

## PUNJAB AND HARYANA HIGH COURT

Ram Singh

Vs

Gainda Ram

(Kapur, J.)

12.11.1952

### JUDGMENT

#### **Kapur, J.**

1. This Second Appeal is brought by the defendants against a judgment and decree of Mr Sansar Chand Bhandari, District Judge, Karnal, dated 12-7-1952 affirming the decree of the trial Court decreeing the plaintiffs' suit.

2. The facts of this case are rather complicated and may be staged at some length, Chaman Lal sold 39 bighas 14 1/2 biswas of land on 5-8-1944 to Asa Ram, Paras Ram and Dalip Singh for a sum of Rs. 10,000/-. Chaman Lal's sister's son Sham Sarup brought a suit for preemption which was decreed on 8-11-1944, and on 18th November, he sold his rights to Gainda Ram and Ladli Parshad, the present plaintiffs, for a sum of Rs. 15,000/- by a document, Ex. P-1. The sale was of the land, that is, 39 bighas 14 1/2 biswas, with all rights appurtenant thereto and of the rights which Sham Sarup had in the pre-emption decree. He stated in the sale deed "I transfer all rights that I possess under the decree" and it was also stated in the sale deed that the possession, which Sham Sarup had, had been delivered and actual physical possession might be obtained by execution. Prior to this sale on 8-12-1944, Sham Sarup had deposited the amount mentioned in the decree, that is, Rs. 10,000/-, which was withdrawn by the then vendees Asa Ram and others.

3. On 5-3-1945, Gainda Ram and Ladli Parshad applied for execution of the decree, which is shown by Ex. D-4, but this application was dismissed on the ground that the pre-emption decree was a personal decree and could not be transferred. Reliance was there placed on -- 'Mehr Khan v. Ghulam Rasul', AIR 1922 Lah 300 (A), where it was held that a decree for pre-emption is not capable of transfer, so as to enable the transferee to obtain possession of the pre-empted property in execution.

4. On 15-6-1945, Sham Sarup took out execution, and warrant for possession was issued on 16th June. On 24th June, the bailiff made a report, Ex. P-4, that actual physical possession of a part

and symbolical possession of the rest had been given. On 13-7-1945, the Court issued an order. Ex, D-9, to the judgment-debtors, to show cause why actual physical possession of the rest should not be given, and the judgment-debtors showed cause. On 10-8-1945, they filed objections in which it was admitted that such possession had been taken, and compensation was asked for on account of the crop which was standing and for manure and also it was stated that physical possession of the rest could not be taken because judgment-debtors' crop was standing. Sham Sarup on 13-10-1945, made a statement "for the present the file be consigned to the Record Room" and the order of the Court was "according to the statement of the decree-holder dismissed as unsatisfied."

5 On 14-2-1949, Sham Sarup took out another execution. Warrant was issued on 17-2-1949, but again it was dismissed as unsatisfied on 12-7-1952.

6. Another litigation was started on 31-7-1945. Chhoto wife of Chaman Lal brought a suit for pre-emption in regard to the sale by her husband which was decreed on 15-7-1946 and on 18th August, she took symbolical possession by Asa Ram and others executing a lease in her favour. An appeal was taken against this decree by the present plaintiffs Ladli Parshad and Gainda Ram which was allowed on 1-2-1947 and the suit of Chhoto was dismissed. Ladli Parshad and Gainda Ram applied under Section 144 read with Section 47, Civil P. C. for restitution, and on 13-4-1947 actual possession of a part and symbolical possession of the rest was taken by them. On 9-5-1947 Asa Ram and others made an application under Sections 47 and 144, Civil P. C. for restitution and this application was allowed on 30-7-1947 by an order of the executing Court, Ex. D-14. Thus Asa Ram and others obtained possession "by way of restitution of the land", and obtained actual physical possession on 5-8-1947, which is clear from Ex. D-8.

7. Gainda Ram and Ladli Parshad then brought a suit for possession on 13-12-1948 on the basis of their title under the deed of sale Ex. P-1. The defence was that there was no sale of property, but there was mere transfer of a right to execute the decree and as that right could not be transferred it was void, that Sham Sarup never obtained possession, that Section 47, Civil P. C. is a bar to the suit and that Ex. D-2, order dated 13-10-1945, operated as 'res judicata'. Both the Courts below decreed the suit. The District Judge has held that defendants 1 to 3 were no longer judgment-debtors but were trespassers and therefore the suit could be brought; that the order dated 13-10-1945, did not operate as 'res judicata', that Sham Sarup had obtained actual physical possession of a part of the property and symbolical of the rest and on these grounds he affirmed the decree of the trial Court,

8. Mr. Tek Chand for the appellants has in the forefront of his arguments placed the bar of Section 47 to the maintainability of the present -suit and has submitted that as Sham Samp's suit would be barred under Section 47 the suit of the plaintiffs should also be barred because they are representatives within the meaning of that word as used in Section 47(1), Civil P.C. But this argument is unsustainable. By the deed of transfer, Ex. P-1, Sham Sarup transferred to the

plaintiffs not only the right to execute the decree but also his right, title and interest in the property, that is, 39 bighas 14 1/2 biswas, and therefore the plaintiffs obtained by this transfer not only the right to execute but also the ownership of the land in dispute.

9. An objection was taken by Mr, Tek Chand that without getting possession Sham Sarup had no title in the property pre-empted and therefore ho had nothing which he could pass by the sale deed to the plaintiffs. In Order 20, Rule 14(1) (b) it is provided:

"14(1). Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall--

(a) \* \* \* \*

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in Clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs." The question arises then as to what is the meaning of the words "whose title thereto shall be deemed to have accrued from the date of such payment." It had been held in --'*Ramasami Pattar v. Chinnan Asari*<sup>1</sup>', that title could not pass unless there was a document executed in accordance with Section 54, Transfer of Property Act. These words which I have mentioned and which were added in this rule supersede the opinion expressed by the Madras High Court and therefore the result is that a title of pre-emptor accrues on payment of the purchase-money and no registered document is necessary to effect that. A Division Bench of the Lahore High Court in -- '*Nadir Ali Shah v. Wali*<sup>2</sup>', held that these words clearly show that the title to the property vests in the pre-emptor on payment of the purchase-money. Reliance in that case was placed on a judgment of Campbell J. in -- '*Hadavat Ullah v. Ghulam Mohammad*<sup>3</sup>', where it was held that the title of the pre-emptor shall be deemed to have accrued from the date of payment into Court of the purchase-money after the decree. Another Division Bench of the Lahore High Court in -- '*Fateh Chand v. Moti Singh*<sup>4</sup>', took the same view, and a Pull Bench of that Court in -- '*Mohammad Saddiq v. Ghasi Ram*<sup>5</sup>', held that the title vests in the pre-emptor from the date of payment. The same view was taken by the Allahabad High Court in -- '*Ram Lal v. Harpal*<sup>6</sup>', where a Division Bench held that under Order 20, Rule 14(b), the title of the pre-emptor to the property accrues from the date of the deposit. Thus the title of Sham Sarup accrued to the pre-empted property from the date of payment and therefore he had a right to sell the property, and could pass a good title to the property by executing Ex. P-1,

10. The second question which arises in connection with this part of the- case is whether the plaintiffs could be held to be the representatives within the meaning of Section 47, Civil P. C., of Sham Sarup. Section 47(1) runs as follows :

"47(1). All questions arising between the parties to" the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

What is barred by Section 47(1) is the decision of any question which arises between the parties to the suit or their representatives and which relates to the execution, discharge or satisfaction of the decree. On 15-G-1945 in a proceeding which was 'inter se', an order was passed Ex. D-3 in which it was held that the present plaintiffs could not execute the decree against the judgment-debtors of Sham Sarup on the ground that the decree was incapable of being transferred as it was a personal right. Reliance there was placed on AIR 1922 Lah 300 (A). That order itself would operate as 'res judicata' irrespective of whether that order is right or wrong. The finding that the decree in favour of Sham Sarup was incapable of transfer and therefore the present plaintiffs had not right to execute would place the present plaintiffs outside the definition of the word "representatives" and that is also clear from the wording of Section 47 of the Code. What is barred is "all questions in regard to execution, discharge or satisfaction", and if a person cannot execute a decree Section 47 cannot be a bar and therefore in my opinion he cannot be a representative within the meaning of that word. The bar of Section 47 which was pleaded therefore would on this ground alone be not applicable to the respondents, the plaintiffs.

11. The next question is whether any possession was taken by the plaintiffs and what was the nature of that possession. I have at a previous place given the history of the case in the execution department. That shows that actual physical possession of a portion and symbolical possession of the rest was taken. The finding of the District Judge on this point is also in favour of the plaintiffs. Symbolical possession is as effective between the parties to the proceedings as actual physical possession and is sufficient to dispossess a party to the proceedings and effectuates the passing of possession from one to the other. It was so held in -- '*Ram Kali v. Gowardhan Lal*'<sup>7</sup>, In -- '*Mohammad Saadat Ali Khan v. Punjab National Bank*'<sup>8</sup>, Din Mohammad J. held that the symbolical possession by the decree-holder is sufficient to break the continuity of adverse possession of the judgment-debtor and it is binding on the transferee' from the Judgment-debtor. In this Court also the same view has been taken in -- '*Gokal Chand v. Sundar Singh*'<sup>9</sup>, In -- '*Subbaraya Goundan v. Samiappa Goundan*'<sup>10</sup>, a Division Bench held that Section 47 is not a bar to the suit as the symbolical possession obtained by the decree-holder amounts to actual physical possession so far as the judgment-debtor and his representatives are concerned and therefore the 'suit brought by the purchaser is not barred under Section 47. The Privy Council in -- '*Adyanath Ghatak v. Krishna Prasad Singh*'<sup>11</sup>, held that symbolical possession of property found to be in occupation of a tenant of the judgment-debtor effectively terminates the possession of both the judgment-debtor and the tenant. The same view was taken by their Lordships in -- '*Radha Krishna v. Ram Bahadur*'<sup>12</sup>,

12. Besides this there is the fact that the defendants asked for compensation on 10-8-1945 in the

executing Court after the report of the possession was made. Taking all these facts into consideration I am of opinion that the possession had passed to the plaintiffs and therefore Section 47 cannot be held to be a bar.

13. The next question raised by Mr. Tek Chand was that Sham Sarup had made a statement as a result of which the execution was dismissed as unsatisfied. Merely because Sham Sarup, who at that time had no rights left as he had sold his ownership in the property to the plaintiffs, stated something which may or may not mean anything, cannot take away the rights of the plaintiffs. In -- '*Bank of Upper India Ltd. v. Robert Hercules Skinner*<sup>13'</sup>', it was held that an acknowledgment made by a party after he had parted with all his interests would not bind the purchaser. Applying that principle anything which was done by Sham Sarup after he had parted with his rights would not be binding on the plaintiffs. Even if what was stated by Sham Sarup was binding on the plaintiffs it cannot affect the merits of this case as the possession that had already been taken by the plaintiffs could not thereby be wiped out and it could not. be said that there was no possession merely because Sham Sarup had stated that he did not want to proceed with the execution application and asked that it be dismissed for the time being.

14. I therefore hold that –

- (1) On deposit of decretal money the pre-emptor gets title to the property preempted under Order 20, Rule 14, Civil P.C.;
- (2) a transferee from such a pre-emptor is not a representative within the meaning of the word "representative" as used in Section 47, Civil P. C.;
- (3) the plaintiffs had obtained actual possession of a portion of the property in dispute and symbolical possession of the rest and it was a sufficient dispossession of the judgment-debtors;
- (4) it has been actually found by the learned Judge that possession had passed to the plaintiffs;
- (5) there was an admission of the defendants that possession had passed in the application which they made for compensation;
- (6) under these circumstances Section 47 cannot be a bar to the bringing of the present suit by the plaintiffs; and (7) any statement made by Sham Sarup is not a statement made on behalf of the plaintiffs as at that time Sham Sarup had no title in the property. I would therefore dismiss this appeal with costs throughout.

Cases Referred.

- 124 Mad 449 at P. 463 (B)
- 2AIR 1925 Lah 202 (C)
- 3AIR 1923 Lah 529 (D)
- 4AIR 1935 Lah 523 (E)
- 5AIR 1946 Lah 322 (F)
- 6AIR 1929 All 237 (G)
- 7AIR 1935 Lah 612 (H)
- 8AIR 1941 Lah 357 (I)

9AIR 1949 EP 282 (J)

10AIR 1946 Mad 529 (K)

11AIR 1949 PC 124 (L)

12AIR 1917 PC 197 (2) (M)

13AIR 1942 PC 67 (N)