

CASE NO.:
Appeal (civil) 1008-1009 of 1995

PETITIONER:
PREMA (DEAD) THR. LRS.

RESPONDENT:
SURAT SINGH AND ORS. ETC. ETC.

DATE OF JUDGMENT: 04/02/2003

BENCH:
SYED SHAH MOHAMMED QUADRI & ARUN KUMAR

JUDGMENT:
JUDGMENT

2003(1) SCR 814

The following Order of the Court was delivered

These two appeals arise from a common judgment of the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal Nos. 2178 of 1989 and 2178-A of 1989 passed on August 18, 1993.

The controversy in these appeals relates to the scope of defence of improvement made in the status in a suit seeking enforcement of the right of pre-emption under the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the Act').

The appellant was the defendant-vendee in the suit for pre-emption filed by the respondent-plaintiff. On 4th September, 1984, the appellant purchased one-fourth share in the agricultural lands from one jangli who was a co-owner along with his brothers, Jai Narain and the respondent-plaintiff [hereinafter referred to as 'the first sale']. On October 15, 1984, the appellant purchased one-eighth share of Jai Narain the said lands [hereinafter referred to as 'the second sale']. While so, the respondent filed Suit No. 129 of 1986 claiming right of pre-emption in respect of the land covered by the first sale in the Court of Sub-Judge, 11nd Class, Gurgaon, on September 3, 1985 [hereinafter referred to as 'the first suit']. The respondent brought another suit for pre-emption in respect of the land covered by the second sale on 15th October, 1985, being Suit No. 124 of 1986 in the Court of the Sub-Judge, 11nd Class, Gurgaon [hereinafter referred to as 'the second suit']. The defence of the appellant was that even before the first suit was filed, he had become the co-owner and had, thus, improved his status equal to that of the respondent and as such, the suit could not be decreed against him. That submission was based on Section 21-A of the Act. The respondent filed an application under Section 28-A of the Act seeking stay of the second suit. The application was dismissed by the trial court on 31st January, 1987. Against that order, he filed a revision petition before the High Court of Punjab and Haryana, which was also dismissed, on 3rd October, 1988, with the observation that both the suits be tried together.

Having considered the respective pleas of both the parties, the learned Trial Judge dismissed the suits on 10th January, 1987. On appeal by the respondent against the judgement and decree of the Trial Judge, the First Appellate Court allowed the appeals and decreed the suits on 14th August, 1989. The High Court upheld the judgements and decrees of the First Appellate Court in the second appeals by its judgements and decrees which are under challenge in these appeals.

Mr. Anip Sachthey, learned counsel appearing for the appellants, contends that inasmuch as the appellant had purchased under the second sale, a share in the joint property and, thus, became a co-owner and improved his status

even before filing of the first suit, the plaintiff cannot claim a superior right in respect of the land covered by the first sale.

Mr. P.C. Jain, learned senior counsel appearing for the respondent, on the other hand, argues that Section 21-A of the Act does not apply to a case like the present one; it is intended to apply to a situation where a co-owner along with a stranger acquires a share in the joint property which defeats his defence to a suit of pre-emption due to the presence of a stranger, so in such a case if the stranger transfers his right in favour of a co-owner, that would amount to improving the status and in such a situation, Section 21-A would apply. Section 28-A of the Act, submits the learned counsel, is applicable to the facts of the instant case and the appellant cannot take advantage of the second sale. The trial court, it is contended, erroneously held that Section 21-A of the Act over-rides Section 28-A of the Act and that both these sections operate in different fields and as Section 21 -A of the Act itself is not applicable, the defence has to fail. In support of his contentions, he invited our attention to a judgement of the Full Bench of the High Court of Punjab and Haryana in *Garib Singh Kishan Singh v. Harnam Singh Kishan Singh and Ors.*, reported in AIR (1972) Punjab and Haryana 99.

It would be appropriate to note that in the Act, Section 28-A was inserted by the Punjab Pre-emption (Amendment) Act, 1928 and Section 21-A was inserted by the Punjab Pre-emption (Amendment) Act, 1944. Section 21-A of the Act is in the following terms:

"Section 21-Any Improvement, otherwise than through inheritance or succession, made in the status of a vendee defendant after the institution of a suit for pre-emption shall not affect the right of the pre-emptor-plaintiff in such suit."

A plain reading of the provision, extracted above, would show that it nullifies the effect to acquisition of any right by the defendant in a pre-emption suit for the purpose of improvement of his status pendente lite, except by way of inheritance or succession. On the clear language of the provision, it is difficult to accede to the contention that Section 21-A of the Act would be attracted only in a case where one of the co-owners as a defendant in a pre-emption suit loses his status by virtue of being a co-vendee with a stranger and subsequently improves his status by acquiring pendente lite the right of the stranger vendee.

In *Garib Singh Kishan Singh* (supra), a Full Bench of the High Court of Punjab and Haryana considered the question,

"Whether a vendee who has joined with a stranger in purchasing agricultural land or immovable property can by acquiring the interest of the stranger co-vendee by gift or sale successfully resist a suit for pre-emption in view of the provisions of Section 21-A of the Punjab pre-emption Act, 1913?"

The question as framed reflects broadly the facts of that case. There, four sons of a person jointly possessed agricultural lands. On the death of Kartar Singh, one of the sons, his son, Harchand Singh, sold his one-fourth share to one of his uncle, Gharib Singh, and his wife, Gurnam Kaur, under a registered sale deed. Harnam Singh, the other brother of Kartar Singh brought the suit for pre-emption. During the pendency of the suit, Gurnam Kaur made a gift of her share in the land which was purchased jointly with her husband, in favour of her husband. The Full Bench of the High Court considered the position of law as it obtained before the insertion of Section 21-A of the Act in paragraph 18 of the judgement.

Having referred to the Statement of Objects and Reasons of the amending Act by which Section 21-A was inserted, it was held, .

"a vendee who associates with himself in the sale a stranger cannot resist

the claim for pre-emption on the basis of his own qualifications or status. It is settled law that where the sale is in favour of several persons, it is the status of the lowest of the vendees that has to be taken into account in determining whether the pre-emptor has a preferential right. Had not Gharib Singh obtained the share of his wife -by gift in his favour, surely he could not have resisted the pre-emptor's claim. Now by purchasing his wife's share he claims to have got rid of that disability and sets up his own status as co-sharer and relationship with the vendor as defence to defeat the pre-emptor's claim. In my opinion, there can be no doubt that by getting rid of the stranger he has attempted to improve his position."

In our view, this position cannot be doubted.

The conclusion arrived at the answer recorded to the afore-mentioned question have to be under stood in the facts of that case and cannot be generalised to limit the scope of Section 21-A of the Act. Be that as it may, from what we have stated above, it is clear that for the purpose of the first suit, the defence of the improvement of status based on the second sale cannot be accepted because that acquisition of right itself is amenable to challenge and was indeed challenged. Acquisition of status for the purpose of Section 21-A of the Act would mean, a status which is undisputable and/ or not amenable to challenge and not the one in controversy or subject matter of challenge before a competent court.

Section 28-A of the Act, which was inserted in the Act, anterior to Section 21-A reads thus:

"Section 28-A:-If, in any suit for pre-emption, any person bases a claim or plea on a right of pre-emption derived from the ownership of agricultural land or other immovable property, and the title to such land or property is liable to be defeated by the enforcement of a right of pre-emption with respect to it, the court shall not decide the claim or plea until the period of limitation for the enforcement of such right of pre-emption has expired and the suits for pre-emption (if any) instituted with respect to the land or property during the period have been finally decided.

(2) If the ownership of agricultural land or other immovable property is lost by the enforcement of a right of pre-emption, the court shall disallow the claim or plea based upon the right of pre-emption derived therefrom."

A careful reading of this provision shows that if in a suit for pre-emption, claim is based or a plea taken is dependant on a right of pre-emption derived from the co-ownership of the agricultural land or other immovable property and title to such land or property is liable to be defeated by enforcement of a right of pre-emption with respect to it, the court is directed not to decide the claim or plea until the period of limitation for the enforcement of such right of pre-emption has expired or the suit for pre-emption, if any, instituted with respect to the land or property during the period has been finally decided. Section 28-A of the Act is attracted to a case where a plaintiff seeks relief of pre-emption as also to a case where the improvement of status is pleaded in defence. If that be so, the fact that by virtue of the second sale, the appellant has acquired one-eighth share in the joint property would be of no consequence as the plea of improvement of status would not be available to him as the second sale itself is the subject-matter of the second suit.

We way record that Mr. Jain learned senior counsel has submitted that the decree under challenge had been executed and the respondent had taken possession as long back as in 1993 itself.

For the above reasons, we are unable to find any illegality in the judgement under challenge. The civil appeals are, therefore, dismissed but, in the circumstances of the case, we make no order as to costs.