

PUNJAB AND HARYANA HIGH COURT

Lokha Singh

Vs

Surmukh Singh

(Kapur, J.)

29.11.1950

JUDGMENT

Kapur, J.

1. This judgment will dispose of two appeals, R. S. A. No. 693 of 1948 and R. S. A : No: 728 (?) of 1948.

2. Surmukh Singh purchased the land in dispute on the 30th of March 1946, for a sum of Rs. 20,000/-. Ishar Singh defendant No. 2 brought a suit for pre-emption on the 2nd of January, 1947, and obtained a consent decree on the 6th of January 1947. Lokha Singh and Phumman Singh, on the 24th of April, 1947 brought a suit to pre-empt the sale on the allegation that they were co-sharers in the 'khata' in the land sold and their right to pre-empt was superior to that of the vendee and Isher Singh, the decree-holder. Several issues were framed and the trial Court held that the plaintiffs were not co-sharers but were merely owners in the estate and had an equal right with Ishar Singh, but because Ishar Singh had already obtained a decree in his favour the plaintiffs were not entitled to a share in the land under Section 17 of the Punjab Preemption Act and he therefore dismissed the suit. On appeal Mr. Gurdial Singh, Additional District Judge of Ferozepore, held that under Section 17 of the Punjab Pre-emption Act both parties were pre-emptors and had a right to share equally under Clause (e) of Section 17

3. The plaintiffs have come up in appeal and their complaint is that the claim should have been decreed in proportion to the lands held by them and the defendants have come up in appeal and their claim is that as they had already obtained the land by pre-emption the plaintiffs have no right of sharing in the land.

4. Section 17 says –

"Where several pre-emptors are found by the Court to be equally entitled to the right of the pre-emption the said right shall be exercised."

5. In this particular case at the time when the present plaintiffs brought their suit Ishar Singh, who had an equal right with the present plaintiffs, had already obtained, by a decree of the Court, the whole of the land in dispute. The question is, can it be said that the parties have equal rights now? Reliance is placed by the plaintiffs on a judgment of the Allahabad High Court, '*KUNDAN LAL v. AMAR SINGH*'¹, where in somewhat similar circumstances it was held that under a 13 of the Agra Pre-emption Act, when two or more persons claim pre-emption and are equally entitled to property it shall be equally divided between them and it matters little who comes to Court first provided they all come within the period of limitation and Section 20 of that Act does not apply to the case where one rival pre-emptor has obtained a decree for pre-emption first.

6. In reply Ishar Singh's learned Counsel has relied on a Pull Bench Judgment of the Lahore High Court, '*MUL CHAND v. GANGA JAL*'², Where to the majority judgment, it was held that the word 'pre-emptor' in Section 17 could not be taken to include a person who had already purchased property out of Court in the exercise of his right of pre-emption. The learned Judge observed at p. 274.

"No authority has been cited in support of this Interpretation and it seems to me to be opposed to the ordinary meaning of the word as understood generally or as used in the Act, as well as to the context. The right of pre-emption means the right to acquire property in preference (vide Section 4 of the Punjab Pre-emption Act), and the word 'pre-emptor' is, I believe, ordinarily understood to mean a person who seeks to acquire property in this manner. A person who has exercised the right is no longer described as a 'pre-emptor' but a 'vendee'. That the term 'pre-emptor' has been used in the above sense in the Punjab Pre-emption Act, 1913, will also appear from the language of Sections 11, 19, 25 and 26 in which the word occurs. The suggested interpretation, moreover, seems to me to be clearly incompatible with the context, for the opening clause of Section 17 presupposes as already pointed out (1) that the right of pre-emption has yet to be exercised and (2) that the persons claiming the right are found by a Court to be equally entitled to exercise it. It would thus appear that the word 'pre-emptor' is used to Section 17, to the sense of a person seeking to enforce his right of pre-emption through a Court."

7. I am in respectful agreement with the observations of the learned Judge. In my opinion, Section 17 applies to those persons who are proposing to exercise the right of pre-emption and have not yet exercised it and cannot apply to a person who has already exercised the right. Ishar Singh, in the present case, has already obtained a decree and therefore the present plaintiffs could not share in the property which he had obtained by means of that decree.

8. In the result, the appeal of Ishar Singh must succeed and is therefore, allowed, but the appeal of Lokha Singh and Phumman Singh is dismissed. The successful party will have his costs-in

both the appeals.

Cases Referred.

1AIR 1927 All 664
211 Lah 258