

Bhagwan Das (Dead) by Lrs. and Others

Vs

Chet Ram

Civil Appeal No. 192 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

16.10.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Punjab and Haryana High Court.
2. In December, 1966, Labhu Ram who was the owner of the land in dispute sold the same in two lots to Bhagwan Das (deceased) now represented by his legal representatives and others. The lands mentioned in clauses (a) and (b) of the title of the plaint in the suit out of which the present appeal has arisen were sold for Rs. 20,000/- and Rs. 1,000/- respectively. The respondent Chet Ram was a tenant-at-will of the lands covered by the sales. Bhagwan Das and others filed a suit against Chet Ram in the Revenue Court for ejection under Section 14-A(i), read with Section 9(1) of the Punjab Security of Land Tenures Act, 1953, which was decreed on July 31, 1967. On August 31, 1968, Bhagwan Das and others entered into possession of the aforesaid lands after evicting Chet Ram by virtue of the decree for eviction obtained against him.
3. After his evidence Chet Ram the present respondent filed a suit for possession of the lands which were the subject-matter of sale by pre-emption under Section 15(1)(a) Fourthly of the Punjab Pre-emption Act, 1913 (Punjab Act I of 1913), hereinafter called the 'Act'. By that provision the right of pre-emption has been declared to vest in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof. It was admitted before the Trial Court that the respondent was a tenant before July 31, 1967, and that before the institution of the pre-emption suit his tenancy had been determined. The Trial Court dismissed the suit. On appeal the learned Additional District Judge, in view of certain decisions of the Punjab High Court, allowed the appeal and decreed the suit. The judgment was upheld in second appeal by the High Court.
4. The sole question for determination is whether a person who has ceased to hold the land sold as a tenant can succeed in a suit for possession by pre-emption under Section 15(1)(a) Fourthly. The Punjab and Haryana High Court in *Kashmiri Lal and Others v. Chuhar Ram* (Letters Patent Appeal No. 71 of 1965, decided on November 19, 1969 : (1970) 72 PLR 325), had expressed the view that in a suit based on a right under the aforesaid clause the plaintiff was required to prove only that he was a tenant under the vendors on the date of the sale and not at any time thereafter as he could not remain a tenant under the vendors after they had sold the property. In certain other judgments delivered by learned single Judge of the Punjab High Court it had been recognised that the rule was firmly established in the law relating to pre-emption that a pre-emptor in order to succeed must have a right to pre-empt not only at the time of sale but also at the institution of the suit and the passing of the decree by the Trial Court. In other words, the pre-emptor's right should subsist up to the date

of the passing of the decree and if he lost that right at any time before the decree was granted his suit must fail. These learned Judges of the High Court, however, considered that the language of Section 15(1)(a) Fourthly showed that the Legislature intended to depart from the well-settled principle mentioned before and all that has to be seen is whether the plaintiff was a tenant of the vendor on the date of sale (see *Sohan Singh v. Udho Ram and Others* (1967 PLR 414)).

5. In *Hans Nath and Others v. Ragho Prasad Singh* (59 IA 138), it was laid down by the Privy Council that the decisive date as regards the right of a pre-emptor to pre-empt the sale was the date of the decree. A full bench of the Lahore High Court in *Thakur Madho Singh and Another v. Lt. James R. R. Skinner and Another* (ILR (1942) 23 Lah 155), while considering the relevant provisions of the Act applied this rule to a case where a vendee had improved his status during the pendency of the pre-emption suit and held that a vendee could defeat the right of a pre-emptor by improving his status at any time before the passing of the decree. The right of pre-emption is a weak one and is liable to be defeated by all legitimate means at the instance of a vendee against whose contract an inroad is being attempted by the pre-emptor. The vendee is on the defensive and is entitled to arm himself with a shield in order to protect his right. The pre-emptor is an aggressor and as he wishes to dislocate the vendee he must show that the superior right of pre-emption which he had at the date of the sale continued to remain superior at all relevant times : vide *Faiz Mohammad v. Fajar Ali Khan and Another* (ILR (1944) 25 Lah 473), (Full Bench). In the latest full bench decision of the Punjab High Court in *Ramji Lal and Another v. The State of Punjab and Others* ((1966) 68 PLR 345), the rule that a pre-emptor must maintain his qualification to pre-empt up to the date of the decree was recognised as well-settled.

6. In the present of the above principle which is firmly entrenched in the law of pre-emption it is difficult to conceive that the Legislature intended to depart from it in Section 15(1)(a) Fourthly nor has any reason been suggested for doing so. The language employed is not very happy but the clear requirement is that the tenant must hold the land as such. If his tenancy has come to an end and he has been dispossessed it can never be said that he is holding the land under tenancy of any one. The Legislature can hardly be attributed the intention of giving the right to a tenant, who has been dispossessed and whose tenancy has been determined either before or during the pendency of the suit, to obtain a decree for possession by pre-emption. This is particularly so as the statutory right of pre-emption is one which attaches to the land and is not a mere personal right. There could be no basis for the Legislature giving an indefeasible right to a person who happens to be in possession of the land sold as a tenant of the vendor. His right is neither better nor worse than any other person who has been conferred that right by the provisions of Section 15 of the Act. For instance, a co-sharer has been given a right to pre-empt the sale of a share out of joint land by clause (b) Fourthly of Section 15(1). If a co-sharer must retain his right up to the date of the decree, which he must, (see *Surjit Singh v. Gurnan Singh, etc.*)(1964 PLR 1063), there is no intelligible ground for treating a tenant differently. The tenant must show his right at all material times before he can succeed in a suit for pre-emption. In other words his tenancy must remain intact and he must hold the land in his capacity as a tenant till the date of the decree.

7. It must be remembered that sale alone does not and cannot divest the tenant of his right to hold the land of which he is in possession by virtue of his tenancy under the vendor. But if his tenancy is determined by a decree for eviction he loses his status of a tenant. He then does not satisfy the first requirement of Section 15(1)(a) Fourthly, that he is a tenant who holds the land. In that situation he cannot succeed in a pre-emption suit if the decree for eviction has been passed after the sale but before the institution of the suit or during its pendency and before the date of the decree. This would be so by applying the well-established rule which, as stated earlier, has become a part of the law

relating to pre-emption.

8. In the present case not only a decree for eviction was passed against the respondent but he was also actually dispossessed from the land in his tenancy pursuant to the decree before he filed the pre-emption suit. We are altogether unable to see how he could be granted a decree in such a suit.

9. An attempt was made by means of C.M.P. No. 4634 of 1970 on behalf of the respondents to reopen the question of the area in respect of which the decree for eviction had been passed on July 31, 1967. It was maintained that it related only to certain Khasra Numbers which were covered by the first sale shown as clause (a) in the heading of the plaint and that there was no order relating to eviction from the land covered by the second sale mentioned in clause (b) therein. This question was never raised in the Courts below and as it involves an investigation into matters of fact it was not possible to allow the same to be reopened at this stage.

10. The appeal is allowed and the suit of the respondent is dismissed. In view of the nature of the points involved the parties are left to bear their own costs in this Court.

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