

A KRISHNA MINOR THROUGH HIS FATHER AND
GUARDIAN AND ORS. ETC. ETC.

v.

STATE OF HARYANA AND ORS.

JULY 12, 1994

B

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

C *Punjab Pre-emption Act, 1913 (as amended in 1960)—Sub-clause "Fourthly" of clause (b) of sub-sec. (1) of section 15—Right of pre-emption conferred on a co-sharer—Constitutionality of—Stranger's claim to a right of pre-emption after he has acquired a co-sharer's interest—Validity of—Meaning of expression "other co-sharer's" appearing in sub-clause "Fourthly".*

D *Constitution of India, 1950 : Arts. 14, 19(1)(f) (as it was before its omission)—Right of pre-emption conferred on a co-sharer by sub-clause "Fourthly" of clause (b) of sub sec.(1) of section 15 of Punjab Pre-emption Act, 1913 as amended in 1960—Constitutionality of.*

E *Constitutionality of sub-clause "Fourthly" of clause (b) of sub-section (1) of section 15 of the Punjab Pre-emption Act, 1913 as amended in 1960 had been challenged in this Writ petition. The right of pre-emption in the concerned suits was claimed by a sister, a co-sharer.*

F *On behalf of the petitioners, it was urged that the decision of Constitution Bench in *Atam Prakash's* case needs reconsideration as there is no definition of co-sharer. It was also contended that though a sister could have such a claim, a brother cannot, and so, the same resulted in discrimination. Another point urged was that the right of pre-emption may not be allowed to be claimed by a stranger merely because he had purchased the property some time back from a co-sharer.*

Dismissing the petitions, this Court

G

HELD : 1.1 The challenge to the constitutionality of sub-clause "Fourthly" of clause (b) of sub-sec. (1) of section 15 of the Punjab Pre-emption Act, 1913 as amended in 1960 has no force. [359-C]

H *Atam Prakash v. State of Haryana, AIR (1986) SC 859; Bhau Ram v. Baij Nath, AIR (1962) SC 1476; Sant Ram v. Labh Singh, AIR (1965) SC*

314 and *Ram Sarup v. Munshi*, AIR (1963) SC 553, followed.

A

1.2. Absence of the definition 'co-sharer' does not provide any reason to reconsider four Constitution Bench decisions because the lack of definition of co-sharer has no material bearing, as the word 'co-sharer' has to be taken as inter-changeable with co-owner. As to who would be co-owner would depend upon who would have succeeded to the property, that is, on the line of succession. [358-B]

B

Ram Sarup v. Munshi, AIR (1963) SC 553, followed.

1.3. The claim that though a sister can have such a claim, a brother cannot, and so, the same results in discrimination is misconceived in as much as under the Hindu Succession Act, both brother and sister are Class II heirs and both of them are in Entry II; the result of which is that because of what has been provided in section 11 of the Act, such heirs share the property equally. [358-C-D]

C

D

1.4. It cannot be said that the right of co-sharer may not be allowed to be claimed by a stranger merely because he had purchased the property sometime back from a co-sharer, as though the purchaser in question was initially a stranger, he having stepped into the shoes of the co-sharer has to be taken as a co-sharer. The objection which applies qua stranger ceases to have any significance after he has acquired the right of the co-sharer. No objection regarding question of a co-sharer's property having been taken earlier, the stranger cannot be treated differently from other co-sharer's afterwards. [358-D-E]

E

Dorab Cawasji Warden v. Cioomi Soraf Warden, JT (1990) 1 SC 199, distinguished.

F

Bhikaram v. Ram Sarup, JT (1991) 4 SC 199, relied on.

Bhoop v. Matadin, [1991] 2 SCC 128, referred to.

G

Jagdish v. Nathi Mal, [1986] 4 SCC 510, referred to.

1.5. The expression other "co-sharer's" appearing in sub-clause "Fourthly", has been explained by a three Judge Bench of this Court in *Bhika Ram v. Ram Sarup*, JT (1991) 4 SC 199. [359-B]

H

A CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 386 of 1991 etc. etc.

(Under Article 32 of the Constitution of India).

B P.C. Jain, Naresh Kaushik, Smt. Lalitha Kaushik and Shankar Divate for the Petitioners/Appellants.

L.K. Pandey and R.K. Maheswari for the Respondents.

The Judgment of the Court was delivered by

C HANSARIA, J. The law of pre-emption is, historically speaking, a product of custom of the Mohamedan world. It came to be enforced here after the advent of Mohamedan Rule. To start with it was accepted as a part of custom and was applied by the courts, particularly in Northern India accordingly. It received statutory recognition in section 22 of Hindu Succession Act, 1956. But this Court has regarded this right as archaic, feudal and weak in character.

E 2. In most of our States the law of pre-emption does not exist as at present. Even the Punjab Pre-emption Act of 1913 (as amended in 1960) has ceased to be a law in the State of Punjab. But in the State of Haryana, as well as in a part of walled city of Delhi, it still prevails. In the present batch of writ petitions and appeals whatever is left of this law after the decision by the Constitution Bench in *Atam Prakash v. State of Haryana*, AIR (1986) SC 859 has been assailed as violative of Article 14 of the Constitution and of Article 19(1)(f) as it was before its omission.

F 3. As the aforesaid attempt has been made despite the decision in *Atam Prakash*, it should be known as to what was decided in that case. Reference to that judgment shows that it relied on three earlier Constitution Bench renderings - these being in *Bhau Ram v. Baij Nath*, AIR (1962) SC 1476; *Sant Ram v. Labh Singh*, AIR (1965) SC 314 and *Ram Sarup v. Munshi*, AIR (1963) SC 553. In *Bhau Ram's* case this Court was concerned, *inter alia*, with the constitutionality of section 16 of the Punjab Pre-emption Act, 1913, which conferred right of pre-emption in respect of urban immovable property on co-sharer's also. The Constitution Bench did not uphold the contention that this restriction offended Article 19(1)(f) of the Constitution. This is what was stated in this regard in paragraph 11.

H

".....We have no doubt that a law giving such a right imposes a reasonable restriction which is in the interest of general public. If an outsider is introduced as a co-sharer in a property it will make common management extremely difficult and destroy the benefits of ownership in common. The result of the law of pre-emption in favour of co-sharer is that if sale takes place the property may eventually go into the hands of one co-sharer as full owner and that would naturally be of great advantage....."

4. Sant Ram Bench referred approvingly to Bhau Ram's decision. In *Ram Sarup* this Court had examined the validity of section 15(1)(a) of the Punjab Pre-emption Act, 1913 before its amendment in 1960. It was noted in paragraph 16 that the objects behind conferring right of pre-emption were 5 in number. In paragraph 19 it was thereafter stated that the ground, namely, that the next in succession should have the chance of retaining the property, has a nexus and the same has rendered the restriction reasonable and in the interest of general public. It was pointed out in paragraph 21 that a successor like a son would have legitimate expectation of succeeding to the property - an expectation founded on and promoted by the consciousness of the community. The very strong sentimental value that is attached to the continued possession of family property was also taken note of in holding that restriction on the right of free alienation imposed by section 15(1)(a), limited as it was to be small class of near relations of vendor, was neither unreasonable nor against the interest of general public.

5. *Atam Prakash's* case had examined the constitutionality of section 15(1)(a) of the Punjab Pre-emption Act as amended in 1960. Clause (b) as amended conferred the right of pre-emption in its sub-clause "Fourthly" on "other co-sharers". The Constitution Bench, after referring to *Bhau Ram's* case upheld that right and took the view that it was founded on a valid classification and did not infringe either Article 14 or 15 of the Constitution; its constitutionality qua Article 19(1)(f) having already been upheld in *Bhau Ram's* case. (See paragraph 10).

6. In view of the aforesaid we cannot agree with the contention advanced by Shri Pandey the *Atam Prakash's* case need reconsideration because it based its decision on *Bhau Ram's* case which had dealt with the constitutionality of section 16 and not with section 15(1)(b). This aspect of the matter has no relevance inasmuch as section 16 also had conferred the

A right of pre-emption on co-sharers, which had been upheld as constitutionally valid for reasons noted above. Not only this *Ram Sarup's* case too had regarded this restriction quo co-sharers as reasonable.

B 7. The mention in the written submission that there is no definition of co-sharer does not provide any reason to reconsider four Constitution Bench decisions because the lack of definition of co-sharer has no material bearing inasmuch as from what has been stated in *Ram Sarup's* case it is apparent that the word co-sharer has to be taken as inter-changeable with co-owner. As to who would be co-owner would depend upon who would have succeeded to the property, that is, on the line of succession. Another C point mentioned in the written submission is that though a sister can have such a claim, a brother cannot, and so, the same results in discrimination. This argument is misconceived inasmuch as under the aforesaid Hindu Succession Act, both brother and sister are Class II heirs and both of them are in Entry II result of which is that because of what has been provided D in section 11 of the Act, such heirs share the property equally.

8. Another point urged is that the right of co-sharer may not be allowed to be claimed by a stranger merely because he had purchased the property sometime back from a co-sharer. This submission cannot also be accepted because though the purchaser in question was initially a stranger, E he having stepped into the shoes of the co-sharer has to be taken as a co-sharer. The objection which applies qua stranger ceases to have any significance after he has acquired the right of the co-sharer. No objection regarding acquisition of a co-sharer's property having been taken earlier, the stranger cannot be treated differently from other co-sharers afterwards. F In such a situation he has himself to be taken as a co-sharer. It is because of this that what was stated by a two-Judge Bench of this Court in *Bhoop v. Matadin*, [1991] 2 SCC 128 in paragraph 7 relating to the object of conferring the right of pre-emption on a co-sharer - the same being exclusion of strangers from acquiring interest in immovable property - would have no application when the stranger has acquired the status of a G co-sharer.

9. The last contention is that the view taken by a two-Judge Bench in *Dorab Cawasji Warden v. Cioomi Sorab Warden*, JT (1990) 1 SC 199 being different from the one taken in aforesaid decisions the same needs H reconsideration and these cases may be referred to a larger Bench to spell

out the meaning and scope of sub-clause "Fourthly" of section 15(1)(b) of the Act. Reference to *Cawasji's* decision shows that that case was concerned with the right conferred by the second paragraph of section 44 of the Transfer of Property Act, 1882. Therefore what was stated in that case regarding the right of a member of undivided family cannot be said to have any connection with the meaning to be given to the expression "other co-sharers" appearing in sub-clause "Fourthly". This is more so because a three-Judge Bench of this Court has well explained its meaning in *Bhikaram v. Ram Sarup*, JT (1991-4) SC 199 by overruling what was held in *Jagdish v. Nathi Mal*, [1986] 4-SCC 510. A B

10. In view of the above, the challenge to the constitutionality of sub-clause "Fourthly" of clause (b) of sub section (1) of section 15 of the Punjab Pre-emption Act, 1913 as amended in 1960 has no force. As to a stranger being clothed with this right, we have held that he too can claim such a right, after he has acquired a co-sharer's interest. C

11. The aforesaid being the legal position, Writ Petitions (C) 386 and 465 of 1991 along with connected Civil Appeals 3150 and 3151 of 1991 are dismissed, as the right of pre-emption in the concerned suits was claimed by a sister, a co-sharer. Writ Petition (C) 1126 of 1991 is also dismissed, as the person to claim the aforesaid right is a co-sharer. Appeals arising out of SLP (C) 218 and 16040-43 of 1992 too are dismissed as the suitor, though a stranger, could claim right of pre-emption, because of purchase of interest of co-sharer by him earlier. Writ Petitions (C) 274, 284 and 313 of 1994 as well are dismissed, as claim for pre-emption in these cases is by a co-sharer. SLP (C) 6050 and 6051 of 1994 meet the same fate as a co-sharer (daughter-in-law) claimed this right. D E

12. In the facts and circumstances of the cases, all the parties herein are left to bear their own costs. F

A.G.

Petitions dismissed.