APPELLATE CIVIL.

Before P. C. PANDIT, J.

CHANAN SINGH AND OTHERS,—*Appellant.*

versus

SMT. JAI KAUR,—*Respondent.*

Regular Second Appeal No. 345 of 1960

Punjab Pre-emption Act (I of 1913) as amended by Punjab Act X of 1960—Section 15(2)—Sale by widow of property got by her through her husband—Daughter of the co-widow—Whether can pre-empt the sale.

1960

Oct., 26th

Held, that a daughter of co-widow has no right to pre-empt the sale by the other widow of the land which she got from her husband. Section 15(2)(b) of the Punjab Pre-emption Act as amended by Act No. X of 1960 vests the right of pre-emption in the daughter of the female vendor and there is no escape from the conclusion that the pre-emptor must have been born from her womb, and it is only then that she can be called her daughter. A daughter of a co-widow cannot be called the daughter of the vendor widow.

Second appeal from the decree of the Court of Shri G. C. Suri, 2nd Additional District Judge, Ferozepur, dated the 6th day of November, 1959, affirming with costs that of Shri R. L. Garg, Sub-Judge, 1st Class, Moga, dated the 13th day of May, 1959, granting the plaintiff a decree for possession by pre-emption of the land in suit on payment of Rs. 6,500 against the defendants with costs and further ordering that the amount minus the amount already paid or deposited by the plaintiff would be paid by the plaintiff to the defendants on or before 30-6-59 (30th June, 1959) failing which the suit of the plaintiff would stand dismissed with costs, and further ordering that the previous mortgagee had not been paid off by the vendees and the plaintiff would be bound to pay him.

JAI KISHEN KHOSLA, ADVOCATE, for the Appellant.

D. N. AGGARWAL, ADVOCATE, *for the Respondent.*

JUDGMENT

Pandit, J.

PANDIT, J.—On the 3rd February, 1958, by a registered sale deed Mst. Sobhi, widow of Santa

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Singh, sold the land in dispute to Chanan Singh and Gurbakhsh Singh for Rs. 8,000. This sale led to the present suit by Mst. Jai Kaur for possession of the land by pre-emption on the ground that she was the daughter of Santa Singh, deceased, husband of Mst. Sobhi, and consequently she had a superior right of pre-emption as against the vendees. She also stated that the sale price of Rs. 8,000 was neither paid nor fixed in good faith, and that Rs. 4,000 was the market value of the land in dispute and this was the amount which had actually been paid to the vendor.

The suit was resisted by the vendees on the ground that the plaintiff had no right of pre-emption, and that the sale had taken place for Rs. 8,000 which was also the market value of the land. It was further pleaded that the suit was for partial pre-emption and was liable to be dismissed on that ground.

The following issues were framed in the case :—

(1) Whether the plaintiff has got a superior right of pre-emption over the vendees ?

(2) Whether the sale price was actually paid or fixed in good faith ?

(3) Otherwise what is the market value ?

(4) Whether the suit is for partial pre-emption ?

(5) Relief.

The trial court decreed the suit on payment of Rs. 6,600 to the vendees on the ground that the plaintiff had a superior right of pre-emption, that out of the sale price only Rs. 6,600 had been actually paid and that was also the market value of the land. The vendees did not urge anything in support of issue No. 4.

Against the decree of the trial court, the vendees went in appeal to the learned Additional District Judge, Ferozepur, who dismissed the same after confirming the findings of the trial court.

The vendees have come here in second appeal. Learned counsel for the appellants has relied on the provisions of the Punjab Pre-emption (Amendment) Act No. 10 of 1960, and has submitted that the plaintiff has not got any right of pre-emption.

The facts that have been established on the record are that Mst. Sobhi had got the land in suit from her husband Santa Singh who had two wives, Mst. Ram Kaur and Mst. Sobhi. Mst. Ram Kaur's daughter is Mst. Jai Kaur, plaintiff who is, therefore, the step-daughter of Mst. Sobhi, the vendor.

Reliance was placed by the learned counsel for the appellants on the provisions of the new section 15 substituted by the Punjab Pre-emption (Amendment) Act, 1960. The relevant provisions of section 15 are as follows :—

"(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest—

(a) where the sale is by a sole owner,—

First, in the son or daughter or son's son or daughter's son of the vendor ;

* * * *

(b) * * * *

(c) * * *

(2) Notwithstanding anything contained in sub-section (1),—

(a) * * * *

(b) where the sale is by a female of land or property to which she has succeeded through her husband, or

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through her son in case the son has inherited the land or property sold from his father, the right of pre-emption shall vest,—

Fisrt, in the son or daughter of such female ;

Secondly, in the husband's brother or "husband's brother's son of such female."

His submission is that in the present case the sale is by Mst. Sobhi and of the land to which she has succeeded through her husband Santa Singh, Therefore, according to the provisions of section 15(2)(b) of the Act, the right of pre-emption with regard to this sale shall vest, firstly in the daughter of Mst. Sobhi, and failing that, in Santa Singh's brother or Santa Singh's brother's son. Since Mst. Jai Kaur plaintiff is not the daughter of Mst. Sobhi, she cannot have a right of pre-emption and her suit should fail.

I think there is merit in this contention, because the statute has clearly laid down that in the case of such a sale, it is the daughter of the female vendor who would have a right of pre-emption, and admittedly Mst. Jai Kaur is not the daughter of Mst. Sobhi vendor.

Learned counsel for the respondent, in the first instance, submitted that the word 'such' governing the word 'female' in sub-section (2) of section 15, refers to a female who has got the property, the subject-matter of sale, through her husband, and should not be read as 'the' which would be the case if the interpretation of the section were that the right of pre-emption would vest only in the daughter from the womb of that female.

In my opinion, even if the word 'the' were not to be read in place of the word 'such' before the word 'female' as is contended by the learned counsel for the respondent, it would not make any difference in the interpretation of the sub-section.

It was next contended that it was not mentioned in the sub-section that the daughter must be from the womb of that female. In my opinion, it was not necessary to say so, because when the statute says that the right of pre-emption shall vest in the daughter of such female, there is no escape from the conclusion that the pre-emptor must have been born from her womb, and it is only then that she can be called her daughter.

It was further contended that the case of a daughter from the womb of the female vendor has already been dealt with in sub-section (1) of section 15, where it is stated that if the sale is by a sole owner, then the right of pre-emption shall vest, first, in the daughter of the vendor, and therefore, it was not necessary to include the case of such a daughter in sub-section 2(b) of section 15 as well.

This ignores the opening words in sub-section (2) which say "Notwithstanding anything contained in sub-section (1)", which, in the present context, mean that where a vendor is the female who had got the land from her husband, then the case would be covered by the provisions of sub-section (2)(b) and not by sub-section (1) of section 15.

It was also argued that in a sale of this kind, right of pre-emption has, in sub-section (2)(b) Secondly, been given to the husband's brother or husband's brother's son of such female, and therefore, the legislature could not have ignored the claim of the daughter of the husband of such female, even though she was not his daughter from

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her womb. Since the wording of the statute is clear, it is needless to speculate as to what the intention of the legislature was.

Lastly, reference was made to *Mt. Sahodra* v. *Ram Babu* (1), and *Pappammal* alias *Mathu Karupayyee Ammal* v. *Meenammal* (2), where it was held that the word 'sister' in the Hindu Law of Inheritance (Amendment) Act of 1929 must be interpreted to include a half-sister, i.e., a sister by the same father even though the mother may be different.

In the first place, these are cases of inheritance and have no analogy to the present case which is one of pre-emption. The pre-emption law is very technical and under the amended Act, right of pre-emption has been given to persons who are specified in the statute itself and the question of inheritance cannot be a guiding factor for determining as to who the pre-emptor can be under the statute especially when this factor has been specifically omitted from the statute by virtue of the Amendment Act.

Lastly, it was contended that the word 'daughter' menioned in section 15(2)(b) of the Act also includes a 'step-daughter' of the female. No authority was cited in support of this proposition and the statute itself is silent on this point.

In view of what I have said above, I am of the opinion that Mst. Jai Kaur, not being the daughter of the vendor Mst. Sobhi, had no right of pre-emption by virtue of the Punjab Pre-emption (Amendment) Act No. 10 of 1960.

The result is that the appeal is accepted and the plaintiff's suit is dismissed. The parties are, however, left to bear their own costs throughout.

R.S.

(1) A.I.R. 1943 P.C. 10.
(2) A.I.R. 1943 Mad. 139.