APPELLATE CIVIL

Before D. K. Mahajan and R. S. Narula, JJ.

SURJAN SINGH AND OTHERS,—*Appellants*

versus

HARCHARAN SINGH,—*Respondent*

S.A.O. No. 25-A of 1965

February 8, 1967

Punjab Pre-emption Act (I of 1913) as amended by Acts X of 1960 and XIII of 1964—S. 15(1)(a) Secondly—"Brother"—Whether includes a step-brother—Interpretation of Statutes—Construction of statutes relating to pre-emption—Two interpretations possible—Which one to adopt—Words used in S. 15—Construction of—Recourse to other enactments pertaining succession—Whether can be had.

Held, that the expression "brother" in the context of section 15(1)(a) Secondly of the Punjab Pre-emption Act denotes a 'real brother' and not a 'step-brother' or a uterine-brother'.

The law of pre-emption is piratical law and has to be strictly construed. If two interpretations are possible, the one which restricts its operation is to be preferred to the other which widens its operation.

Held, that while construing the words used in section 15 of the Punjab Pre-emption Act one cannot travel beyond the provisions of the Act and have recourse to other enactment pertaining to succession.

Second Appeal from the order of Shri Jagwant Singh, Senior Sub-Judge, Ferozepore, dated the 15th March, 1965, reversing that of Shri Narinder Singh, Sub-Judge, 1st Class, Muktsar, dated the 20th July, 1964, accepting the appeal and remanding the case under order 41 rule 23, C.P.C. to the trial court for fresh decision.

H. L. SIBAL, SENIOR ADVOCATE, INSTRUCTED BY S. C. SIBAL, ADVOCATE, for the Appellants.

J. L. GUPTA, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—This appeal was posted for hearing before me on the 7th of November, 1966 and by my order of that date, I directed that this appeal be better heard by a Division Bench, in view of the importance of the question involved.

The only question, that requires determination in this appeal, is—Whether the phrase 'brother' in section 15(1)(a) SECONDLY of the Punjab Pre-emption Act, 1913, includes a 'step-brother'. tI is common ground between the parties that if the phrase 'brother' does not include a 'step-brother', the appeal must succeed and the suit for pre-emption, which has been filed by the step-brother of the vendor, must fail. But if the expression 'brother' includes a 'step-brother', the decision of the trial Court must stay and the appeal will fail.

No other question, than the one indicated above, arises for determination and it is not necessary to set out the facts of the case.

In order to appreciate the contentions of the learned counsel for the parties, it will be proper to set out the provisions of section 15 of the Punjab Pre-emption Act, 1913 (Punjab Act I of 1913), as well as the provisions of that very section in the Punjab Pre-emption Act (Punjab Act I of 1913), as amended by Punjab Act 10 of 1960, and as further amended by Punjab Act 13 of 1964 (hereinafter referred to as the Act):—

Section 15 of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913)	Section 15 of the Punjab Pre-emption Act (Punjab Act I of 1913), as amended by Punjab Act 10 of 1960; and as further amended by Punjab Act 13 of 1964.
"15. Subject to the provisions of section 14, the right of pre-emption in respect of agricultural land and village immovable property shall vest—	15. (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 or occupancy tenant or, in the case of land or property jointly owned or held, is by all the co-sharers	(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;

Section 15 of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913)	Section 15 of the Punjab Pre-emption Act (Punjab Act I of 1913), as amended by Punjab Act 10 of 1960; and as further amended by Punjab Act 13 of 1964
jointly in the persons in order of succession, who but for such sale would be entitled, on the death of the vendor or vendors, to inherit the land or property sold;	Secondly, in the brother or brother's son of the vendor;
	Thirdly, in the father's brother or father's brother's son of the vendor;
	Fourthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;
(b) where the sale is of a share out of joint land or property, and is not made by all the co-sharers jointly,—	(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,—
firstly, in the lineal descendants of the vendor in order of succession;	First, in the sons or daughters or sons' sons or daughters' daughters' sons of the vendor or vendors;
secondly, in the co-sharers, if any, who are agnates, in order of succession; *thirdly*, in the persons, not included under *firstly* or *secondly*, above, in order of succession, who but for such sale would be entitled, on the death of the vendor, to inherit the land or property sold;	Secondly, in the brothers or brother's sons of the vendor or vendors;
	Thirdly, in the father's brothers or father's brother's sons of the vendor or vendors;
fourthly, in the co-sharers;	Fourthly, in the other co-sharers;
(c) if no person having a right of pre-emption under clause (a) or clause (b) seeks to exercise it,—	Fifthly, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof;
firstly, when the sale affects the superior or inferior proprietary right and the	

Section 15 of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913)	Section 15 of the Punjab Pre-emption Act (Punjab Act I of 1913), as amended by Punjab Act 10 of 1960; and as further amended by Punjab Act 13 of 1964.
superior right is sold, in the inferior proprietors, and when the inferior right is sold, in the superior proprietors; secondly, in the owners of the *patti* or other sub-division of the estate within the limits of which such land or property is situate; thirdly, in the owners of the estate; fourthly, in the case of a sale of the proprietary right in such land or property in the tenants (if any) having rights of occupancy in such land or property; fifthly, in any tenant having a right of occupancy in any agricultural land in the estate within the limits of which the land or property is situated. *Explanation.*—In the case of sale by a female of land or property to which she has succeeded on a life tenure through her husband, son, brother or father, the word mean the 'agnates' of the person through whom she has so succeeded.	(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly,— First, in the sons or daughters or sons' sons or daughters' sons of the vendors; Secondly, in the brothers or brother's sons of the vendors; Thirdly, in the fathers' or father's brother's sons of the vendors; Fourthly, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof. (2) Notwithstanding anything contained in sub-section (1)— (a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest,— (i) if the sale is by such female, in her brother or brother's son; (ii) if the sale is by the son or daughter of such female, in

Section 15 of the Punjab Pre-emption Act, 1913, (Punjab Act 1 of 1913)	Section 15 of the Punjab Pre-emption Act (Punjab Act I of 1913), as amended by Punjab Act 10 of 1960; and as further amended by Punjab Act 13 of 1964.
	the mother's brothers or the mother's brother's sons of the vendor or vendors;
	(b) where the sale is by a female of land or property to which she has succeeded through her husband, or through her son in case the son has inherited the land or property sold from his father, the right of pre-emption shall vest,—
	First, in the son of or daughter of such husband of the female;
	Secondly, in the husband's brother or husband's brother's son of such female."

Before proceeding further, it will be proper to refer to the decision of of the Supreme Court in *Gulraj Singh* v. *Mota Singh* (1), which has covered certain part of the contentions which have been raised before us. In *Gulraj Singh's* case, the question, that fell for determination, was whether an illegitimate son or daughter of the female vendor could pre-empt the sale by such female under section 15(2) (b) (i) of the Act. In this decision, a part of section 15 fell for consideration; and their Lordships, while dealing with the relevant part of this section, namely, 15(2) (b) (i) observed as follows:—

> "The submission of learned counsel virtually amounts to this that in order to construe the words used in section 15, one should travel beyond the enactment and ascertain the class of persons who are entitled under the Hindu Succession Act to succeed as the heirs of the intestate vendor.

(1) 1964 P.L.R. 746.

Even a cursory examination would show that this construction is untenable and that the framers of the Act did not proceed on any such theory. Take, for instance, the case where a female succeeds to property through her father or brother dealt with in section 15(2) (a) of the Pre-emption Act. Her heir under the Hindu Succession Act would be, if the property was inherited from her father, her son or daughter (including the children of any pre-deceased son or daughter) and in their absence the heirs of the father. If, however, the property was inherited from her brother, the devolution is different (*vide* section 15(1) and (2). The devolution provided by section 15(2) (a) (i) of the Pre-emption Act is different and confers the right to pre-empt on her brother or her brother's son. The theory, therefore, that we should resort to the line of heirs as in an intestate succession under the Hindu Succession Act or, for the matter of that, to any other system of common law or statute applicable to the vendor is obviously untenable. Pursuing this line of reasoning a little, it was not disputed that if the female vendor were a Christian by relgion, only her legitimate issue would be denoted by these words. As it is common ground that the statutory right of pre-emption conferred by section 15 is as much applicable to a Christian owner of property as to a Hindu, it would be seen that the construction of the words of this statute of general application would be made to depend on the religion to which the vendor belonged, and in fact would vary with any change made by statute in the law of intestate succession as applicable to different communities. The position that would arise on a conversion of the vendor to a different faith, with a different personal law as to succession would bring out in bold relief the unsustainability of the submission based on the peculiarities of the personal law as to intestate succession applicable to the vendor.

4. We have, therefore, to ascertain whether by the expression 'son or daughter' only the legitimate issue of such female is comprehended or whether the words are wide enough to include illegitimate children also. That the normal rule of construction of the words 'child', 'son', or 'daughter' occurring in a statute would include only legitimate children, i.e., born in wedlock, is too elementary to

require authority. No doubt, there might be express provision in the statute itself to give these words a more extended meaning as to include also illegitimate children and section 3(j) of the Hindu Succession Act (Act XXX of 1956) furnishes a good illustration of such a provision. It might even be that without an express provision in that regard the context might indicate that the words were used in a more comprehensive sense as indicating merely a blood relationship apart from the question of legitimacy. Section 15, with which we are concerned, contains no express provision and the context, so far as it goes, is not capable of lending any support to such a construction. In the first place, the words 'son or daughter' occur more than once in that section. It was fairly conceded by Mr. Bishan Narain that where the son or daughter of a male vendor is referred to, as in section 15(1), the words mean only the legitimate issue of the vendor. If so, it cannot be that in the case of a female vendor the words could have a different connotation. Even taking the case of a female vendor herself, there is a reference in section 15(2)(i) to the brother's son of such vendor. It could hardly be open to argument that a brother's illegitimate son is comprehended within those words. The matter appears to us to be too clear for argument that when section 15(2)(b)(i) uses the words 'son or daughter', it meant only a legitimate son and a legitimate daughter of the female vendor."

Their Lordships have clearly settled one matter, namely, that while construing the words used in section 15, one cannot travel beyond the provisions of the Act and have recourse to other enactments pertaining to succession.

At this stage, it will be appropriate to set out the respective contentions of the learned counsel for the parties. Mr. Sibal, who appears for the vendee, contends that the phrase 'brother' merely means a 'real brother' or, in other words, 'a son of the common parents'. Learned counsel argues that there is no warrant for holding that a 'step-brother' or a 'uterine-brother' is included in the expression 'brother', because the expression 'brother' would merely mean a descendant of the common parents. It is only to distinguish a real brother that the expression 'step-brother' or 'uterine-brother' is used; otherwise wherever a 'real brother' is indicated, the expression

'brother' alone will be used. In support of his contention, Mr. Sibal has relied upon a Single Bench decision delivered by me and reported as *Ujagar Singh* v. *Rattan Singh* (2). The tentative view expressed by Dua, J., in *Mota Singh* v. *Prem Parkash Kaur* (3), was adopted by me in this decision. I was also a party to the case decided by Dua, J., in *Mota Singh's case*. The question that I settled in *Ujagar Singh's case* was that a pichhlag son is not a son within the meaning of that expression in section 15 of the Act.

The learned counsel for the respondent-pre-emptor, on the other hand, has raised the contention basing himself on various English and American decisions that the expression 'brother' in those cases has been held to include a 'step-brother' or a 'uterine-brother'. The learned counsel further contended that section 15 (2) (b) firstly would cover the case of a 'step-son or daughter' though not of a 'uterine son or daughter'; and on that basis, the learned counsel argued, that there was no justification to hold that the expression 'brother' in section 15 (1) (a) secondly, would not include a 'step-brother'. The learned counsel further maintained that there is no distinction in the Indian Succession Act with regard to succession between brothers of half-blood or uterine-blood and they were treated at par; and as the law of pre-emption is applicable to all religious denominations and is a common law, so far as they are concerned, there would be no justification for interpreting the expression 'brother' as merely to include a 'real brother' and not a 'step-brother'.

It is the respective merit of these contentions that requires determination. The matter being of first impression and being bare of authority, we are of the view that the expression 'brother' in the context of section 15 denotes a 'real brother' and not a 'step-brohter' or a 'uterine-brother'. The principal reason, that has prevailed with us for this interpretation, is that the law of pre-emption is a piratical law and, as repeatedly held, it has to be strictly construed; and if two interpretations are possible, the one, which restricts its operation, is to be preferred rather than the interpretation which widens its operation. Reference in this connection only need be made to the decision in *Sant Singh* v. *Sucha Singh* (4). The contention, that a 'step-son' or a 'step-daughter' is covered by section 15 (2) (b) FIRST and, therefore, we should give an extended meaning to the expression 'brother'

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(2) 1965 P.L.R. 258.
(3) I.L.R. (1962) 2 Punj. 614.
(4) 1963 Current Law Journal (Pb.) 62.

in section 15(1) (a) SECONDLY, does not commend itself to us. We are also unable to accept the contention of the learned counsel for respondent that by logical process, we must read the expression 'brother' in section 15(1) (a) SECONDLY to include a 'step-brother' or a 'uterine-brother', because in section 15(2) (b) FIRST, the expression 'son' and 'daughter' include a 'step-son' and 'step-daughter'. In section 15(2) (b) FIRST, by necessary intendment, the legislature has indicated that a step-son or a step-daughter has the right of pre-emption and if these two provisions are compared, the indication to that effect is missing in section 15(1) (a) FIRST. Moreover, the expression 'brother' normally, to an Indian mind, indicates a 'real brother', though loosely the word has been used even for the relationship whether it is of a step or a uterine brother. But primarily, the expression 'brother' is used to indicate a 'real brother' and not a step or a uterine brother. If the legislature had intended to confer the right on the step-brother, it could have made its intention clear by either defining the phrase 'brother' or added an explanation to section 15(1) (a) FIRST, that the expression 'brother' will include a 'step-brother' or a 'uterine-brother'. In Bouvier's Law Dictionary, Volume I, Third Revision, it is stated at page 399 that—

> "Brothers are of the whole blood when they are born of the same father and mother, and of the half-blood when they are the issue of one of them only. In the civil law, when they are the children of the same father and mother, they are called brothers germain; when they descend from the same father but not the same mother, they are "consanguine brothers"; when they are the issue of the same mother, but not the same father, they are uterine brothers. A half-brother is one who is borne of the same father or mother, but not of both; one born of the same parents before they were married, a left-sided brother; and a bastard born of the same father or mother is called a natural brother."

It is only in cases of succession or wills that the expression 'brother', where there is no qualification attached to that expression, has been interpreted by the Courts to include 'half-brother' or 'consanguine brother' or 'uterine-brother'. It is not necessary to refer to those cases because in none of them, a provision like section 15 of the Punjab Pre-emption Act fell for determination. The expression 'brother' has no doubt been interpreted in a variety of ways, that is, sometimes to include step-brothers or uterine-brothers. But that does not

mean that it necessarily includes step-brothers and uterine-brothers. Its meaning has to be ascertained in the context of the legislative provisions in which it occurs.

The argument, that the right of pre-emption under section 15 is really conferred on the member of the family and its object is to protect the land going out of the family fold, cannot be accepted. Under section 15, right of pre-emption is also enjoyed by the tenants who have nothing to do with the family. Daughters, after marriage, cease to be members of the family; yet under section 15, there is no distinction drawn so far as the married daughters are concerned. They have the right to pre-empt the sale by the father. Not only that, their children have also been given the right to pre-empt. The phrase 'family' has different shades of meaning, as would be evident from Stroud's Judicial Dictionary, pages 1066 to 1069. But the primary legal meaning of 'family' is 'children'. In some cases, it has been held that grand-children are not included in the phrase 'family'. The phrase 'family' is really controlled by the context in which it is used, it being a word of a most loose and flexible description; and would also include all types of relations. Thus in its primary meaning, a certain number of relations mentioned in section 15 cannot be considered as 'members of the family'. But in the broader sense, the family may include all possible relations. If family is considered to include all possible relations, there is no reason why only a few of those relations are picked up for the purposes of pre-emption and the others have been left out. In this view of the matter, giving the expression 'family' either of the two meanings, the argument, that section 15 treats the family as a unit for the purposes of pre-emption and the right of pre-emption is conferred on the family members alone and, therefore, a step-brother is included in the expression 'brother', cannot be accepted.

As already observed, the matter being of first impression, we are inclined to take the view that the word 'brother' in section 15 (1) (a) SECONDLY denotes a 'real brother' and not a 'step-brother' or a 'uterine-brother'.

That being so, we allow the appeal, set aside the judgment of the lower appellate Court and dismiss the plaintiff's suit. But in the circumstances of the case, the parties are left to bear their own costs throughout.

R. S. NARULA, J.—I agree.

K.S.K.