

Before R. N. Mittal, J.

WARYAM SINGH AND ANOTHER,—Petitioners.

versus

ISHAR SINGH,—Respondent.

Civil Revision No. 428 of 1985

September 25, 1985.

*Punjab Pre-emption Act (1 of 1913)—Section 8(2)—Two suits for pre-emption—One by tenant and other by son—Notification under section 8(2) issued during pendency of suits declaring that no right of pre-emption would exist pertaining to the sale—Both suits dismissed in view of the notification—Appeal filed by the son alone—Notification quashed by the High Court in another proceeding—Appeal of son allowed and case remanded to Trial Court for disposal of appeal on merits—Tenant filing application praying for revival of his suit—Trial court allowing application and ordering revival of the suit—Such order of the Trial court—Whether legal.*

*Held, that the suit for possession by pre-emption filed by the tenant was dismissed in view of the notification issued by the Government under section 8(2) of the Punjab Pre-emption Act, 1913 and no appeal against that judgment was taken to the appellate court. In the circumstances, that judgment became final between the parties. A decision of a court which has become final between the parties cannot be set aside by the same court by way of review or otherwise; on the ground that subsequently another decision has been given by the higher court on the basis of which the court could change its earlier view. As such the order of the Trial court ordering revival of the suit is not legal.*

(Para 6)

*Petition under section 115 C.P.C. against the order of Shri T. C. Gupta, Senior Sub Judge Ambala, dated 9th January, 1985 dismissing the application and the suit. Further ordering that the other suit namely Ishar Singh vs. Waryam Singh bearing old registration No. 112/79, be registered separately and shall be proceeded independently and further ordering to come for plaintiff's evidence afresh on 19th April, 1985.*

H. N. Mehtani, Advocate, for the Petitioner.

I. S. Saini, Advocate, for the Respondent.

#### JUDGMENT

*Rajendra Nath Mittal, J. (Oral)*

(1) This revision petition has been filed by the defendant-vendees against the order of the Subordinate Judge 1st Class, Ambala, dated 9th January, 1985.

(2) Briefly, the facts are that Avinash Chander was the owner of the land in dispute. He sold it to defendants Nos. 1 and 2 for a consideration of Rs. 7,625,—*vide* sale deed on 18th April, 1978. Two suits for pre-emption were filed—one by Vikas son of the vendor (suit No. 108 of 1979) and the other by Isher Singh, tenant of the vendor (suit No. 112 of 1979). Both the suits were consolidated by the trial Court,—*vide* order dated 22nd September, 1980, and it was ordered that the evidence would be recorded in suit No. 108 of 1979. While the suits were pending, Haryana Government issued a notification dated 24th September, 1981 under section 8(2) of the Punjab Pre-emption Act (hereinafter referred to as the Act) declaring that no right of pre-emption shall exist with respect to the sale of the land in dispute. The Subordinate Judge dismissed both the suits on 29th October, 1981.

(3) Vikas filed an appeal against the decree passed against him before the Additional District Judge, Ambala. During the pendency of the appeal, the notification under section 8(2) of the Act was quashed in C.W.P. No. 816 of 1982 (Isher Singh v. State of Haryana) decided on 23rd August, 1982. In view of the quashing of the notification, the Additional District Judge, set aside the judgment and decree of the Subordinate Court on 10th November, 1982 and remanded the case to the Subordinate Judge for deciding the matter afresh. After the remand, Vikas died. The application by his legal representatives for becoming the plaintiffs was dismissed by the trial Court.

(4) Isher Singh, the plaintiff in suit No. 112 of 1979 also moved an application on 26th October, 1983 that his suit be taken with the other suit and be tried jointly therewith. The Court while dismissing the application of the legal representatives of Vikas ordered revival of the suit of Isher Singh. The defendant-vendees have come up in revision against the said order to this Court.

(5) It is contended by Mr. Mehtani that the suit filed by Isher Singh had been dismissed by the trial Court and no appeal against the said judgment had been filed. Consequently, after the remand order in the appeal filed by Vikas, the suit of the Isher Singh respondent could not be ordered to be revived. On the other hand, Mr. Saini learned counsel for the respondent has vehemently argued that as soon as the notification under section 8(2) of the Act was quashed, that notification shall be deemed to have never existed. Therefore, the respondent after the order of remand could get his

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suit revived. In support of his contention he places reliance on *Hari Kishan and others v. Mst. Gaindi and others* (1) and *Nawabkhan Abbaskhan v. The State of Gujarat* (2).

(6) I have given due consideration to the arguments of the learned counsel. However, I agree with the submission of Mr. Mehtani. The facts of the case are not disputed. The suit for possession by pre-emption filed by the respondent was dismissed by the trial Court and no appeal against that judgment was taken to the appellate Court.

In the circumstances, that judgment became final between the parties. It is well settled that a decision of a Court which has become final between the parties cannot be set aside by the same Court by way of review or otherwise on the ground that subsequently another decision has been given by the higher Court on the basis of which the Court could change its earlier view. In the above observations, I get support from *Lachhmi Narain Balu, v. Ghisa Bihari and another* (3), wherein it was held by Dua, J., (as he then was), that once a case is decided, it is hardly permissible to review that decision on the mere ground that, subsequently to its date, another decision has been given, the ratio of which may induce the Court to change its previous view.

(7) In *Hari Kishan's case* (supra) the facts were that some land was sold by two brothers. Two suits for possession by pre-emption were filed, one by the mother of the vendors and the other by their collaterals. Both the suits were consolidated and by one judgment they were disposed of. The mother was granted a decree for possession by pre-emption on payment of the sale consideration before a particular date failing which her suit would stand dismissed and in the event of the dismissal of her suit, the collaterals were granted decree for possession on payment of the same consideration by another date failing which their suit was also to stand dismissed. The Collaterals went up in appeal to the Court of District Judge against the decree granted in favour of the mother in the suit filed by her. That appeal was dismissed and the collaterals came up in second appeal to this Court. During the pendency of the second appeal, the Punjab Pre-emption Act was amended and the provision conferring right of

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(1) I.L.R. (1966)2 Pb. 856.

(2) (1974)2 S.C.C. 121.

(3) AIR 1960 Punjab 43.

pre-emption on the persons of the category in which the mother and the collaterals fell, was omitted. It was further provided that no Court would pass a decree in a suit for pre-emption whether instituted before or after the commencement of the Punjab Pre-emption (Amendment) Act which was inconsistent with the provisions of the Act. In view of the aforesaid provision, the learned Judge dismissed both the suits holding that even if the vendee had not filed any appeal against the decree, the appellate Court would set aside the decree in appeal filed by the rival pre-emptor by having recourse to its powers under Order XLI Rule 33 of the Code of Civil Procedure, for the reason that an appeal is a rehearing of the suit and any change in law that takes place during the pendency of the appeal has to be taken into account while deciding the appeal. From the observations it is evident that the learned Judge relied on Order XLI Rule 33 of the Code. In the present case, the aforesaid provision is not applicable as suit has been ordered to be revived by the trial Court. In *Nawabkhan Abbaskhan's* case (supra) the externment order was struck down under Article 226 for the reason that it violated the rule of *audi alteram partem*. Thus the question for determination in that case was absolutely different. In my view, the ratio in both the cases is not applicable to the present case.

(8) For the aforesaid reasons, I accept the revision petition, set aside the order of the trial Court and hold that it had no right to restore the suit of the Isher Singh respondent. No order as to costs.

H.S.B.

Before I. S. Tiwana, J.

DALIP SINGH AND OTHERS,—*Petitioners*.

*versus*

CHANDIGARH ADMINISTRATION AND OTHERS,—*Respondents*.

Civil Writ Petition No. 3989 of 1985.

September 27, 1985.

*Punjab Capital (Development and Regulation) Building Rules, 1952—Rule 3(b) and Schedule I—Zoning Plan specifying area as vacant space—Said vacant space—Whether can be utilized by the*