

PETITIONER:
KARNAIL SINGH

Vs.

RESPONDENT:
ANIL KUMAR AND ANOTHER

DATE OF JUDGMENT 10/01/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MANOHAR SUJATA V. (J)

CITATION:
1995 SCC (2) 9 JT 1995 (2) 516
1995 SCALE (1) 141

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. This appeal by special leave arises from the judgment of the High Court of Punjab and Haryana dated 22-1-1985 made in RSA No. 3126 of 1984. The facts not in dispute are that Anil Kumar and the vendor of the appellant Neeru are brother and sister. Neeru sold the property in dispute to 'the appellant by a registered sale deed. Anil Kumar laid the suit for preemption under Section 15(1)(b) clause secondly of the Punjab Pre-emption Act, 1913, (for short "the Act"). The trial court decreed the suit and it is confirmed by the appellate court. The second appeal was dismissed in limine. By then, this Court in *Atam Prakash v. State of Haryana*¹ declared sub-clauses (i) to (iii) of clause (1) of Section 15(1)(b) of the Act as amended in 1960 as ultra vires Articles 14 and 15 of the Constitution..Consequently, the claim of the respondent on the basis of clause secondly of Section 15(1)(a) having been declared to be ultra vires, this Court granted leave.

2. In *Atam Prakash* case¹ this Court upheld the constitutional validity of clause fourthly which postulates entitlement of pre-emption by "other co-

+From the Judgment and Order dated 22-1-1985 of the Punjab & Haryana High Court in R.S.A. No. 3126 of 1984
1 (1986) 2 SCC 249

10 sharers". Subsequently, the questions whether the relations covered in clauses (i) to (iii) of Section 15(1) are co-sharers under clause fourthly and whether they are entitled to the benefit of the pre-emption, were referred to a Bench of three Judges. In *Bhikha Ram v. Ram Sarup*² this Court considered the controversy and held that Section 15 after the amendment in 1960 provided that where the sale is of a share out of the joint property and is not by the co-sharers jointly, the right of pre-emption was vested fourthly in the "other co-sharers". It was further held that this Court

in Atam Prakash case¹ did not intend to exclude any specified co-sharer from the scope of clause fourthly of Section 15(1)(b) of the Act. It was concluded thus: (SCC p. 326, para 4)

"We find it difficult to hold that the purport of this Court's decision in Atam Prakash case¹ was to deny the right of pre-emption to those relative or relatives of the vendor or vendors who were specified in the erstwhile first three clauses of Section 15(1)(b) even if they happen to be co-sharers. The expression 'other co-sharers' was used in the fourth clause of the said provision to ensure that no co-sharer was left out or omitted and not to deny the right to kinsfolk-co-sharers covered by the preceding clauses. If the preceding clauses were not erased from the statute book as unconstitutional the kinsfolk would have exercised the right in the order of preference, for which no justification was found. The relations in the first three clauses of Section 15(1)(b) may or may not be co-sharers. The use of the expression 'other' in clause fourthly conveys the possibility of their being co-sharer also. What this Court disapproved as offensive to Articles 14 and 15 is the classification based on consanguinity and not on co-ownership. The right of pre-emption to co-sharers is held to be ultra vires the Constitution. Therefore, it is difficult to hold that this Court intended to deny the right of pre-emption of those kinsfolk even if they happened to be co-sharers. That would clearly be discriminatory."

3. In view of the above declaration of law by this Court, it is now concluded that even relations who would be otherwise not entitled under clauses (i) to (iii) of Section 15(1)(b) of the Act would also become 'co-sharers' under clause fourthly. Being not a party to the sale transaction of joint property, they are entitled to claim pre-emption. It is not in dispute, as stated earlier, that the respondent Anil Kumar was not a party to the sale transaction executed by his sister Neeru. Therefore, he would be other co-sharer in clause fourthly of sub-section (1)(b) of Section 15 of the Act. As a consequence, he is entitled to pre-emption. Shri K.K. Mohan, learned counsel for the appellant, contended that there is no evidence to show that respondent Anil Kumar is a co-sharer. On the other hand, the recitals in the sale deed shows that there was a prior partition under which Neeru had obtained the property under sale towards her share and therefor Anil Kumar cannot be said to be a co-sharer. The learned counsel for the respondents has produced before us a document of the year 1974-75 which

2 (1992) 1 SCC 319

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was already marked in the trial court which would show that they are the co-owners. In this view, we do not think that we will be justified to remit the matter for further evidence.

4. The appeal is accordingly dismissed though for different reasons. No costs.

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