

2026 LiveLaw (SC) 675

IN THE SUPREME COURT OF INDIA
SANJAY KAROL; J., NONGMEIKAPAM KOTISWAR SINGH; J.
Special Leave to Appeal (C) No(s). 29289/2025; July 14, 2026
MAHINDER & ORS. *versus* PURAN SINGH

Hindu Succession Act, 1956 – Section 22 – Applicability to Agricultural Land – Preferential Right of Co-heirs – Constitutional Validity and Legislative Competence of Parliament – Held The preferential right given to a Class-I Hindu heir under Section 22 of the Hindu Succession Act, 1956 (HSA) is fully applicable even if the immovable property in question is agricultural land - Key Legal Principles – i. Nature of the Right - The right of pre-emption under Section 22 of the HSA is, in its pith and substance, an incident of succession and not a regulation of transfer *simpliciter* - It is intrinsically and inseparably linked to succession among Class-I heirs, acting as a qualification placed by Parliament so that family properties are retained within the family - The right lives and dies with the succession relationship and cannot be invoked by strangers, tenants, or distant blood relations; ii. Legislative Competence of Parliament - Parliament possesses complete legislative competence to enact Section 22 of the HSA regarding agricultural land under Entry 5 of List III (Concurrent List) of the Seventh Schedule to the Constitution - Unlike Item 7 of the Concurrent List under the Government of India Act, 1935 (which expressly excluded agricultural land), the framers of the Constitution deliberately omitted the exclusionary clause from Entry 5 of List III - Entry 5 is unqualified and covers intestacy and succession to all forms of property; iii. Doctrine of Pith and Substance - Applying the doctrine of pith and substance, the dominant character of Section 22 falls squarely within Entry 5 of List III (Succession) - It does not regulate the formalities or conditions of a transfer under Entry 6 of List III ("transfer of property other than agricultural land") or Entry 18 of List II - The mere fact that a proposed transfer triggers the right does not alter its fundamental character as a succession provision; iv. Distinction between *Atam Prakash* and *Babu Ram* - There is no conflict between the rulings in *Atam Prakash v. State of Haryana* (1986) and *Babu Ram v. Santokh Singh* (2019); *Atam Prakash* struck down Section 15 of the Punjab Pre-emption Act, 1913, because the wide array of entitled relatives (including tenants and co-sharers without succession ties) violated Article 14 by lacking a reasonable classification based on agnatic succession - Section 22 of the HSA restricts its scope exclusively to Class-I co-heirs inheriting from a common intestate - *Atam Prakash* dealt with consanguinity-based pre-emption under a different statutory context and did not strike down the concept of pre-emption itself, nor did it consider Section 22 of HSA – held that where a petition under Section 22 of the HSA is instituted *prior* to the actual execution of a sale deed to a third party, it perfectly satisfies the requirement that the right of pre-emption applies to an alienation that is "about to happen" - There is no subsequent legal requirement for the plaintiff to challenge the completed sale deed separately, as the transaction was carried out in the teeth of an active, pending enforcement of a preferential right. [Relied on *Babu Ram v. Santokh Singh*, (2019) 14 SCC 162; *Vaijanath v. Guramma*, (1999) 1 SCC 292; *Bishan Singh v. Khazan Singh*, 1958 SCC OnLine SC 88; *Paras Paras* 7-13]

[Arising out of impugned final judgment and order dated 08-08-2025 in RSA No. 2717/2025 passed by the High Court of Punjab & Haryana at Chandigarh]

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J U D G M E N T

SANJAY KAROL, J.

1. Leave Granted.

2. The short but significant question in this case is whether Section 22 of the Hindu Succession Act, 1956¹ would apply to agricultural land or not. This arises from an appeal preferred by the original defendants who are aggrieved by the First Appellate Court², setting aside the finding of the Civil Court³ which dismissed the suit by the plaintiff (respondent herein) and such finding being confirmed by the High Court⁴.

3. The facts lie in a narrow compass. The plaintiff and the defendants, are siblings, being children of one Nanhu, had inherited the agricultural land as Class-I legal heirs. Defendant nos.1 to 7, either directly or through their legal heirs, sold their respective shares collectively to a third party *vide* sale deed dated 28th December 2011 to one Mrs. Poonam, who was plaintiff no.9 before the Civil Court. The plaintiff filed a suit on 8th December 2011, being Petition No.35 of 2013, before the Civil Court, challenging the aforesaid alienation by virtue of Section 22 of HSA. The Civil Court by an order dated 7th March 2019 dismissed the same by placing reliance on the Constitution Bench judgment of this Court in **Atam Prakash v. State of Haryana**⁵, which held Section 15 of the Punjab Preemption Act 1913⁶ as unconstitutional. It was observed that Section 22 of the HSA was *pari materia* to the aforesaid Section and, as such the same also has to be struck down. The First Appellate Court took a different view. It was held that in **Babu Ram v. Santokh Singh**⁷, this Court discussed the right of pre-emption under the HSA and held it to be applicable to agricultural land. It was further observed that since HSA was a post-independence enactment and the Court in **Atam Prakash** was not examining any conflict between Section 15 of the Punjab Act and Section 22 of HSA, the holding in the latter would not govern the question. This conclusion is buttressed with reference to certain judgments of the High Court itself. The High Court, in the second appeal, observed that no substantial question arose for consideration and as such dismissed the same.

SUBMISSIONS OF THE PARTIES

4. We have heard learned counsel for the parties. The case of the parties is as follows:

4.1 The original defendants contend that the suit under Section 22 HSA was not maintainable at the first instance since – (i) all the relevant persons who were covered within its sweep, were not made parties thereto; (ii) the sale deed by which the property in question stood transferred to a third party was never challenged; (iii) once the sale in question stood completed, the only course of action available to the plaintiff was to file a

¹ HSA

² District Judge, Karnal in Civil Appeal no.213 of 2019

³ Additional Civil Judge (Senior Division), Karnal

⁴ RSA 2717 of 2025

⁵ (1986) 2 SCC 249

⁶ Punjab Act

⁷ (2019) 14 SCC 162

regular civil suit; **(v)**there lies no right of appeal against an adjudication under Section 22; and**(vi)**the judgment in **Babu Ram** is not good law for having missed out Entry 6 of List III and Entries 14 and 18 of List II.

4.2 *Per contra*, the plaintiff submits *inter-alia* that – **(i)**the issue of nonjoinder of parties was not raised before the High Court and it is settled law that the same was to be raised at the earliest; **(ii)**the present case is not one of partial pre-emption and the prayer of the plaintiff before the Civil Court was with regard to the entire land; **(iii)**since the petition under Section 22 HSA was filed prior in point of time to the sale deed which was dated 28th December 2011, there was no requirement to challenge the sale deed; **(iv)**a petition to enforce Section 22, HSA rights is maintainable even after transfer of property is complete and the same is the consistent view of the High Courts; **(v)****Atam Prakash** has no application in this case and **Babu Ram** is the applicable law since it has settled the question of law, conclusively; and **(vi)**Entry 5 list III of the VII schedule read with Article 254 of the Constitution gave complete autonomy to the Central Legislature to legislate about succession and devolution of agricultural lands. Reliance is placed on **West U.P. Sugar Mills Assn. v. State of U.P.**⁸, and **M. Karunanidhi v. Union of India**⁹,.

4.3 There is no conflict between **Atam Prakash** and **Babu Ram**. Section 22 HAS, has been enacted under Entry 5 List III and the same is a neutral, succession-based provision conferring a limited preferential right amongst co-heirs. This is the submission of Mr. Indrajit Mahanty, learned senior counsel assisting the Court as *amicus curiae*.

4.4 In this backdrop, we consider the question noted in Para 2. We may take note of the following facets governing the right of pre-emption:

- (a) Originally, pre-emption was an import of Mohammedan law, particularly in places such as Bihar and Gujarat, which later came to be adopted into customs through the reasons of convenience, in these areas. (**Audh Behari Singh v. Gajadhar Jaipuria**¹⁰)
- (b) Its origin lies in custom and was subsequently codified; the objective is to keep out strangers from coming into the property otherwise held by class I heirs. (**Shyam Sunder v. Ram Kumar**¹¹)
- (c) It is a right of substitution exercisable by a person who has a superior right, not a right of re-purchase; (**Gobind Dayal v. Inayatullah**¹²)
- (d) It is a legal servitude that goes alongside the land inherited by the parties. It imposes a right to restrict another person's use of the property (**Audh Behari Singh v. Gajadhar Jaipuria**¹³)
- (e) It is *jus ad rem alienum acquirendum* and not a *jus in re aliena*- "*A right to the offer of a thing about to be sold is not identical with a right to the thing itself, and that is the primary right of the pre-emptor.*" (**Plowden, J.**¹⁴)
- (f) The right of pre-emption is a weak right, since acquiescence by a positive act to a sale amount to giving up the right of pre-emption or signals forfeiture thereof.

⁸ (2020) 9 SCC 548

⁹ (1979) 3 SCC 431

¹⁰ (1954) 1 SCC 836 (Constitution Bench)

¹¹ (2001) 8 SCC 24 (Constitution Bench)

¹² [(1885) ILR 7 All 775, 809]]

¹³ (1954) 1 SCC 836 (Constitution Bench)

¹⁴ 136 P.R. 1894, at page 511)

(Radhakishan Laxminarayan Toshniwal v. Shridhar Ramchandra Alshi¹⁵, Jagad Bandhu Chatterjee v. Nilima Rani¹⁶)

(g) Somewhere it is recognised as an outdated right, but till and such time that it occupies space in the statute book, it has to be enforced.

5. Relevant provision, Section 22, HSA is reproduced below:

“22. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in Class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in Class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section, “Court” means the court within the limits of whose jurisdiction the immovable property is situate or the business

is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

(Emphasis supplied)

5.1 A bare perusal of the above-mentioned Section reveals its following ingredients:

- (a) This right exists between co-heirs of an intestate succession;
- (b) It gives a right to one heir, preferential in nature, over the property of other co-heirs in case of alienation to a third party;
- (c) The Section itself provides for the intervention of the Court to enable the co-heir holding the preferential right to seek enforcement thereof, not through a specially laid out procedure, but only through the general procedure for enforcement of a civil right;
- (d) The right of pre-emption is to be asserted at a point in time prior to completion of a transaction, by which it is alleged that such a right would be offended;

5.2 A four-judge Bench in **Bishan Singh v. Khazan Singh¹⁷** had also summarised principles for the application of the right of pre-emption:

“To summarize : (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak

¹⁵ 1960 SCC OnLine SC 308 (Constitution Bench)

¹⁶ (1969) 3 SCC 445 (Three-Judge Bench)

¹⁷ 1958 SCC OnLine SC 88 (Four-Judge Bench)

right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.”

ATAM PRAKASH vs. BABU RAM- CONFLICT?

6. Now let us discuss the two judgments **Atam Prakash** and **Babu Ram**:

6.1 **Atam Prakash** - In this case, a Constitution Bench was considering the validity of Section 15 of the Punjab Act, insofar as its application to the State of Haryana is concerned. The Section 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 sons' sons or daughters' sons of the vendor or vendors;

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

Thirdly, in the father's brother 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 sons' sons or daughters' 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 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 husband of the female; Secondly, in the husband's brother or husband's brother's son of such female.”

After discussing **Bhau Ram v. Bajj Nath Singh**¹⁸ wherein the right of pre-emption was held to be a reasonable restriction to a right conferred by Article 19(1)(f) of the Constitution; it moved to the ground of challenge raised before it i.e., under Article 14. The list of persons given under Section 15 was held to detract from the theory of agnatic right of succession. It was concluded that there was no justification for the classification contained therein. The relevant discussion is, Para 12 which is as under:

“12. A scrutiny of the list of persons in whose favour the right of pre-emption is vested under Section 15 reveals certain glaring facts which appear to detract from the theory of preservation of the integrity of the family and the theory of agnatic right of succession. First we notice that neither the father nor the mother figures in the list though the father's brother does. The son's daughter and the daughter's daughter do not appear though the son's son and the daughter's son do. The sister and the sister's son are excluded though the brother and the brother's son are included. Thus relatives of the same degree are excluded either because they are women or because they are related through women. It is not as if women and those related through women are altogether excluded because the daughter and daughter's son are included. If the daughter is to be treated on a par with the son and the daughter's son is treated on a par with the son's son it does not appear logical why the father's son (brother) should be included and not the father's daughter (sister). These are but a few of the intrinsic contradictions that appear in the list of relatives mentioned in Section 15 as entitled to the right of pre-emption. It is understandable why a son's daughter, a daughter's daughter, a sister or a sister's son should have no right of pre-emption whereas a father's brother's son has that right. As Section 15 stands, if the sole owner of a property sells it to his own father, mother, sister, sister's son, daughter's daughter or son's daughter, the sale can be defeated by the vendor's father's brother's son claiming a right of pre-emption.”

Since the classification mentioned therein was deemed to have no justification, the pre-emption right as contained in Section 15 of the Punjab Act was held to be inconsistent with the constitutional scheme, along with observing that pre-emption based on consanguinity is a relic of the past. In this case there was no consideration of the right of preemption as contained in Section 22 of HSA.

6.2 In **Babu Ram**, this Court was confronted with the same question as has arisen in this appeal, i.e., the application of Section 22 HSA to agricultural land, and not the provisions of the Punjab Act. Section 22 with which we are concerned already stands extracted in Para 6 above. The Court noted divergent views of the High Courts and then, after discussing the earlier judgment in **Vaijanath v. Guramma**¹⁹, concluded as follows:

“24. We may consider the matter with the following three illustrations:

(a) Three persons, unrelated to each other, had jointly purchased an agricultural holding, whereafter one of them wished to dispose of his interest. The normal principle of preemption may apply in the matter and any of the other joint holders could pre-empt the sale in accordance with rights conferred in that behalf by appropriate State legislation. (b) If those three persons were real brothers or sisters and had jointly purchased an agricultural holding, investing their own funds, again like the above scenario, the right of pre-emption will have to be purely in accordance with the relevant provisions of the State legislation.

(c) But, if, the very same three persons in Illustration (b) had inherited an agricultural holding and one of them was desirous of disposing of his or her interest in the holding, the principles of Section 22 of the Act would step in.

The reason is clear. The source of title or interest of any of the heirs in the third illustration, is purely through the succession which is recognised in terms of the provisions of the Act. Since the

¹⁸ 1962 SCC OnLine SC 324 (Constitution Bench)

¹⁹ (1999) 1 SCC 292

right or interest itself is conferred by the provisions of the Act, the manner in which the said right can be exercised has also been specified in the very same legislation. Therefore, the content of preferential right cannot be disassociated in the present case from the principles of succession. They are both part of the same concept.

25. When Parliament thought of conferring the rights of succession in respect of various properties including agricultural holdings, it put a qualification on the right to transfer to an outsider and gave preferential rights to the other heirs with a designed object. Under the Shastric Law, the interest of a coparcener would devolve by principles of survivorship to which an exception was made by virtue of Section 6 of the Act. If the conditions stipulated in Section 6 were satisfied, the devolution of such interest of the deceased would not go by survivorship but in accordance with the provisions of the Act. Since the right itself in certain cases was created for the first time by the provisions of the Act, it was thought fit to put a qualification so that the properties belonging to the family would be held within the family, to the extent possible and no outsider would easily be planted in the family properties. In our view, it is with this objective that a preferential right was conferred upon the remaining heirs, in case any of the heirs was desirous of transferring his interest in the property that he received by way of succession under the Act.

26. We, therefore, conclude that the preferential right given to an heir of a Hindu under Section 22 of the Act is applicable even if the property in question is an agricultural land. ...

(Emphasis supplied)

OUR VIEW

7. Having considered the two judgments, we proceed to examine the contention of the parties regarding their applicability. It appears to us quite plainly that using ***Atam Prakash supra*** to say that the concept of pre-emption itself is unconstitutional would be a stretch of the observations made therein. The primary reason for holding Section 15 of the Punjab Act unconstitutional was that the list of persons mentioned therein did not conform to the theory of agnatic succession, and there was no justification for their inclusion. Reliance on the observations made further ahead, are reproduced as under:

“The right of pre-emption based on consanguinity is a relic of the feudal past. It is totally inconsistent with the constitutional scheme. It is inconsistent with modern ideas. The reasons which justified its recognition quarter of a century ago, namely, the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession are today irrelevant.”

To impute a finding that the concept of pre-emption itself has been held to be unconstitutional would be nothing but a wholly incorrect reading of the passage. It is quite clear that those observations are informed by the idea of consanguinity being the problem and not pre-emption. That apart, to use observations made in the specific context of a challenge to an Act, to also, in effect, strike down another provision of an otherwise unconnected legislation which was never in the zone of consideration in the judgment, would be too wide an application of the observations made therein. To put it differently, if the constitutional validity of Section 22 HSA was never put to challenge where does the occasion arise for any Court whatsoever, to say that the same cannot be enforced?

8. If duly enacted legislation could be so easily struck down by importing observations made elsewhere, we would invite a situation of judicially created anarchy, laying waste to cherished principles and also the well-established limited grounds on which an otherwise duly enacted legislation can be examined as being conformant to the Constitution or not.

9. On the aspects of the submission that the two provisions i.e., Section 15 of the Punjab Act and Section 22 of HAS being *pari materia*, reference can be made to

Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer,²⁰ wherein the principle was noticed in the following terms:

“12. ... See the following observations contained in *Principles of Statutory Interpretation* by G.P. Singh (8th Edn.), Syn. 4, at pp. 235 to 239:

“*Statutes in pari materia*

It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in *pari materia* i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including ‘other statutes in *pari materia*’. As stated by Lord Mansfield ‘where there are different statutes in *pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other’.

The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context; it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute.”

”

While it may be true that both the Sections do deal with the right of pre-emption, they are not *pari-materia*. Under the Punjab Act the right of pre-emption was granted to those in consanguinity whereas Section 22 HSA limits its application to only Class-I heirs. The scope is different. Even if *arguendo* we say that they were *pari-materia*, observations made in one context can be lifted, lock stock and barrel, to decide the fate of a provision which was not even in contemplation, would undoubtedly be stepping well beyond the contours of the principle which provides for the ability to use the earlier one, to shed light on the latter. Needless to say, shedding light does not permit deciding the validity of provisions themselves.

10. Moving to the next argument of the original defendants, which, in effect, is that **Babu Ram** postulates bad law. We find it difficult to accept this submission. The provisions of List II of the State List and List III of the Concurrent List are as follows:

“List II-State List

Entry

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

List III- Concurrent List

Entry

²⁰ (2004)1 SCC 755

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
6. Transfer of property other than agricultural land; registration of deeds and documents.”

(Emphasis supplied)

Regarding Entry 14 List II of the State List, the argument that is sought to be advanced is lost on us for the reason that the wording of the Entry is fairly clear. It pertains to agriculture as a profession and education and research therein. What application it has in the context of Section 22 HSA is anyone's guess. Entry 6 List III of the Concurrent List, in our view, meets a similar fate as Entry 14 List II.

11. For Entry 18, List II we may observe that while it does deal with '*transfer and alienation of agricultural land*' and the alienation of the property by defendant nos.1 to 7 is indeed an alienation to the third party, we find **Babu Ram** to have answered this scenario in Para 20 and 24. The illustration provided for in Para 24 particularly illustration (c) makes it clear that when the parties are siblings and have inherited the property, Section 22 HSA would apply by virtue of Entry 5 List III which provides that both the State and Centre shall have the legislative competence to make law regarding, among other issues mentioned therein, '*intestacy and succession*'. To be abundantly clear, it is also observed that nobody has put forth the case that any other law apart from HSA governs the disputed property.

12. In view of the aforesaid, we hold that the appellant's submission that the entries discussed above escaped the attention of the co-ordinate bench is misplaced and has to be rejected. No occasion arises for **Babu Ram supra** to be considered by a larger Bench.

13. Another submission may be dealt with here. The appellant contends that the sale deed was never challenged. It is a matter of record that the petition under Section 22 HSA was filed prior to the execution of the sale deed, particularly on 8th December 2011. In this manner, it conforms to the principle that the right of pre-emption applies to what is about to happen, not what has already happened. Once the matter was already pending in the file of the concerned Court, the plaintiff had taken the steps required by law. There is no reason for him to subsequently challenge the sale deed since the same was executed in the face of his assertion of the right available to him.

14. Consequent to the above discussion, the appeal is dismissed. The findings of the First Appellate Court and the High Court are affirmed. No costs.

Pending applications, if any, shall stand closed.

NONGMEIKAPAM KOTISWAR SINGH, J.

1. I have gone through the erudite judgment rendered by esteemed Brother, Sanjay Karol, J., with which I am in full agreement. However, I would like to supplement the same in respect of the issue of the validity of Section 22 of the Hindu Succession Act, 1956 (for short "*HSA*") and the competence of the Parliament to enact the same.

2. As regards the submission of the Appellants that Parliament lacked legislative competence to enact Section 22 of the HSA insofar as it relates to agricultural land, by reason of Entry 6 of List III and Entries 14 and 18 of List II, in our considered view, this submission proceeds on a fundamental mischaracterisation of the nature of Section 22 of HSA and must be rejected.

3. The right of pre-emption as conferred under Section 22 of the HSA is, in its pith and substance, an incident of succession and nothing more. It does not exist in isolation but is

intrinsically associated with succession amongst Hindus. It does not apply between co-owners who have jointly purchased property, or between persons who share no succession relationship. It arises exclusively amongst the parties who are co-heirs, who have inherited property under the Act. It does not operate between strangers. The moment the succession relationship, as recognised and created by the HSA, is removed from the transaction, the right under Section 22 simply ceases to exist. Though the exercise of the aforesaid right of pre-emption will involve transfer in the land, it is intrinsically and inseparably linked to succession. The right is, therefore, not independent of succession. Parliament, in enacting the HSA, conferred succession rights upon Class I heirs among others, in respect of all properties of the intestate, including agricultural land, and simultaneously placed a qualification upon those rights, that any heir wishing to transfer his inherited interest must first offer it to his co-heirs. The preferential right and the succession right are two limbs of the same legislative design dealing with succession amongst the Hindus under the Act. They cannot be read apart and must be read together. This cannot be termed as transfer simpliciter, but essentially arising out of succession, that too confined to Class I heirs only.

4. This is precisely what distinguishes Section 22 of the HSA from Section 15 of the Punjab Pre-emption Act, 1913. Section 15 of the Punjab Act conferred the right of pre-emption upon a wide circle of persons connected not only by consanguinity, which includes brothers, cousins, father's brothers and their sons, but also individuals who are not part of the family, such as, tenants and co-owners, irrespective of whether they had any succession relationship with the vendor. It was, in that sense, a free-standing pre-emption right rooted not only in blood relationship, but also to others, having no necessary connection with succession or inheritance. Section 22 of the HSA, by contrast, is confined strictly and exclusively to succession in respect of Class I heirs under the Schedule to the HSA, i.e., persons who have inherited together from the same intestate. No tenant, no distant blood relation, no co-owner can invoke Section 22 as in the case of the Punjab Act. It is a right that lives and dies with the succession relationship. The two provisions are, therefore, fundamentally different in character and scope, and thus, what was held in respect of Section 15 of the Punjab Act in *Atam Prakash* can have no bearing on interpreting Section 22 of the HSA.

5. Turning then to the constitutional entries, viz., Entry 5 of List III, the Concurrent List, covers "*marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition....*" Critically, there is no exclusion of agricultural land from Entry 5. This is not an oversight. Under the Government of India Act, 1935, the corresponding entry, i.e., Item 7 of the Concurrent List, expressly read "*wills, intestacy and succession, save as regards agricultural land.*" Thus, agricultural land was excluded. When the Constitution was framed, that exclusionary clause was deliberately omitted. Entry 5 of List III, as it stands today, is unqualified and unrestricted; it covers succession to all property and does not exclude agricultural land. Parliament's competence under Entry 5 of List III to legislate on intestacy and succession, insofar as it relates to agricultural land, is therefore complete and beyond doubt, as this Court recognised in *Vaijanath v. Guramma*, (1999) 1 SCC 292.

6. Entry 6 of List III, on the other hand, covers "*transfer of property other than agricultural land.*" As already discussed above, Section 22 of the HSA is not, in its true and dominant character, a provision regulating the transfer of property, including agricultural land. It does not prescribe the formalities of transfer. It does not regulate the mode or conditions of a transfer transaction. What it does is to place a succession-based qualification upon a co-heir's right to exit — a qualification that is an integral part of the

succession scheme created by the HSA itself. The fact that Section 22 is triggered by a proposed transfer does not convert it into a transfer provision of property. The trigger for the exercise of a right is not the same as the nature and source of that right. Applying the well-settled doctrine of pith and substance, the true character of Section 22 of the HSA is that of a succession provision falling squarely within Entry 5 of List III, and any incidental connection it may have with the transfer of agricultural land does not displace its dominant character or affect the Parliament's competence to enact it.

7. Furthermore, Entry 5 of List III being part of the Concurrent List, both the Parliament and State Legislature have competence to legislate upon intestacy and succession. In the present case, no State legislation governing the subject of succession to the disputed property has been brought to our notice. Indeed, it has not been the case of any party that any law other than the HSA governs the succession to the disputed property. In the absence of any State legislation on the subject of intestacy and succession and consequently, in the absence of any conflict between a State law and the Central Act, the question of repugnancy under Article 254 of the Constitution does not arise at all for consideration. The HSA, as the only legislation operating in this field, will govern the matters relating to succession amongst the Hindus covered under the HSA. The submission that Parliament lacked competence to enact Section 22 of the HSA in respect of agricultural land is, therefore, not only incorrect in principle but also unsupported by any factual foundation in the present case. The question of noncompetence of the Parliament, thus, does not arise.

In view of the above, the challenge to the validity of Section 22 of the Hindu Succession Act must fail.

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