out after the coming into force of the Succession Act.

There is no difficulty at all in deciding the question relating to the rights of pre-emption in cases of categories (i) and (iii) mentioned above. In the case of the first category, the unamended section 15 would apply as it stood prior to the passing of the Punjab Act 10 of 1960. In the cases falling in the third category, it is sub-section (2) of section 15 of the Pre-emption Act, as it stands today, that shall decide the fate of the litigation. The question which has arisen before us, would arise only in cases falling in the second category, and in my view, those sales would be deemed to be on the same footing as sale of self-acquired property by a female, on account of the doctrine of merger, to which detailed reference has been made above. The same result can be achieved by extending the analogy of property acquired by a female by gift, in which case it has already been held by Harbans Singh, J., in *Surjit Singh* v. *Nazir Singh and another* (3), that a female may acquire property either by inheritance or by self acquisition or by gift from others, and that in each of these cases, she may be a sole owner of the property, and in either of these cases, there is no reason why her own relations as mentioned in clause (a) of sub-section (1) of section 15, should not have a right to pre-empt, just as in the case of a sale by a male proprietor. The learned Judge held that where a property is acquired by a female by way of gift from her husband such an acquisition cannot be equated to inheritance by her from her husband, and sub-section (2) would not be applicable to such a sale. I am in respectful agreement with the law laid down by Harbans Singh, J., in *Surjit Singh's case* (supra) and further hold that the same considerations apply to property in which the rights of ownership have been acquired by a female under section 14(1) of the Succession Act. To the same effect was the law laid down by a Division Bench of this Court (Falshaw, C.J., and Khanna, J.) in *Kahla Singh and others* v. *Rajinder Singh and others* (4).

Strength can also be derived for the view which has prevailed with us in connection with the interpretation of clause (b) of sub-section (2) of section 15 of the Pre-emption Act, from the judgment of Falshaw, C.J.; and Jindra Lal, J., in *Sawan Singh alias Sarwan Singh and others* v. *Amar Nath* (2), wherein it was held that in a

(3) I.L.R. (1966) 1 Punj. 257=1965 P.L.R. 1108.
(4) I.L.R. (1967) 1 Punj. 514=1966 Cur. L.J. (Pb.) 535.

case where occupancy rights held by a woman mature into full ownership, her rights of ownership are her self-acquired property and cannot be said to have accrued to her through succession to her husband. Learned Judges of the Letters Patent Bench upheld, in that case, the judgment of Shamsher Bahadur, J., reported as *Sawan Singh and others* v. *Amar Nath* (1).

For the foregoing reasons, it is held that a widow who originally succeeded to some land or property through her husband as a limited owner under the Hindu Law, is not deemed to have "succeeded" to the absolute and full ownership of the estate in the said land or property, which she acquires under section 14(1) of the Hindu Succession Act, on the coming into force of the said provision, by the merger of her lesser estate into the greater one, within the meaning of clause (b) of sub-section (2) of section 15 of the Pre-emption Act, and that, therefore, a sale of such absolute estate by her after the coming into force of the Succession Act, is pre-emptible under sub-section (1), and not under sub-section (2) of section 15.

In my opinion there is no ambiguity in the relevant provision and it is capable of only one meaning, which I have assigned to it. Even if the provision was capable of two possible interpretations, as indeed it does appear at first sight, I would have preferred to construe the section in such a way as to preserve to the vendor and the vendees their fundamental right guaranteed under Article 19(1)(f) of the Constitution to acquire, hold and dispose of property. The right of pre-emption is undoubtedly a restriction on the aforesaid fundamental right, though it is no doubt saved by clause (5) of Article 19 of the Constitution as authoritatively held by the Supreme Court. Nevertheless, the right of pre-emption being piratical in nature, must be strictly construed so as not to confer on any person a right of pre-emption which is otherwise destructive of the fundamenal right of property, which right has not been specifically conferred on the intended pre-emptor by the Legislature. Even from this point of view, the construction placed by me on section 15(2)(b) of the Pre-emption Act, has to be preferred.

In view of the above finding, this appeal has to be allowed and is accordingly accepted and the judgment and the decree of the Court below are reversed, and the suit of the pre-emptor dismissed. Since the fate of the case has depended on a pure question of law, the parties are left to bear their own costs throughout.

D. K. MAHAJAN, J.—I agree.

R.N.M.