CASE NO.:
Appeal (civil) 4680 of 1993

PETITIONER:
SHYAM SUNDER AND OTHERS

RESPONDENT:
RAM KUMAR AND ANOTHER

DATE OF JUDGMENT: 31/07/2001

BENCH:
S.P.BHARUCHA & V.N.KHARE & SANTOSH N.HEGDE & Y.K.SABHARWAL & S.V.PATIL

JUDGMENT:
JUDGMENT

DELIVERED BY:
V.N.KHARE,J.

V. N. KHARE, J.

Leave granted.

"What is the effect of substituted Section 15 introduced by the Haryana Amendment Act, 1995 (hereinafter referred to as the Amending Act 1995) in the parent Act i.e. The Punjab Pre-emption Act (hereinafter referred to as the parent Act) as applicable to the State of Haryana whereby the right of a co-sharer to pre-empt a sale has been taken away during the pendency of an appeal filed against a judgment of the High Court affirming the decree passed by the trial Court in a preemption suit".

That is the short question which we are required to answer in this group of appeals which has come on reference before us.

When Civil Appeal No.4680/93 came up for hearing before a Bench of this Court, the Bench, on the question of the effect of the amendment made in 1995 in the parent Act, found that there is conflict in the view taken in the decisions of two three-Judges' Bench of this Court ,which are Didar Singh etc. etc. vs. Ishar Singh (dead) by Lrs. etc. etc. [1995 (1) Scale 1] (wherein it was held that in a suit for pre-emption, the pre-emptor must prove his right to preempt upto the date of decree of the first court and any loss of right or subsequent change in law after the date of adjudication of the suit and during pendency of appeal would not affect the decree of the first court) and Ramjilal & Ors. etc. vs. Ghisa Ram etc. [JT 1996 (2) SC 649] (wherein it was laid down that appeal being continuation of the suit, the right to claim pre-emption must be available on the date when the decree is made and is finally to be affirmed or needs to be modified at the time of disposal of the appeal therefrom, and since the Amending Act came into force during pendency of appeal, the right and remedy of the plaintiff stood extinguished and as a result suit must fail.) In order to resolve the conflict between the aforesaid two decisions rendered by two different Benches, the Bench referred the appeal for decision by a Bench of five Judges. It is in this way, the matter has

come before us.

Since common question of law is involved in this group of appeals, we would notice the facts which have given rise to Civil Appeal No. 4680/1993.

The defendants/appellants herein purchased land measuring 54 Kanals, situated in village Rithal Phogat, being 1/2 share of the land of Khewats Nos. 204, 205 and 206, measuring 108 Kanals for a sum of Rs. 84,000/- from vendors viz., Bharpai, Chhoto and Pyari - daughters of Bhagwana vide sale deed dated 17.7.1985. The plaintiffs/respondents herein claimed preferential right to pre-empt the sale in favour of defendant-appellants on the ground that they are co-sharers by means of a civil suit laid before the Sub-Judge, 1st Class, Gohana. In the said suit, issues were framed and the trial court decided all the issues in favour of the plaintiffs/respondents and consequently on 30.5.1990 the suit was decreed. The respondents after passing of the decree by the court of the first instance deposited the purchase money as required under Order 20 rule 14 CPC. The appeal preferred by the appellants before the first appellate court and the second appeal before the High Court were dismissed and the decree of the trial court was affirmed. The appellants thereafter preferred this appeal by way of special leave petition. During pendency of the appeal, Section 15(1)(b) of parent Act, on the basis of which the suit was filed by the plaintiffs/respondents was amended and was substituted by new Section 15 whereby the right of a co-sharer to preempt a sale was taken away. The substituted Section 15 of the Act runs as under:

"15. Right of pre-emption to vest in tenant.
The right of pre-emption in respect of sale of agricultural land and village immovable property shall vest in tenant who holds under tenancy of the vendor or vendors of the land or property sold or a part thereof."

Learned counsel appearing for the appellants, on the strength of the decision of this Court in Ramjilal v. Ghisa Ram (supra) and the amending Act of 1995 urged that the right of a co-sharer to pre-empt sale having been extinguished by substituted Section 15 of the Act, the appeal being continuation of the suit, this Court is competent to take into account the legislative changes and in that event the plaintiff-respondents suit must fail. Secondly it was urged that the amending Act being declaratory in nature, it has retrospective effect and consequently, whatever the right a co-sharer had on the date of decree of the Court of first instance stood extinguished after the amending Act came into force. The third contention was that in any event, the amending Act being beneficial legislation passed for general good of citizens, this Court while construing new substituted Section 15 is required to apply rule of benevolent construction and in that event amending Act would have retroactive operation. On the other hand the contention of respondents' counsel is that in a suit for pre-emption a claimant has to prove his right on the date of the decree of the first court and loss of right after the date of decree by an act beyond his control or subsequent change in law did not effect his claim in the suit and, therefore, the amending Act subsequent to the date of decree of the first court has no effect on the maintainability of the suit. It was also contended that assuming the appeal being continuation of the suit, the amending Act having no retrospective operation does not effect the decree of the first instance court. It was also urged that in view of provisions of Order 20 rule 14 CPC the title to the property had already been passed on to the claimant on deposit of purchase money and, therefore, the amending Act does not affect

the title acquired by the claimant.

On the arguments of learned counsel of the parties the questions that arise for consideration are : (i) whether the appeal being continuation of the suit, the amendment in Section 15 of the parent Act whereby the right of a co-sharer to pre-empt a sale has been taken away during the pendency of the appeal would effect the maintainability of the suit and the rights of a co-sharer and (ii) whether the Amending Act has retrospective operation so as to affect the rights of parties in litigation.

Learned counsel for the parties in support of their arguments relied upon number of decisions rendered by Privy Council, Federal Court, this Court and various other High Courts. In order to have complete picture of the views expressed in these decisions and thereafter to arrive at the conclusion, it is appropriate to categorise the decisions cited at the Bar which shall hereinafter be referred as first, second and third categories of decisions. The first category of decisions are those wherein the view of law expressed is that in a suit for pre-emption, the pre-emptor must possess his right to pre-empt right from the date of sale till the date of decree of the first Court, and loss of that right after the date of decree either by own act, or an act beyond his control or by any subsequent change in legislation which is prospective in operation during pendency of the appeal filed against the decree of the court of first instance would not affect the right of preemptor. Second category of decisions deals with the cases where right of a preemptor was taken away after the date of decree of the first court and during pendency of the appeal by statutory enactment which had retroactive operation. In such cases it was held that the appellate Court is competent to take into account legislative changes which are retrospective and accordingly affect the rights of the parties to the litigation. The decisions in third category of cases are those where it has been held that appeal being continuation of suit, the right to pre-empt a sale must be available on the date when the decree is made and is finally to be affirmed or needs to be modified at the time of disposal of appeal and in case of loss of right by legislative changes during pendency of appeal, the suit for pre-emption must fail.

The first case in the first category of decisions is judgment by Allahabad High Court in Sakina Bibi vs. Amiran and others [1888 ILR (10) Allahabad 472] wherein it was held that a court of appeal is required to see what was the decree which the court of first instance should have passed, and if the court of first instance wrongly dismissed the claim, the plaintiff cannot be prejudiced by her share having been subsequently sold in execution of a decree in another suit. Such a sale would not affect the preemptor's right to maintain the decree if she had obtained the decree in her favour in the court of first instance. In short, the view of the Court was that the right of pre-emption has to be found which existed on the date of the decree and any subsequent sale of the land in execution proceedings during pendency of the appeal would not affect the maintainability of the suit. In Baldeo Misir vs. Ram Lagan Shukul [1923 ILR (45) Allahabad 709], it was laid down that what is to be seen is whether the pre-emptor has the right on the date of the decree of the first Court. Any subsequent change of right during pendency of the appeal would not affect the right of the pre-emptor. In Hans Nath and others vs. Ragho Prasad Singh [59 The Law Reports (Indian Appeals) 138], the Privy Council following the decision in Baldeo Misir vs. Ram Lagan Shukul (supra) held, that a pre-emptor's claim may be defeated by losing his preferential qualification to pre-empt after the sale and at any time before the adjudication of the suit. In short, it was held that a pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the trial court. This decision by the Privy Council related to the right of preemption prevailing in the then Agra

Province, but the same was followed and applied in the then undivided Punjab before partition of the country by the Lahore High Court in Madho Singh vs. Lt. James R.R.S. Kinner [1942 ILR(23) Lahore 155] and Zahur Din and another vs. Jalal Din Noor Mohammad and others [1944 ILR (25) Lahore 443]. In both the cases, two Full Benches of Lahore High Court held that it is not possible to extend the date by which a vendee in a pre-emption suit may improve his status beyond the date of litigation of the suit by the court of first instance and he cannot, therefore, by improving his position during pendency of the appeal defeat the right of the pre-emptor. In Ramji Lal & anr. vs. State of Punjab & ors. [1966 ILR 19 (2) Punjab 125] it was held that preemptor must have his qualification to preempt on the date of sale, on the date of institution of the suit and on the date of decree of the trial Court. The preemptor must maintain his qualification to preempt on the date of decree of the first court only and any subsequent loss of qualification by preemptor by his own act or by an act beyond his control does not affect the maintainability of the suit. In Bhagwan Das (d) by Lrs. & ors. vs. Chet Ram [1971 (2) SCR 640] a Bench of three Judges of this Court held that a preemptor must maintain his qualification to preempt upto the date of decree for possession by preemption. This decision approved the decision of Full Bench rendered by Punjab & Haryana High Court in Ramji Lal vs. State of Punjab (supra). In Rikhi Ram & anr. vs. Ram Kumar & ors. [1975 (2) SCC 318] a Bench of three Judges of this Court reiterated that a pre-emptor who claims the right to pre-empt the sale on the date of the sale must continue to possess that right till the date of the decree. If the claimant loses that right before passing of the decree, no decree for pre-emption can be granted by the Court even though he may have had such right on the date of the suit. In Didar Singh vs. Ishar Singh (supra) a Bench of three Judges of this Court laid down that in a suit for pre-emption, the claimant must prove that his right to pre-empt is subsisted till the date of the decree of the First Court and the loss of right after the date of the decree by an act beyond his control or by statutory intervention during pendency of the appeal against the decree of the trial Court would not disentitle the claimant to maintain his claim of preemption already exercised and decreed. In this case again decision by a Full Bench of Punjab & Haryana High Court in Ramji Lal vs. State of Punjab (supra) was approved.

An analysis of the aforesaid decisions referred to in first category of decisions, the legal principles that emerge are these:

1. The pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the Court of the first instance only.
2. The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.
3. A pre-emptor who has a right to preempt a sale on the date of institution of the suit and on the date of passing of decree, the loss of such right subsequent to the decree of the first court would not affect his right or maintainability of the suit for pre-emption.
4. A pre-emptor who after proving his right on the date of sale, on the date of filing the suit and on the date of passing of the decree by the first court, has obtained a decree for preemption by the Court of first instance, such right cannot be taken away by subsequent legislation during pendency of the appeal filed against the decree unless such legislation has retrospective operation.

Coming to the second category of decisions it may be noted that while the view of law laid down in first category of decisions held the field, the Federal Court in the case of Lachmeshwar Prasad Shukul & Ors. vs. Keshwar Lal Chaudhuri & Ors. [AIR 1941 Federal Court 5] while interpreting Section 7 of the Bihar Money-lenders Act, 1939 which was found retrospective held that once the decree of the High Court had been appealed against, the matter becomes sub-judice again and thereafter the appellate Court had seisin of the whole case, though for certain purposes, e.g., execution, the decree was regarded as final and the Courts below retained jurisdiction. The principle of law laid down by the Federal Court has to be understood in the context of the provisions of the Act which the learned Judges were interpreting. The view taken in Lachmeshwar Prasad Shukul & Ors. Vs. Keshwar Lal Chaudhuri (supra) was followed in Ram Lal vs. Raja Ram & anr. [1960 Punjab Law Reporter 291]. The High Court was of the view that appeal being continuation of original proceedings and re-hearing the suit, the amending Act being retrospective has to be taken into consideration and given effect to not only in the fresh suit filed or suit pending but also in cases where appeal is pending and not decided. In nut-shell, the High Court was of the view that appeal being continuation of a suit, the appellate court is entitled to take into account the change in law which is retrospective. The decision of Punjab & Haryana High Court in Ram Lal vs. Raja Ram (supra) was approved in Ram Sarup Vs. Munshi & ors. [1963 (3) SCR 858]. A Constitution Bench of this Court in Ram Sarup case (supra) held that Section 31 of amending Act 10 of 1960 being retrospective, the right to pre-empt a sale which had accrued before coming into force of the amending Act stood defeated. The Constitution Bench also noted and explained that in Lachmeshwar Prasad Shukul vs. Keshwar Lal (supra), the Federal Court was construing Section 7 of the Bihar Money-lenders Act which had retrospective operation.

The decision in Ram Sarup vs. Munshi (supra) was followed by another Constitution Bench of this Court in Amir Singh & Anr. vs. Ram Singh & Ors. [1963 (3) SCR 884] wherein, this Court while interpreting section 31 introduced by the Punjab Amending Act 1960 reiterated that retrospective operation of section 31 necessarily involves effect being given to the substantive provisions of amended section 15 by the appellate court, whether the appeal before it is one against a decree granting preemption or one refusing that relief.

The legal position that emerges on review of the second category of decisions is that the appeal being continuation of suit the appellate court is required to give effect to any change in law which has retrospective effect.

We shall now proceed to notice the third category of decisions cited at the Bar. The first decision in this category of cases is decision in Karan Singh & Ors. vs. Bhagwan Singh (dead) by L.Rs. & ors. [1996 (7) SCC 559] wherein it was held that an appeal being continuation of the suit, the right to claim preemption must be available on the date when the decree is finally to be affirmed and needs to be modified at the time of disposal of the appeal and since substituted Section 15 of the Act came into force during pendency of the appeal, the right and remedy of the preemptor stood extinguished. This decision was followed in Ramjilal vs. Ghisa Ram (supra) wherein it was held that since substituted section 15 introduced by amending Act of 1995 having come into force during pendency of appeal which is continuation of the suit, the right and remedy of the plaintiff stood extinguished and as a result of which the suit for pre-emption was not maintainable.

The legal principle that emerges out of the aforesaid decisions is that an appeal being continuation of suit, the right to pre-empt must be available on the date when the decree is made and is finally to be

affirmed or needs to be modified at the time of disposal of the appeal and where right and remedy of plaintiff has been taken away statutorily during pendency of appeal, the suit must fail.

After having heard counsel for the parties and carefully gone into the decisions cited at the Bar we are in respectful agreement with the statement of law expressed in the first and second categories of decisions. However, we regret to express of our disagreement with the decisions in third category of decisions for the reasons hereinafter stated.

In modern time, the right of pre-emption based on statutes is very much a maligned law. During hearing of these appeals such rights have been characterised as feudal, archaic and outmoded and so on. But its origin which was based on custom and subsequently codified was out of necessity of the then village community and society for its preservation, integrity and maintenance of peace and security. In changed circumstances, right of pre-emption may be called outmoded, but so long it is statutorily recognised, it has to be given the same treatment as any other law deserves. The right of pre-emption of a co-sharer is an incident of property attached to the land itself. It is some sort of encumbrance carrying with the land which can be enforced by or against the co-owner of the land. The main object behind the right of pre-emption either based on custom or statutory law is to be prevent intrusion of stranger into the family holding or property. A co-sharer under law of pre-emption has right to substitute himself in place of stranger in respect of portion of the property purchased by him meaning thereby where a co-sharer transfers his share in holding, the other co-sharer has right to veto such transfer and thereby prevent the stranger from acquiring the holding in an area where law of pre-emption prevails. Such a right at present may be characterised as archaic, feudal and out-moded but this was law for nearly two centuries either based on custom or statutory law. It is in this background the right of pre-emption under statutory law has been held to be mandatory and not mere discretionary. The Court has no option but to grant decree of pre-emption where there is a sale of a property by another co-sharer. And for that reason the Courts consistently have taken view that where there is a sale of holding or property by a co-sharer, the right of a pre-emption is required to be settled at the earliest either on pre-emptor's proving his qualification to pre-empt on the date of the sale, on the date of filing of suit, and on the date of the decree of the Court of the first instance or vendee improving his status till the adjudication of suit for pre-emption and after adjudication of suit any loss of qualification by the pre-emptor or vendee improving his status equal or above to right of pre-emptor is of no consequence. In Zahur Din vs. Jalal Din (supra) a full Bench of Lahore High Court while expressing necessity for settlement of rights of the parties at the earliest, held thus:

"It seems to be essential that a line should be drawn at some stage when the race between a pre-emptor and a vendee ought to come to an end and after having the well-known landmark of the date of the sale behind - as one now must - the farthest limit that can be granted to a vendee is that of the time of adjudication of the suit by the trial court."

(emphasis supplied)

As noticed earlier, in Hans Nath vs. Ragho Prasad Singh (supra) Privy Council held that a pre-emptor to maintain a suit for pre-emption is required to prove his right of pre-emption on three

important dates. The claimant must possess right of pre-emption on the date of sale. The claimant must possess the same right on the date when the suit is instituted and that right should continue to exist on the date of adjudication of the suit. However, it is matter of no consequence whether the trial court decrees or dismisses the suit. It has also been the consistent view of Privy Council and various High Courts that a pre-emptor must possess qualification to pre-empt a sale on the date of decree of the Court of first instance only for maintainability of the suit although it is immaterial that pre-emptor looses the right of pre-emption after the adjudication of suit either by his own act or vendee improving his status equal to pre-emptor during pendency of appeal filed against the decree of the trial court. This view of law is in consonance with the object behind the right of pre-emption and held the field for over a century with which we are in respectful agreement, as nothing has been shown to us which may persuade us to take a contrary view and disturb the settled law.

It was argued by learned counsel for the appellant that an appeal being continuation of suit, the appellate court is required to notice and consider the subsequent event, namely, loss of qualification by the pre-emptor during pendency of an appeal. In fact, argument is that where a co-sharer looses the right to pre-empt during pendency of appeal the pre-emptor's suit must fail. It is no doubt true that in certain context an appeal is continuation of suit and appellate court is rehearing the suit, but such wide appellate power has not shown to be exercised to affect the vested right of a pre-emptor. It is not disputed that a claimant's right to get the property in preference to the vendee is an inchoate one upto the date of adjudication of the suit but it becomes effective as soon as a decree is passed in his favour. Order 20 sub-rule (1) of Rule 14 CPC provides that where a court decrees a claim to pre-empt in respect of a particular sale of property and a decree holder has deposited the purchase money along with the cost of the suit in the Court, the vendee is required to deliver possession of the property to the decree holder and title to the property stands transferred in favour of claimant. In view of said provision, on deposit of purchase money in the Court by the claimant the right and title to the property vest in pre-emptor and it becomes vested right of the pre-emptor. The right of pre-emption prior to decree may be weak but after it becomes vested right, it can only be taken away by known method of law. The loss of qualification of pre-emptor or vendee acquiring status above to pre-emptor during pendency of appeal cannot be allowed to influence the Court as a Court of Appeal is mainly concerned with the correctness of the judgment rendered by the Court of first instance. As earlier noticed that an appellate court is entitled to take into consideration subsequent event taking place during pendency of appeal and a Court in an appropriate case permits amendment of plaint or written statement as the case may be but such amendment is permitted in order to avoid multiplicity of proceeding and not where such amendment causes prejudice to the plaintiff's vested right rendering him without remedy. It is thus only those events which have taken place or rights of the parties prior to adjudication of pre-emption suit and which the trial court was entitled to dispose of, can only be taken into consideration by the appellate court. We find support of our view from decision in Sakina Bibi vs. Amiran (supra) wherein the High Court of Allahabad held that a Court of Appeal was only required to see whether the trial court had wrongly dismissed the claim of pre-emptor and it is irrelevant that during the pendency of appeal land was sold in an execution proceeding in another suit. In a pre-emption case where an appeal is filed against the decree of court of first instance, the scope of appeal is confined to the question whether the decision of the trial court is correct or not. This being the legal position which held the field for over a century any subsequent event taking place during pendency of appeal cannot be allowed to be taken into consideration by the appellate court otherwise it may displace the case of a pre-emptor.

It was next contended on behalf of appellants that the view of law (i) that subsequent event taking place or change in law during the pendency of appeal filed against the decree in a pre-emption suit cannot be looked into by the appellate court and that (ii) all that is required to be seen by the appellate court whether decree passed by the court of first instance on the basis of rights of the parties on the date of adjudication, has ceased to be good law in view of decision of the Federal Court in Lachmeshwar Prasad Shukul Vs. Keshwar Lal Choudhuri (supra) wherein it was laid down that an appeal is rehearing of suit and appellate court is entitled to consider any subsequent change in law which has come into existence during pendency of appeal. On the strength the said decision it was vehemently argued that the powers of appellate court are not restricted only to see whether the decision of the first court was correct on basis of rights of the parties on the date of adjudication of suit but also to consider and give effect to subsequent change in law whereby a co-sharer's right of pre-emption has been taken away during pendency of appeal. It is true that in Lachmeshwar Prasad Shukul (supra) in the context of the provisions of Bihar Money-lenders Act, it was laid down that once the decree had appealed against, the matter became sub-judice again and thereafter the appellate court had seisin of the whole case and therefore, the appellate court is entitled to take into consideration any change in law taking place during pendency of appeal and in such a situation the power of appellate court is not confined only to find out whether the judgment of the Court of first instance was correct.

It was also argued that the amending Act being retrospective whatever the right the plaintiff possessed on the date of adjudication of suit, the same stood extinguished during pendency of appeal and therefore, the plaintiff suit must fail. Since both the arguments are overlapping we shall consider the effect of decision in Lachmeshwar Prasad Shukul vs. Keshwar Lal Choudhuri (supra) slightly later. Before that it is necessary to consider the effect of substituted Section 15 introduced by the amending Act of 1995 on the substantive rights of the parties. We would now proceed to examine whether said provision of the amending Act is retrospective as urged by learned counsel for the appellant.

In Maxwell on the Interpretation of Statutes, 12th Edn. the statement of law in this regard is stated thus:

"Perhaps no rule of construction is more firmly established than thus - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.' The rule has, in fact, two aspects, for it, "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

In Francis Bennion's Statutory Interpretation, 2nd Edn, the statement of law is stated as follows:

"The essential idea of a legal system is that current law should govern current activities.

Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex post factor law is enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that lex prospicit non respicit (law looks forward not back). As Willes, J. said retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law."

In Garikapati Veeraya s. N.Subbiah Choudhry 1957 SCR 488 this Court observed as thus:

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

In Smt. Dayawait and another vs. Inderjit and others 1966 (3) SCR 275, it is held thus:

"Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke whose maxim - a new law ought to be prospective, not retrospective in its operation - is off-quoted, courts have looked with dis-favour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance."

In Hitendra Vishnu Thakur & ors. vs. State of Maharashtra & ors. [1994 (4) SCC 602] this Court laid down the ambit and scope of an amending act and its retrospective operation as follows:

"(i)A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) a procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication."

In K.S.Paripoornan vs. State of Kerala & others [1994 (5) SCC 593 @ p.636], this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus:

"....In the instant case we are concerned with the application of the provisions of sub-section 1 (1-A) of S.23 as introduced by the Amending Act to acquisition proceedings which were pending on the date of commencement of the Amending Act. In relation pending proceedings, the approach of the courts in England is that the same are unaffected by the changers in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is change before the hearing of the case at the first instance or while an appeal is pending (See Halsbury's Laws of England, 4th Edn., Vol.44, para 922)".

From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise. We have carefully looked into new substituted section 15 brought in the parent Act by Amendment Act 1995 but do not find it either expressly or by necessary implication retrospective in operation which may effect the right of the parties on the date of adjudication of suit and the same is required to be taken into consideration by the appellate Court. In Shantidevi (Smt) and another vs. Hukum Chand [1996 (5) SCC 768] this Court had occasion to interpret the substituted section 15 with which we are concerned and held that on a plain reading of section 15 it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not effect the right of the parties which accrued to them on the date of suit or on the date of passing of the decree by the Court of first instance. We are also of the view that present appeals are unaffected by change in law in so far it related to determination of the substantive rights of the parties and the same are required to be decided in light of law of preemption as it existed on the date of passing of the decree.

Coming to decision in Lachmeshwar Prasad Shukul vs. Keshwar Lal Choudhuri (supra), which is the sheet anchor of the argument on behalf of appellants, it is necessary to notice the facts of the said case and the provisions of law which were interpreted by the Federal Court. In the said case, the plaintiff brought a suit for recovery of money by sale of mortgaged property. The suit was partly decreed. There was an appeal and cross-appeal to the High Court. Before the High Court one of the arguments raised was that section 11 of the Bihar Money-lender Act (3 of 1938) which was enacted by the Bihar Legislature during pendency of the appeal before the High Court is void. Accepting the arguments, the High Court held section 11 of the Act to be void. Subsequently, the defendants preferred an appeal before the Federal Court. While the appeal was pending Bihar Legislature repealed the Money-lender Act of 1938 and substantially re-enacted it as the Bihar Money-lender Act 1939. Section 7 of the Act (Act No.7 of 1939) which came for consideration before the Federal Court runs as under:

"Notwithstanding anything to the contrary contained in any other law or in any thing

having the force of law or in any agreement, no Court shall, in any suit brought by a money-lender before or after the commencement of this Act or in any appeal or proceeding in revision arising out of such suit, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already released as interest through the Court or otherwise, is greater than the amount of loan advanced, if the loan is based on a document, the amount of loan mentioned in, or evidenced by such document."

(emphasis supplied)

After passing of the Act 7 of 1939, it was argued before the Federal Court that the defendants are entitled to the benefit of section 7 of the Act 1939 whereas the respondents' argument was based on the theory that hearing an appeal the appellate court was only concerned to see whether or not , the judgment of the Court was in conformity with the law as it stood at that time, that judgment was given and further that as the Act of 1939 had not been enacted at the time when the High Court decided the case, the Federal Court was not competent to give relief to appellants in terms of Section 7 of the new Act. In the background of the aforesaid facts, the Federal Court while interpreting Section 7 of the Act was of the view that Section 7 has in terms been made applicable to appeals in suits brought before the commencement of the Act and that the decree in appeal yet remained to be passed. The Federal Court after having found that Section 7 is retrospective held that the appellate court is required to consider and give effect to legislative changes which have taken place during pendency of the appeal as an appeal is continuation of suit. It is in this context, the decision in Lachmeshwar Prasad Shukul vs. Keshwar Lal Choudhuri has to be understood. Where a repeal of an enactment is followed by fresh legislation, having no retrospective operation, an appellate Court is not required to take into account the change in law but to dispose of the appeal on the basis of right of pre-emption on the date of adjudication of suit. In that view of the matter the decision in Lachmeshwar Prasad vs. Keshwar Lal (supra) has no application in the present case. Subsequently, the view taken in Lachmeshwar Prasad Shukul vs. Keshwar Lal Choudhuri was followed in Ram Lal vs. Raja Ram (supra) by Punjab and Haryana High Court. In the said case the plaintiff brought a suit for preemption on the ground of vicinage. The trial Court dismissed the suit on the ground that the land fell outside the limit of Panipat town and in that locality no custom of preemption prevailed. On appeal the appellate Court reversed the decision of the trial Court and decreed the suit. Second appeal was filed by the vendee before the High Court. During pendency of appeal, the State Legislature amended the Punjab Preemption Act by amending Act No.10 of 1960. By the said amending Act Section 15 of the Parent Act was deleted and in its place new Section 15 was substituted whereby the grounds on which the urban property was pre-empted was taken away. New substituted Section 31 further provided that no court shall pass decree in a suit for preemption whether instituted before or after the commencement of the amending Act which is inconsistent with the provision of the Act. The High Court applying the principles laid down in Lachmeshwar Prasad Shukul's case held that an appeal being continuation of suit, the appellate Court is to take into account the subsequent change in law which has retrospective operation. The said decision of Punjab & Haryana High Court in Ram Lal vs. Raja Ram was approved in Ram Sarup vs. Munshi & ors. (supra). In the

said case, a Constitution Bench of this Court held that section 31 of Amending Act 10 of 1960 being retrospective the right to preempt a sale which has accrued before coming into force of the Amending Act stood defeated. The Constitution Bench also noted and explained that in Lachmeshwar Prasad Shukul vs. Keshwar Lal Choudhuri (supra), the Federal Court was construing Section 7 of Bihar Money-lender Act which had retrospective operation and in that context held that appeal being continuation of suit, the appellate court is required to take into account subsequent change in law. It is appropriate to reproduce the following passage from Ram Sarup's case:

"Though we agree that there is a presumption against the retrospective operation of a statute and also the related principle that a statute will not be construed to have a greater retrospective operation than its language renders necessary, we consider that in the present case the language used in section 31 is plain and comprehensive so as to require an appellate court to give effect to the substantive provisions of the Amending Act whether the appeal before it is one against a decree granting pre-emption or one refusing that relief. The decision of the Federal Court in Lachmeshwar Prasad vs. Keshwar Lal on which learned counsel for the appellant relied fully covers this case. The question there raised related to the duty of the Federal Court when an amending Act enacted after the decree appealed from was passed adversely interfered with the rights of the respondent before the Court. The learned Judges held that the provisions of the Act were clearly retrospective and should be applied to the decree which was the subject matter of appeal before it."

(emphasis supplied)

The decision in Ram Swarup vs. Munshi (supra) was followed by another Constitution Bench of this Court in Amir Singh & Anr. vs. Ram Singh & Ors. (supra). In Amir Singh's case also another Constitution Bench of this Court interpreting section 31 introduced by Punjab Amending Act 1960 reiterated that the retrospective operation of section 31 necessarily involves effect being given to the substantive provisions of amended section 15 by the appellate court whether the appeal before it is one against a decree granting pre-emption or one refusing that relief.

It may be noticed that the phraseology and the words "before and after" used in Section 7 of the Bihar Money-lender Act 1939 "no court shall in any suit brought before or after the commencement of this Act" and in Section 31 of Punjab Amending Act 10 of 1960 "no court shall pass a decree in a suit for pre-emption whether instituted before or after the commencement of the Act" led the Constitution Bench of this Court to come to conclusion that there is necessary intendment in the Act, that it has retroactive operation and has to be taken into consideration by the appellate court and the powers of an appellate court is not confined to see whether the judgment of the trial court was correct or not.

Learned counsel for the appellants strongly relied upon a decision of Amarjit Kaur etc. vs. Pritam Singh & ors. etc. [1974 (2)

SCC 363]. In the said case this Court was interpreting section 3 of Punjab Pre-emption Repealed Act 1973 which provided that on and from the commencement of the Act no Court shall pass a decree in any suit for pre-emption. This Court in the said case while applying principles laid down in Lachmeshwar Prasad Shukul vs. Keshwar Lal Choudhuri (supra) held that as an appeal is rehearing, it would follow that if the Court was to dismiss the appeal, it would be passing a decree in a suit for pre-emption and therefore the only course open to the High Court was to allow that appeal and that is what the High Court has done. The said decision in Amarjit Kaur was followed in Sadhu Singh & Anr. vs. Dharam Dev & Ors. [AIR 1980 SC 1654] wherein this Court reiterated that Section 3 of the Act interdicts the passing of the decree even in appeal as the appeal is rehearing of the suit. In both the cases this Court without examining whether the Section 3 of the Act is prospective or retrospective applied the principle laid down by Federal Court in Lachmeshwar Prasad Shukul vs. Keshwar Lal Choudhuri's case. We have not been supplied with the full text of the Act and in its absence, we are unable to conclude that either the said Act was prospective or retrospective in operation. It appears, this Court proceeded on the assumption that Section 3 of the Act was retrospective in operation and, therefore, applied the principle laid down in Lachmeshwar Prasad Shukul vs. Keshwar Lal Choudhuri (supra). In view of such facts and circumstances, these decisions are of no assistance to the case of the appellants.

During the course of argument, a half-hearted argument was raised that a substituted section in an Act introduced by an amending Act is to be treated having retroactive operation. According to the learned counsel for the appellant, the function of a substituted section in an Act is to obliterate the rights of the parties as if they never existed. This argument is noted only to be rejected. A substituted section in an Act is the product of an amending Act and all the effects and consequences that follow in the case of an amending Act the same would also follow in the case of a substituted section in an Act.

Coming to the next question, learned counsel for the appellants after characterising the right of pre-emption as archaic and feudal, argued that substituted Section 15 being a beneficial legislation enacted for general benefit of citizens, this Court while construing it, is required to apply rule of benevolent construction and on application of the said rule of construction the substituted Section 15 has to be given retroactive operation. Generally rule of interpretations are meant to assist the Court in advancing the ends of justice. It is, therefore, true in the case of application of rule of benevolent construction also. If on application of rule of benevolent construction, the Court finds that it would be doing justice within the parameters of law there appears to be no reason why such rule of construction be not applied in the present case. But there are limitations on the powers of the Court, in a sense that Courts in certain situations often refrain themselves to apply rule of benevolent or liberal construction. The judicial precedents have laid down that, ordinarily, where and when the rule of benevolent construction is required to be applied and not to be applied. One of the situations is, when the Court finds that by application of rule of benevolent construction it would be re-legislating a provision of statute either by substituting, adding or altering the words used in the provision of the Act. In such a situation generally Courts have refrained themselves to apply rule of benevolent construction. Under the cover of application of rule of benevolent construction a Court is not entitled to re-legislate a provision of a statute and to do violence with the spirit of the provision of the Act so construed. The second situation is when the words used in a statute is capable of only one meaning. In such a situation, the courts have been hesitant to apply the rule of benevolent construction. But if it is found that the words used in the statute give rise to more than one meaning, in such circumstances, the Courts are

not precluded to apply such rule of construction. The third situation is when there is no ambiguity in a provision of a statute so construed. If the provision of a statute is plain, unambiguous and does not give rise to any doubt, in such circumstances the rule of benevolent construction has no application. However, if it is found that there is a doubt in regard to meaning of a provision or word used in provisions of an enactment it is permissible for court to apply the rule of benevolent construction to advance the object of the Act. Ordinarily, the rule of benevolent construction has been applied while construing welfare legislations or provisions relating to relationship between weaker and stronger contracting parties. Assuming that the amending Act is for general good of people, we do not find the presence of the aforestated situations which may call for application of such rule while construing substituted Section 15 introduced by the amending Act. A reading of substituted Section 15 would show that the words used therein are plain and simple and there is no ambiguity in it. The words used in the Section do not give rise to more than one meaning. Further, we do not find that amending Act either expressly or by necessary implication is retrospective. If we hold that the amending Act is retrospective in operation, we would be re-legislating the enactment by adding words which are not to be found in the amending Act either expressly or by necessary intendment and it would amount doing violence with the spirit of the amending Act. For these reasons, the application of rule of benevolent construction is wholly inapplicable while construing substituted Section 15.

Learned counsel then argued that since the amending Act being a beneficial legislation, retrospectivity is implied in it. Assuming, for the sake of argument that right of preemption being a feudal or archaic law and therefore, the amending Act is a beneficial legislation meant for general benefit of citizens but there is no such rule of construction that a beneficial legislation is always retrospective in operation even though such legislation either expressly or by necessary intendment is not made retrospective. In the case of Moti Ram vs. Suraj Bhan & Ors. [1960 (2) SCR 896] it was held thus:

"It is clear that the amendment made is not in relation to any procedure and cannot be characterized as procedural. It is in regard to a matter of substantive law since it affects the substantive right of the landlord. It may be conceded that the Act is intended to provide relief to the tenants and in that sense is a beneficial measure and as such its provision would be liberally constructed; but this principle would not be material or even relevant in deciding the question as to whether the new provision is retrospective or not. It is well settled that where an amendment affects vested rights the amendment would operate prospectively unless it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication. The amending Act obviously does not make the relevant provision retrospective in terms and we see no reason to accept the suggestion that the retrospective operation of the relevant provision can be spelt out as a matter of necessary implication."

We are in respectful agreement with the view taken in Moti Ram Vs. Suraj Bhan & ors. (supra). The right of pre-emption may be a weak right but nonetheless the right is recognised by law and can be allowed to be defeated within the parameters of law. A statute

which affect the substantive right has to be held prospective unless made retrospective either expressly or by necessary intendment. Learned counsel appearing for the appellants strongly relied upon a decision of this Court in the case of Rafiquennessa vs. Lal Bahadur Chetri (dead) through His Representatives and others [1964 (6) SCR 876 @ 883] for contention that a beneficient provision enacted by legislation has to be given retroactive operation. In the said case it was held thus:

"This provision clearly indicates that the legislature wanted the beneficient provisions enacted by it to take within their protection not only leases executed after the Act came into force, but also leases executed prior to the operation of the Act. In other words, leases which had been created before the Act applied are intended to receive the benefit of the provisions of the Act, and in that sense, the Act clearly affects vested rights of the landlords who had let out their urban properties to the tenants prior to the date of the Act. That is one important fact which is material in determining the scope and effect of s.5."

In the said case Section 2 of the Act provided that notwithstanding anything contained in any contract or in any law for the time being in force, the provisions of the said Act shall apply to all non-agricultural tenancies whether created before or after the date on which this Act comes into force.. Section 5 further provided protection to the tenants who have raised construction within 5 years from the date of leases executed in their favour on the land let out to them for residential or business purposes. While construing Sections 2 and 5 of the Act, this Court held that Section 2 and Section 5 give an unmistakably indication of the legislative intention to make its provisions retrospective. For the said reasons the decision relied upon has no application to the present case.

Learned counsel for the appellant then relied upon a decision of this Court in the case of H. Shiva Rao & Anr. vs. Celelia Pereira & Ors. [1987 (1) SCC 258] for the proposition that a beneficial legislation has to be given retrospective effect. In the said decision it was held that if the expressions are ambiguous, then the construction that fulfils the object of the legislation must provide the key to the meaning. But that is not the case here. We have already held that there is no ambiguity in substituted Section 15 and, therefore, this decision has no application in the present case. We accordingly reject the arguments of the learned counsel for the appellants.

Lastly, it was contended on behalf of the appellants that the amending Act whereby new Section 15 of the Act has been substituted is declaratory and, therefore, has retroactive operation. Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or explain previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed invariably it has been held to be retrospective. Mere absence of use of word 'declaration' in an Act explaining what was the law before may not appear to be a declaratory Act but if the Court finds an Act as declaratory or explanatory it has to be construed as retrospective. Conversely where a statute uses the word 'declaratory', the words so used may not be sufficient to hold that the statute is a declaratory Act as words may be used in order to bring into effect new

law.

Craies on a Statute Law, 7th Edition stated the statement of law thus:
"If a doubt is felt as to what the common law is on some particular subject, and an Act is passed to explain and declare the common law, such an Act is called a declaratory Act."

G.P. Singh on Principles of Statutory Interpretation quoting Craies stated thus:

"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble and also the word 'declared' as well as the word' enacted". But the use of the words "it is declared is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be held to the substance rather than to the form.

If a new Act is 'to explain" an earlier Act, it would be Without object unless construed retrospective. An Explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended."

In Keshavlal Jethalal Shah vs Mohanlal Bhagwandas & Anr. [1968 (3) SCR 623], this Court while interpreting section 29(2) of the amending Act, held thus:

"An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. Section 29(2) before it was enacted was precise in its implication as well as in its expression; the meaning of the words used was not in doubt, and there was no omission in its phraseology which was required to be supplied by the amendment."

In R. Rajagopal Reddy (dead) by Lrs. & Ors. vs. Padmini

Chandrasekharan (dead) by Lrs. [1995 (2) SCC 630], it was held thus:

"Declaratory enactment declares and clarifies the real intention of the legislature in connection with an earlier existing transaction or enactment, it does not create new rights or obligations. If a statute is curative or merely declaratory of the previous law retrospective operation is generally intended....A clarificatory amendment of this nature will have retrospective effect and therefore, if the principal Act was existing law when the Constitution came into force the amending Act also will be part of the existing law. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act"

From the aforesaid decisions, the legal principle that emerges is that the function of a declaratory or explanatory Act is to supply an obvious omission or to clear up doubts as to meaning of the previous Act and such an Act comes into effect from the date of passing of the previous Act. Learned counsel for the appellants strongly relied upon a decision of two-Judges Bench of this Court in Mithilesh Kumari & anr. vs. Prem Behari Khare [1989 (2) SCC 95] in support of his argument. In the said decision, it was held by this Court that The Benami Transactions (Prohibition) Act 1988 being a declaratory Act, the provisions of Section 4 of the Act has retroactive operation. The reliance of this decision by the appellants' counsel is totally misplaced as this decision was overruled in R. Raja Gopal Reddy vs. Padmini Chandrasekharan (supra) wherein it was held that, the Act was not passed to clear any doubt existed as to the common law or the meaning of effect of any statute and it was, therefore, not a declaratory Act.

We have already quoted substituted section 15 of the amending Act but do not find that the amending Act either expressly or by necessary implication intended to supply an omission or to clear up a doubt as to the meaning of previous Section 15 of the parent Act. The previous Section 15 of the parent Act was precise, plain and simple, There was no ambiguity in it. The meaning of the words used in Section 15 of the parent Act was never in doubt and there was no omission in its phraseology which was required to be supplied by the amending Act. Moreover, the amending Act either expressly or by implication was not intended to be retroactive and for that reason we hold that the amending Act 10 of 1995 is not a declaratory Act and, therefore, it has no retrospective operation.

For the aforestated reasons, we approve the view of law taken in Didar Singh etc. vs. Ishar Singh (dead) by Lrs. etc. (supra) and further hold that the decision in the case of Ramjilal vs. Ghisa Ram (supra) does not lay down the correct view of law.

The result of the aforesaid discussion is that the amending Act being prospective in operation does not affect the rights of the parties to the litigation on the date of adjudication of the pre-emption suit and the appellate court is not required to take into account or give effect to the substituted Section 15 introduced by the amending Act.

In view of what has been stated above, these appeals fail and accordingly are dismissed, but there shall be no order as to costs.