

PETITIONER:
JAGDISH & ORS.

Vs.

RESPONDENT:
NATHI MAL KEJRIWAL & ORS.

DATE OF JUDGMENT 24/10/1986

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
DUTT, M.M. (J)

CITATION:
1987 AIR 68 1987 SCR (1) 68
1986 SCC (4) 510 JT 1986 697
1986 SCALE (2) 679
CITATOR INFO :
R 1988 SC2141 (8)
O 1992 SC 207 (3,4)

ACT:
Punjab Pre-emption Act, 1913, s. 15(1)(b) clause 'Fourthly'-'Other Co-sharers'--Interpretation of--Land belonging to joint family--Sold--Non-alienating co-sharers--Whether entitled to claim right of pre-emption.

HEADNOTE:

Respondent Nos. 5 to 7 were joint owners of the suit land. They sold it to respondent nos. 1 to 4 on 25.10.71. The petitioners, sons and nephews of the vendors, instituted a suit before the sub-Judge, Palwal for possession of the suit land on payment of the sale consideration on the ground that they were entitled to the right of the pre-emption in respect of the suit land either under clause "First", or Secondly, of s. 15(1)(a) or under clause 'First' or 'Secondly' of s. 15(1)(b) of the Punjab Pre-emption Act 1913 as in force in the State of Haryana. The Sub-Judge decreed the suit for possession. The appeal of Respondent Nos. 1 to 4 against the aforesaid order having been dismissed by the District Judge, they filed a second appeal before the High Court.

During the pendency of the second appeal, the Supreme Court delivered its judgment in *Atam Prakash v. State of Haryana & Ors.*, [1986] 2 SCC 249. The High Court allowed the second appeal and dismissed the suit since the provisions under which the petitioners claimed the right of pre-emption had been declared void by the Supreme Court in *Atam Prakash's* case.

Being aggrieved by the judgment of the High Court, the petitioners in the special leave petition contended that since the suit land belonged to the joint family and it had not been sold by all the sharers, they were entitled to claim the right of pre-emption under clause 'Fourthly' of s. 15(1)(b) of the Act because they happened to be the non-alienating co-sharers.

Dismissing the petition,

HELD: The expression 'other co-sharers' in clause 'Fourthly' of s. 15(1)(b) of the Act refers to only those

co-sharers who do not fall

69

under clause 'First' or 'Secondly' or 'Thirdly' of s.15(1)(b) of the Act. Since the petitioners admittedly fail either under clause 'First' or under clause 'Secondly' of s. 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'. [71D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 11015 of 1986.

From the Judgment and Order dated 2.5.86 of the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 1504 of 1977.

R.K. Jain, D.S. Mehra and Ms. Abha Jain for the Petitioners.

K.K. Jain, P. Dayal, Shiv Kumar and A.D. Sanger for Respondent No. 1

The Judgment of the Court was delivered by

VENKATARAMIAH, J- Respondents 5 to 7--Aji Ram, .Tota Ram and Hari Chand are sons of one Kesaria. The suit land belonged jointly to Respondents 5 to 7. They sold it to Respondents 1 to 4Nathi Mal Kejriwal, Radhey Shayam Kejriwal, Smt. Daropdi Devi and Nagar Mal Kejriwal, who were strangers to their family for a consideration of Rs.33,000 under a sale deed registered on 25.10.1971. The petitioners, who claimed themselves to be the sons and nephews of the vendors, instituted a suit in Civil Suit No. 466 of 1972 on the file of the Sub-Judge, 1st Class, Palwal for possession of the suit land on payment of Rs.33,000 claiming that they were entitled to the right of pre-emption in respect of the suit land either under clause 'First' or 'Secondly' of Section 15(1)(a) of the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the Act') as in force in the State of Haryana or under clause 'First' or 'Secondly' of Section 15(1)(b) of the Act. The learned Sub-Judge upheld the plea of the petitioners and decreed the suit for possession of the suit land against Respondents 1 to 4 who had purchased the suit land as well as against Respondents 5 to 7 who had sold it subject to the petitioners paying a sum of Rs.36,642' which included the consideration of Rs.33,000 and interest thereon at 8 per cent per annum. The learned Sub-Judge further directed the petitioners to deposit the sum of Rs.36,642 minus the zare punjam amount on or before 3rd May, 1976 and that on their failure to deposit the said amount, he directed that the suit should be deemed to have been

70

dismissed with costs. Aggrieved by the judgment of the learned SubJudge, Respondents 1 to 4 filed an appeal before the District Judge, Gurgaon in Civil Appeal No. 69 of 1976. The appeal was dismissed. Against the judgment of the learned District Judge, Respondents 1 to 4 filed a second appeal before the High Court of Punjab and Haryana in Regular Second Appeal No. 1504 of 1977. That second appeal was taken up for hearing on 2nd May, 1986. By that time this Court had delivered its judgment in *Atam Prakash v. State of Haryana and Others*, [1986] 2 S.C.C. 249 declaring clauses 'First', 'Secondly' and 'Thirdly' of Section 15(1)(a), clauses 'First', 'Secondly' and 'Thirdly' of Section 15(1)(b), clauses 'First', 'Secondly' and 'Thirdly' of Section 15(1)(c) and the whole of Section 15(2) of the Act as ultra vires the Constitution. Following the said decision the High Court allowed the second appeal and dismissed the

suit since the provisions under which the petitioners claimed the right of pre-emption had been declared void by this Court. This petition is filed praying for special leave to prefer an appeal against the judgment of the High Court in the second appeal.

At the hearing of this Special Leave Petition the learned counsel for the petitioners contended that even though the petitioners were not able to claim the right of pre-emption under clauses 'First', and 'Secondly' of Section 15(1)(a) or clauses 'First' and 'Secondly' of Section 15(1)(b) by reason of the decision in the *Atam Prakash's* case (supra) they were entitled to claim the right of pre-emption under clause 'Fourthly' in Section 15(1)(b) of the Act. Section 15(1)(b) reads thus:

"15. 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--

(
a

)
(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 sons or daughters' sons of the vendor or vendors;
Secondly, in the brothers or brother's sons of the vendor or vendors;--

71

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

....."

It is argued by the learned counsel for the petitioners that since the suit land belonged to the joint family and it had not been sold by all the co-sharers they were entitled to claim the right of pre-emption under clause 'Fourthly' of Section 15(1)(b) of the Act because they happened to be the non-alienating co-sharers. Although there is no specific finding that the property is the joint property in this case, we shall assume for purposes of this judgment that the suit land was joint property. In order to understand the meaning of the words 'other co-sharers' in Section 15(1)(b) we have to read of the Act as it stood before the decision in *Atam Prakash's* case (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 which was urged for the first time before the High Court. The suit was, therefore, rightly dismissed by the High Court holding that the petitioners were no longer entitled to any relief under the Act. This petition, therefore, fails and it is dismissed.

M.L.A.
missed.

Petition dis-

JUDIS