BHIKHA RAM

v.

RAM SARUP AND ORS.

OCTOBER 31, 1991

[RANGANATH MISRA, CJ., A.M. AHMADI AND P.B. SAWANT, JJ.]

Punjab Pre-emption Act, 1913—Section 15(1) (b), Fourthly—Pre-emption—Pre and post Amendment—Legislative intention—Atam Prakash's case—Purport of.

Punjab Pre-emption Act, 1913—Section 15(1) (b), Fourthly—" Other co-sharers"—Construction.

The appellant seeking to exercise the right of pre-emption as a co-sharer, i.e. father's brother's son of the vendors, contended that he fell within the expression 'other co-sharers' in clause 'Fourthly' of section 15(1)(b) of the Punjab Pre-emption Act, 1913 and was, therefore, entitled to exercise the right of pre-emption.

The courts below negatived his contention following the decision of this Court in *Jagdish & Ors.* v. *Nathi Mal Kejriwal & Ors.*, [1986] 4 SCC 510.

In this appeal filed by special leave, the appellant submitted that since the suit land belonged to more than one co-sharer and had not been sold jointly by all the co-sharers, he, as a co-sharer, was entitled to claim the right of pre-emption under clause 'fourthly' of section 15(1)(b) and that in *Jagdish's* case, the interpretation placed on the expression 'other co-sharers' in section 15(1)(b) required reconsideration.

Allowing the appeal, this Court,

HELD: 1. According to section 15 of the Act before its amendment in 1960, in the case of sale of share out of joint land or property, the right of pre-emption was conferred firstly on the lineal descendants of the vendor in order of succession; secondly, in the co-sharers, if any, who are agnates, in order of succession; thirdly, in persons not included under firstly or secondly above, in order of succession, who but for such sale would be entitled, on death of the

A **vendor, to inherit the land or property sold and fourthly, in the co-sharers. [126 E-F]**

2. Section 15 after its amendment in 1960 provided that where the sale is of a share out of the joint land or property and is not by all the co-sharers jointly, the right of pre-emption was vested, first, B **in the sons or daughters or son's son or daughter's sons of the vendor or vendors; Secondly, in the brothers or brother's sons of the vendor or vendors; Thirdly, in the father's brother or father's brother's sons of the vendor or vendors; Fourthly, in the other co-sharers and Fifthly, in the tenants. [126 F-G]**

C **3. The legislature desired to confer the right of pre-emption on specified family members of the vendor or vendors in the first three clauses of section 15(1)(b) and with a view to covering all the remaining co-sharers not specifically mentioned in the preceding clauses it used the expression 'other co-sharers' in the fourth clause which was meant to serve as a residuary clause to ensure that no co-**D **sharer is left out. [126 G-127 A]**

4. The expression 'other co-sharers' was used in the fourth clause of the said provision to ensure that no co-sharer was left out or omitted and not to deny the right to kinsfolk co-sharers covered E **by the preceding clauses. If the preceding clauses were not erased from the statute book as unconstitutional the kinsfolk would have exercised the right in the order of preference, for which no justification was found. The relations in the first three clauses of section 15(1)(b) may or may not be co-sharers. The use of the expression 'other' in clause fourthly conveys the possibility of their being co-**F **sharer also. [127 D-F]**

5. The purport of *Atam Prakash's* case was that while co-sharers were entitled to pre-empt, the conferment of that right on certain kinsfolk based on the rule of consanguinity being a relic of the feudal past could not be tolerated. This Court never intended to G **exclude any specified co-owners from the scope of clause fourthly of section 15(1)(b) of the Act. Once conferment of the right of pre-emption in favour of co-sharers was considered to be a reasonable restriction on the right to hold, acquire and dispose of property under Article 19(1)(f), the same restriction was held to be valid when tested on the touchstone of Articles 14 or 15 of the Constitu-**H **tion. [127 B-D]**

6. What this Court disapproved as offensive to Articles 14 and 15 is the classification based on consanguinity and not on co-ownership. The right of pre-emption to co-sharers is held to be *intra-vires* the Constitution. Therefore, it is difficult to hold that this Court intended to deny the right of pre-emption of those kinsfolk even if they happened to be co-sharers. That would clearly be discriminatory. [127 F-G]

7. The interpretation placed on clause 'fourthly' of section 15(1)(b) of the Act by this court in *Jagdish's* case was not correct on a proper construction of that clause after the preceding clause were held to be unconstitutional, the word 'other' preceding the word 'co-sharer' is rendered redundant. [127 G]

Ram Sarup v. _Munshi & Ors._, [1963] 3 SCR 858 = AIR 1963 SC 553; _Atam Prakash_ v. _State of Haryana & Ors._, [1986] 2 SCC 249 = AIR 1986 SC 859; _Bhau Ram_ v. _B.Baijnath Singh_, [1962] Suppl. SCR 724 = AIR 1962 SC 1476, referred to.

Jagdish & Ors. v. _Nathi Mal Kejriwal & Ors._, [1986] 4 SCC 510 = AIR 1987 SC 68, over-ruled.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4366 of 1991.

From the Judgment and Order dated 16.5.1988 of the Punjab & Haryana High Court in Regular Second Appeal No. 3648 of 1987.

R.K.Kapoor and Anis Ahmed Khan for the Appellant.

S.N.Mishra, L.K. Gupta, D.K. Yadav and D.K.Garg for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J. Delay condoned. Special leave granted.

The constitutional validity of section 15(1)(a) of the Punjab Pre-emption Act, 1913 was challenged on the ground that it offended the fundamental right guaranteed by Article 19(1)(f) in _Ram Sarup_ v. _Munshi & Ors._, [1963] 3 SCR 858-AIR 1963 SC 553 A Constitution Bench of this Court upheld the validity holding that there was no infringement of Article 19(1)(f) of the Constitution. Thereafter, a host of writ petitions

A were filed in this Court under Article 32 of the Constitution challenging the constitutional validity of section 15 on the ground that it infringed Articles 14 and 15 of the Constitution. It may be mentioned that the mother State, the State of Punjab, had repealed the Act in 1973 but it continued to be in force in the State of Haryana which prior to 1966 was a part of the State of Punjab. Section 15 of the 1913 Act, as it originally
B stood, underwent substantial changes in 1960 and as amended read as under :

"15. Persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property—

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

(a) where the sale is by a sole onwer—

First, in the son or daughter or son's son or daughter's son of the vendor;

D 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
E vendor the land or property sold or a part thereof;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly—

First, in the sons or daughters or son's son or daughter's sons of the vendor or vendors;

F

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

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

G 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;

H (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; A

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

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

Fourthly, in the tenants, who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof. B

(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: C

(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; D

(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— E

First, in the son or daughter of such husband of the female;

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

F

This Court in *Atam Prakash* v. *State of Haryana & Ors,* [1986] 2 SCC 249 - AIR 1986 SC 859 held that the right of pre-emption given to co-sharers as well as to a tenant can be justified as they constitute a class by themselves. This Court, therefore, upheld the constitutional validity of clause 'fourthly' of section 15(1)(a), clauses 'fourthly' and 'fifthly' of section 15(1)(b) and clause 'fourthly' of section 15(1)(c) as valid and not G infringing Articles 14 or 15 of the Constitution. This Court, however, did not find any justification for the classification contained in section 15 which conferred a right of pre-emption on the kinsfolk. The right of pre-emption based on consanguinity was held to be a relic of the feudal past totally inconsistent with the constitutional philosophy and scheme. It also found the list of kinsfolk entitled to pre-emption as intrinsically defective H and Self-contradictory. Finding no reasonable classification it struck down

A clauses 'first', 'secondly' and 'thirdly' of section 15(1)(a), clauses 'first', 'secondly', and 'thirdly' of section 15(1)(b) and clause 'first', 'secondly', and 'thirdly' of section 15(1)(c) and the entire section 15(2) as *ultra vires* the Constitution. The right of pre-emption in regard to a co-sharer was upheld on the consideration that if an outsider is introduced as a co-sharer in a property it will make common management extremely difficult and B destroy the benefits of ownership in common. The right of pre-emption vested in a tenant was sustained on the ground that land reform legislations in regard to the tiller of the soil to obtain proprietary right in the soil with a view to ensuring his continuance in possession of the land and consequently of his livelihood without threat or disturbance from the superior proprietor. The right of pre-emption granted to a tenant was taken as C another instance of a legislation aimed at protecting the tenant's interest in the land. Holding that the co-sharers and the tenants constituted a distinct class by themselves, the right of pre-emption conferred on them was upheld as reasonable and in public interest. In taking this view strong reliance was placed on the ratio of the decision of this court in *Bhau Ram* v. *B.Baijnath Singh,* [1962] Suppl.SCR 724 - AIR 1962 SC 1476 wherein D the vires of a provision of the Rewa State Pre-emption Act which conferred a right of pre-emption based on vicinage and the right of pre-emption conferred on co-sharers and the Punjab Pre-emption Act, 1913 were challenged on the ground of infraction of Article 19(1) (f) of the Constitution. In that case it was held that a right of pre-emption by vicinage offended Article 19(1) (f) of the Constitution but a similar right conferred E on co-sharers was *intra vires* Article 19(1)(f) of the Constitution. In that case also this Court held that the right of pre-emption vested in co-sharers was a reasonable restriction on the right to hold, acquire or dispose of property conferred by Article 19(1)(f) of the Constitution. In *Atam Prakash's* case, this Court, therefore, held that what was said about the right of pre-emption granted to co-sharers in relation to Article 19(1)(f) of the Consti- F tution applied with equal force to justify the classification in relation to Articles 14 and 15 of the Constitution.

After the surgery, section 15 underwent at the hands of this Court removing the offending parts in *Atam Prakash's* case, what survives of section 15 is that in the case of sale of agricultural land and village G immovable property by a sole owner, the tenant alone can exercise the right of pre-emption. Where the sale is of a share out of joint land or property, and is, not made by all the co-sharers jointly, only the other co-sharers and the tenants can exercise the right of pre-emption. Where the sale is of a land or property owned jointly and is made by all the co-sharers jointly, the right to pre-empt survives to the tenants only. Since in H the present case, we are concerned with sale by a single co-sharer and not

by all the co-sharers jointly, the remaining part of section 15(1)(b), with which we are concerned, reads as under:

> "15(b). Persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property—
>
> (1) The right of pre-emption in respect of agricultural land and village immovable property shall vest—
>
> (b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly—
>
> xxx xxx xxx xxx xxx xxx xxx xxx
> xxx xxx xxx xxx xxx xxx xxx xxx
> xxx xxx xxx xxx xxx xxx xxx xxx
> 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."

Counsel for the appellant submitted that since the suit land belonged to more than one co-sharer and had not been sold jointly by all the co-sharers, he, as a co-sharer, was entitled to claim the right of pre-emption under clause 'fourthly' of section 15(1)(b). A similar question came up before this Court in *Jagdish & Ors.* v. *Nathi Mal Kejriwal & Ors.*,[1986] 4 SCC 510 - AIR 1987 SC 68 wherein a two-judge Bench of this Court negatived the contention in the following words :

> "In order to understand the meaning of the words 'other co-sharers' in Section 15(1)(b) we have to read the Act as it stood before the decision in *Atam Prakash's* case (AIR 1986 SC 859) (supra). It is seen that the expression 'other co-sharers' in clause 'Fourthly' of Section 15(1)(b) of the Act refers to only those co-sharers who do not fall under clause 'First' or 'Secondly' or 'Thirdly' of Section 15(1)(b) of the Act. Since the petitioners admittedly fall either under clause 'First' or under clause 'Secondly' of Section 15(1)(b) of the Act they are clearly outside the scope of clause 'Fourthly'. Therefore, the petitioners cannot claim the right of pre-emption under clause 'Fourthly'. We do not, therefore, find any substance in this contention....."

In the present case also the appellant seeks to exercise the right of pre-emption as a co-sharer i.e. father's brother's son of the vendors. His contention is that he falls within the expression 'other co-sharers' in clause 'Fourthly' of section 15(1)(b) and is, therefore, entitled to exercisee the right of pre-emption conferred on him by that provision. The courts below

A have negatived this contention solely on the ground that it cannot stand after the pronouncement of this Court in the case of *Jagdish* (supra). Counsel for the appellant, however, contended that the interpretation placed by the two-judge Bench on the expression 'other co-sharers' in section 15(1)(b) requires reconsideration as it leads to certain anomalous situation e.g. a sister who is a co-sharer can claim pre-emption while her brother
B cannot or a daughter's daughter of the vendor can claim pre-emption but not the son.

The history of the Punjab Pre-emption law may be kept in mind to understand the purport of clause 'Fourthly' of section 15(1)(b) of the Act. Under the Punjab Pre-emption Act, 1905, the corresponding provision,
C section 12, conferred a right of pre-emption, in the case of a sale of a share of such land or property held jointly, firstly, in the lineal discendents of the vendor in male line in order of succession; secondly, in the co-sharers, if any, who are agnates, in order of succession; thirdly, in the persons described in sub-clause (a) i.e. in persons who but for such sale would be entitled to inherit the property in the event of his or their
D decease, in order of succession and fourthly, in the co-sharers jointly or severally. It will be noticed that priority for the exercise of the right owes statutorily fixed and even in the case of those falling within the same class, the exercise of right was regulated by the use of the expression, 'in order of succession'. The 1905 Act was repealed and replaced by the 1913 Act. According to section 15 of this Act before its amendment in1960, in
E the case of sale of a share out of joint land or property, the right of pre-emption was conferred firstly on the lineal descendents of the vendor in order of succession; secondly, in the co-sharers, if any, who are agnates, in order of succession; thirdly in persons not included under firstly or secondly above, in order of succession, who but for such sale would be entitled, on death of the vendor, to inherit the land or property sold and
F fourthly, in the co-sharers. Section 15 after its amendment in 1960 provided that where the sale is of a share out of the joint land or property and is not by all the co-sharers jointly, the right of pre-emption was vested, First, in the sons or daughters or son's son or daughter's sons of the vendor or vendors; Secondly, in the brothers or brother's sons of the vendor or vendors; Thirdly, in the father's brother or father's brother's
G sons of the vendor or vendors; Fourthly, in the other co-sharers and Fifthly in the tenants. Read in the context, it becomes clear that the legislature desired to confer the right of pre-emption on specified family members of the vendor or vendors in the first three clauses of section 15(1)(b) and with a view to covering all the remaining co-sharers not specifically mentioned in the preceding clauses it used the expression 'other co-sharers' in
H the fourth clause which was meant to serve as a residuary clause to ensure

that no co-sharer is left out. Since this Court found certain intrinsic contradictions in the list of relatives covered by the first three clauses, it saw no justification for the classification contained in the said provision conferring a right based on consanguinity and, therefore, struck down those clauses as discriminatory and violative of Articles 14 and 15 of the Constitution. At the same time it upheld the right conferred on co-sharers for reasons stated earlier. Thus the purport of *Atam Prakash's* case (supra) was that while co-sharers were entitled to pre-empt, the conferment of that right on certain kinsfolk based on the rule of consanguinity being a relic of the feudal past could not be tolerated. This Court never intended to exclude any specified co-owners from the scope of clause fourthly of section 15(1)(b) of the Act. Once conferment of the right of pre-emption in favour of co-sharers was considered to be a reasonable restriction on the right to hold, acquire and dispose of property under Article 19(1) (f), the same restriction was held to be valid when tested on the touchstone of Articles 14 or 15 of the Constitution. We find it difficult to hold that the purport of this Court's decision in *Atam Prakash's* case was to deny the right of pre-emption to those relative or relatives of the vendor or vendors who were specified in the erstwhile first three clauses of section 15(1)(b) even if they happen to be co-sharers. The expression 'other co-sharers' was used in the fourth clause of the said provision to ensure that no co-sharer was left out or omitted and not to deny the right to kinsfolk-co-sharers covered by the preceding clauses. If the preceding clauses were not erased from the statute book as unconstitutional the kinsfolk would have exercised the right in the order of preference, for which no justification was found. The relations in the first three clauses of section 15(1)(b) may or may not be co-sharers. The use of the expression 'other' in clause fourthly conveys the possibility of their being co-sharer also. What this Court disapproved as offensive to Articles 14 and 15 is the classification based on consanguinity and not on co-ownership. The right of pre-emption to co-sharers is held to be *intra-vires* the Constitution. Therefore, it is difficult to hold that this Court intended to deny the right of pre-emption of those kinsfolk even if they happened to be co-sharers. That would clearly be discriminatory. With respect, therefore, we find it difficult to approve of the interpretation placed on clause 'fourthly'; of section 15(1)(b) of the Act by this Court in *Jagdish's* case. We think on a proper construction of that clause after the preceding clauses were held to be unconstitutional the word 'other' preceding the word 'co-sharer' is rendered redundant. We, therefore, do not approve the ratio of *Jagdish's* case and overrule the same.

In the result the appeal succeeds. The decision of all the three courts below dismissing the appellant's suit is set aside and the suit is decreed.

A We direct that on the appellant-plaintiff depositing the entire amount of sale price together with the amount needed for the stamp duty for the execution of the conveyance in his favour within three months from today, the purchaser-respondent No.1 shall within one month of such deposit execute a conveyance of the land, i.e. his share therein derived from his vendors, in favour of the appellant and shall deliver possession thereof
B to the appellant. If the respondent No. 1 fails to do so, the Court shall appoint a Commissioner who shall execute the conveyance on behalf of the respondent No. 1 and the Court shall put the appellant in possession of the suit land. There will be no order as to costs throughout.

V.P.R. Appeal allowed.