1964

March 13

GULRAJ SINGH

v.

MOTA SINGH

[P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.]

Decree—Pre-emption suit by illegitimate son and daughter of a female vendor—Whether the words "son or daughter of such female" used in Punjab Pre-emption Act, as amended, include an illegitimate son or daughter of such female—Punjab Pre-emption Act, 1913 (1 *of* 1913), *as amended by Act X of* 1960, *s.* 15(2)(*b*).

The appellants—illegitimate son and daughter of one Sardarni—filed a suit to pre-empt the sale made by her of agricultural land to the respondents. Both the trial court as well as the District Court on appeal granted to the appellants a decree for pre-emption, though to a limited extent. On second appeal by the respondents, the High Court directed the dismissal of the suit on the ground that the appellants were not comprehended within the class of persons who were entitled to pre-emption under s. 15(2)(b) of the Punjab Pre-emption Act as amended by Act X of 1960. On appeal by Special Leave the appellants contended that the provision in s. 15 of the Pre-emption Act must be read in conjunction with the Hindu Succession Act, 1956 which made provision for the devolution of property belonging to a female owner and that as under the latter enactment illegitimate children of the Hindu female were entitled to succeed to her property, it must be held that when the Punjab legislature used in 1960 the expression 'son or daughter' it meant a son or a daughter who would be entitled to succeed as an heir of a Hindu female.

Held: The normal rule of construction of the words "child" "son" or "daughter" in a statute would include only legitimate children. 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 s. 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 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 on behalf of the appellant that where the son or daughter of a male vendor is referred to, as in s. 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 s. 15(2)(a)(i) to the brother's son of such vendor. It could hardly be argued that a brother's illegitimate son is comprehended within those words. Therefore, it must be held that when s. 15(2)(b)(i) uses the words "son or daughter" it meant only a legitimate son and legitimate daughter of the female vendor.

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v.
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CIVIL APPELLATE JURISDICTION—Civil Appeal No. 467 of 1963.

Appeal by special leave from the judgment and decree dated February 1961 of the Punjab High Court in Regular Second Appeal No. 837 of 1960.

Bishan Narain and *Naunit Lal*, for the appellants.

Yashpal Gandhi and *S. D. Goswami*, for the respondents.

March 13, 1964. The judgment of the Court was delivered by

Ayyangar, J.

AYYANGAR, J.—Do the words "son or daughter of such female" occurring in s. 15(2)(b) of the Punjab Pre-emption Act, 1913 as amended by Act X of 1960 include an illegitimate son or illegitimate daughter of such female is the only question that arises in this appeal by special leave.

The appellants are the illegitimate son and daughter of one Sardarni Prem Prakash Kaur. By a registered deed of sale dated December 1, 1956 the said lady sold 18 bighas, 1 biswas and 5½ biswansis of agricultural land for a sum of Rs. 10,000/- to the respondents. The appellants filed a suit to pre-empt this sale. There was some dispute about the consideration actually paid but we are not now concerned with it. Both the trial court as well as the District Court on appeal granted to the appellants a decree for pre-emption, though to a limited extent. The respondents filed a second appeal to the High Court and the learned Judges, by the judgment now under appeal, directed the dismissal of the suit on the ground that the appellants were not comprehended within the class of persons who were entitled to pre-emption under s. 15(2)(b) of the Punjab Pre-emption Act as it now stands under the amendment effected by Act X of 1960. It is from this judgment that, by special leave, the present appeal has been brought.

Mr. Bishan Narain—learned Counsel for the appellants submitted to us that the provision in s. 15 of the Pre-emption Act must be read in conjunction with the Hindu Succession Act, 1956 which made provision for the devolution of property belonging to a female owner and that as under the latter enactment illegitimate children of a Hindu female were entitled to succeed to her property, it must be held that when the Punjab legislature used in 1960 the expression 'son or daughter' it meant a son or a daughter who would be entitled to succeed as an heir of a Hindu female. We are unable to accept this submission of learned Counsel. Section 15 whose construction calls for consideration reads as follows:

> "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) 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;

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:—

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

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 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;

(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 son's sons or daughter's sons of the vendors;

Secondly, in the brothers or brother's sons of the vendors;

Thirdly, in the father's brothers 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

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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 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 or daughter of such female;

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

The submission of learned Counsel virtually amounts to this that in order to construe the words used in s. 15 one should travel beyond the enactment and ascertain the class of persons who are entitled under the Hindu Succession Act to succeed as heirs of the intestate vendor. 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 s. 15(2)(a) of the Pre-emption Act. Her heirs under the Hindu Succession Act would be, if the property was inherited from her father, her son or daughter (including the children of any predeceased 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 s. 15(1) and (2)). The devolution provided by s. 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 religion, only her legitimate issue would be denoted by these words. As it is common ground that the statutory right of pre-emption conferred by s. 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.

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 s. 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 s. 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 s. 15(2)(a)(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 s. 15(2)(b)(i) uses the words "son or daughter" it meant only a legitimate son and a legitimate daughter of the female vendor.

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.