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question whether or not the transaction in dispute had been proved by the plaintiff to be a sale, they concentrated their attention on the question whether the defendants had established the transaction to be a genuine gift. This, in my view, was a wholly erroneous approach and has resulted in a decision which is contrary to law.

In the result, I allow the appeal and setting aside the judgment and decree of the Courts below dismiss the plaintiffs' suit with costs throughout.

FALSHAW, J.—I agree.

R. S.

REVISIONAL CIVIL

Before Mehar Singh, J.

SANSAR CHAND,—*Petitioner*

versus

RAM LALL AND ANOTHER.—*Respondents.*

Civil Revision No. 390 of 1956

1958

Nov., 18th

Courts Fees Act (VII of 1870)—Section 7 (vi)—Suit for possession by pre-emption—Vendee affecting improvements after the sale but before the institution of suit—Plaintiff whether liable to pay court-fee on the value of such improvements.—Suit for possession by pre-emption and an ordinary suit for possession—Distinction between.

Held, that in a suit for possession to enforce a right of pre-emption. the plaintiff seeking only a right to be substituted for the vendee at the date of the sale and not having a right in law to claim anything more nor claiming anything more, cannot be forced or compelled to pay court-fee on the value of improvements made by a vendee after the sale and before the date of the suit because of an equitable claim by such a vendee to be compensated for the value of such improvements. Such improvements are not part of the claim of the plaintiff in such a suit and he cannot be forced to pay court-fee on a subject-matter of dispute that arises not because of his claim but because of the defence of the defendant.

Held, that a suit for possession in enforcement of a right of pre-emption is a slightly different type of suit than an ordinary suit for possession. In the case of the former the plaintiff seeks to pre-empt the sale in question, and his right, as it is now admitted on all hands, is not a mere right to possession of the property on the date of the suit. but it is a right to be substituted for the vendee of that property on the date of the sale. The plaintiff in such a suit seeks no more than what the vendee has obtained under the sale and as soon as his success will substitute him for the vendee, his position cannot be different from that of the vendee himself and his substitution will naturally operate not from the date of his success or from the date of his suit. but from the date of the sale itself. So that in such a suit it is the nature of the property on the date of the sale that is to be taken and not that on the date of the suit. The plaintff-pre-emptor is not interested in any more and he does not claim anything more in a suit like this. He does not seek improvements in a suit like this and his suit is not making a claim for such improvements. It is obvious that his being a right of substitution he is to pay court-fee on the property as regards the rights to which he claims to be substituted for the original vendee.

Held, that in an ordinary suit for possession, the plaintiff takes the property on the date of the suit as such. It is the value of the property on that date that is to be taken into consideration. It is obvious that in an ordinary suit for possession the state of the property will in most cases be entirely different than the state of the property about which a right of pre-emption is enforced at the time of the sale, for in the case of an enforcement of a right of pre-emption the crucial date is the date of the sale.

Petition under Section 115 of Act V of 1908 for revision of the order of Shri Onkar Nath, Sub-Judge, Ist Class. Kaithal. dated 31st August, 1956, ordering that the plaintiffs should make up deficincy in court-fee on the improvements made by the defendants worth Rs. 3,000 by 4th October, 1956.

H. L. SARIN, for Petitioner.

D. N. AWASTHY, for Respondents.

JUDGMENT

Mehar Singh, J.

MEHAR SINGH, J.—A common question of law arises in these two Civil Revision Petitions Nos. 390 and 391 of 1956. They are between different parties but they are taken together because of the common question of law arising in them.

Each was a case to enforce a right of pre-emption. The defendant vendee in each case, apart from defending the suit on other grounds, has claimed value of improvements after sale and before the institution of the suit and the trial Court has in the case of Civil Revision No. 390 of 1956, found the value of the improvements to be Rs. 3,000 and in the case of Civil Revision No. 391 of 1956 to be Rs. 10,000. The question as to the correctness of that finding in each case on merits is not involved in these revision petitions. In each case the learned trial Judge has demanded court-fee from the plaintiff on the amount of the improvements. The orders were made by the Subordinate Judge of the first class, at Kaithal, on August 31, 1956. The revision petitions are directed against those orders demanding additional court-fee on the value of the improvements from the plaintiff in each case.

In the matter of court-fee in a pre-emption suit, section 7(vi) of the Court-fees Act 1870, says:—

> "7(vi). In suits to enforce a right of pre-emption-according to the value (computed in accordance with paragraph (v) of this section) of the land, house or garden in respect of which the right is claimed."

Paragraph (v) of section 7 of the Act refers to court-fee in a suit for possession of land, houses

and gardens and broadly it provides that where the suit relates to land, which is paying land revenue, the valuation for purposes of court-fee is to be ten times the revenue payable on such land and otherwise it is to be the market value of the land.

In the present cases the subject-matter of dispute between the parties is land. Normally for purposes of court-fee valuation is ten times the land revenue payable on such land, and according to this proper court-fee has been paid. But additional court-fee has been demanded from the plaintiff in each case on the value of improvements, possibly on the ground that in succeeding in his suit the plaintiff will also succeed in getting the improvements. The provisions of section 7, paragraphs (v) and (vi), of the Court-fees Act are not helpful in resolving this question. It has to be considered in relation to the opinion that has prevailed with the learned Judges upon this question in cases already decided.

However, it has to be borne in mind that a suit for possession in enforcement of a right of pre-emption is slightly different type of a suit than an ordinary suit for possession. In the case of the former the plaintiff seeks to pre-empt the sale in question, and his right, as it is now admitted on all hands is not a mere right to possession of the property on the date of the suit, but it is a right to be substituted for the vendee of that property. Such a plaintiff takes the bargain with all its advantages and disadvantages. His substitution for the vendee leaves him exactly in the position in which the vendee himself is in consequence of the sale in question. In a suit for pre-emption the plaintiff seeks no more than what the vendee

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has obtained under the sale and as soon as his success will substitute him for the vendee his position cannot be different from that of the vendee himself. In an ordinary suit for possession, the plaintiff takes the property on the date of the suit as such. It is the value of the property on that date that is to be taken into consideration. It is obvious that in an ordinary suit for possession the state of the property will in most cases be entirely different than the state of the property about which a right of pre-emption is enforced at the time of the sale, for in the case of an enforcement of a right of pre-emption the crucial date is the date of the sale. The plaintiff seeking substitution for the vendee, if he should succeed, the substitution will naturally operate not from the date of his success or from the date of his suit, but from the date of the sale itself. So that in such a suit it is the nature of the property on the date of the sale that is to be taken and not that on the date of the suit. The plaintiff-pre-emptor is not interested in any more and he does claim anything more in a suit like this. He does not seek improvements in a suit like this and his suit is not making a claim for such improvements. It is obvious that his being a right of substitution he is to pay court-fee on the property as regards the rights to which he claims to be substituted for the original vendee. The claim of a defendant-vendee in a suit like this for compensation for improvements is an equitable claim, and in certain circumstances, though not always, a plaintiff-pre-emptor may by a decree of a Court be compelled to take substitution for the original vendee subject to, in equity, compensating the original vendee for improvements. But then that comes about not because of any claim by such a plaintiff for such improvements but by the Court intervening and giving relief to the vendee in equity. It seems to me quite obvious that in such circumstances it is

from any consideration quite an unreasonable proposition that the plaintiff should be forced to pay court-fee on an equitable claim by a defendant, even though the property of the equivalent value of such a claim is given to such a plaintiff, but then that is done against his will and by the decree of a Court. There is another aspect of this matter and that is that it is not in every case that a vendee is entitled to the value of his improvements in equity. He has to make out his own case at the trial to be entitled to be compensated in equity for the value of the improvements between the date of the sale and the date of the suit. He may not be able to establish such a claim. Even if it is proved that he has made improvements, the Court, having regard to the particular circumstances of a case, might not feel compelled in equity to grant him relief in the shape of compensation. It would be manifestly illogical in such cases to force the plaintiff to pay Court-fee arising out of an equitable claim of a defendant. The demand of court-fee as in these cases does not directly arise out of the claim of the plaintiff, it is the result of the equitable claim of the defendant for compensation against the plaintiff. That the defendant foregoes the improvement itself and takes its value from the plaintiff, appears to me not to justify burdening of the plaintiff for court-fee in connection with such a claim. With these observations, I will now proceed to consider what is the state of the case-law on the question.

There are first for consideration two cases, which lend support to the view of the trial Judge and the view that has been advanced by the learned counsel for the defendant in this Court. The first

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case is *Khidmat Rai* v. *Annant Ram* (1). In that case the house had been purchased for Rs. 400. The vendee had rebuilt it and the Court found that the value of the reconstructed house was Rs. 2,512. It was upon this that the plaintiff was ordered to pay court-fee by the trial Court. On appeal the Divisional Court reversed the order of the trial Court, but in the Chief Court Kensinghton. J., observed—"The Sub-Judge's orders were correct on the questions both of court-fee and deposit, *see* the Full Bench rulings Nos. 16 and 19 P.R: of 1908, and the wording of section 19(1), Pre-emption Act." The reference is to section 19(1), of the Pre-emption Act of 1903, but that related to the question of deposit and that is not a question for consideration in these cases. In *Muhammad Afzal Khan and others* v. *Nand Lal* (2), no question of the type as in the present cases arose for consideration. That was a case of the competency of a Munsif whose jurisdiction was limited to Rs. 1,000 to give a decree in a pre-emption suit on payment of Rs. 4,098, and the Full Bench held that he was not competent to pass such a decree. In *Abdur Rahman* v. *Charag Din and others* (3), the suit was an ordinary suit for possession of a house. It was not a suit to enforce a right of pre-emption. It has already been shown that different considerations prevail in the matter of court-fee in an ordinary suit for possession than in a suit to enforce a right of pre-emption. The reason is obvious. In the case of the latter the plaintiff does not ask for the property as it is on the date of the suit but seeks to substitute himself for the vendee on the date of the sale, and in the case of the former the plaintiff claims the property as it is on the date of the suit.

(1) 184 P.L.R. 1912.
(2) 16 P.R. 1908.
(3) 19 P.R. 1908.

In either case different considerations are bound to prevail in regard to valuation for court-fee. No other reason has been given by the learned Judge in *Khidmat Rai's case* (1), to support the order of the Subordinate Judge as to court-fee than merely relying upon the last cited two Full Bench cases. So that *Khidmat Rai's case* (1), does not help the defendant in these cases. The second case that requires consideration in this connection is *Mohammad Anwar and others* v. *Dial Cand and another* (2). It purports to follow the first case already referred to. But at page 240 the only reason that Skemp, J., gives in support of his view that the plaintiff-pre-emptor must also pay court-fee on the value of improvements is that "* * * * the plaintiff would obtain a decision on most of the points in suit on the court-fee payable on Rs. 203 (or, at any rate on Rs. 400) for a property valued at Rs. 2,493." The sale was alleged to be for a sum of Rs. 400 in that case. If I may say so with due deference to the learned Judge, this is no consideration upon the basis of which a plaintiff in a pre-emption suit can be burdened with the burden of court-fee. The claim of court-fee against him is a statutory claimand must conform to the statute. It has already been explained that in such a case if the plaintiff has forced upon him the improvements because the Court gives relief in equity to a defendant in compensating him, that situation does not arise from any claim of the plaintiff or anything done by him. There is no justification for burdening a plaintiff in a pre-emption suit in such circumstances, and I do not find my way to agree with the reasoning of the learned Judge in this case. No other case has been cited to support the view that has prevailed with the learned trial Judge in these cases.

(1) 184 P.L.R. 1912.
(2) A.I.R. 1937 Lah. 239.

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There are four cases in which contrary view has been taken and that is the view consistent with what has already been stated above in this Judgment. In *Lal Hussain* v. *Hassa Khan and others* (1), Chevis. J., did not accept the contention that the plaintiff-pre-emptor must amend his plaint to claim the improvements and pay court-fee on the value of improvements, the learned Judge pointing out that the plaintiff has not expressed his willingness to pay for the improvements and on the conrary, the question of his liability to pay for improvements has to be put in issue. In *Chiragh Din* v. *Seraj Din* (2), on a similar question arising. the learned Judges, observed, at page 388,—

> "The only apparent ground on which the inclusion of the amount paid as compensation can be justified in determining the valuation of the suit is that the plaintiff should pay court-fee on the value of the property he seeks possession of. On the other hand, his claim is merely to be substituted for the vendee in respect of the property in the condition in which it stood at the time of the sale. He does not pray for possession of the improvements effected since the sale nor is he invariably bound to take over those improvements. Indeed the vendee may prefer to remove the improvements effected by him. and in some cases he will be allowed to do so whilst in others he may be forced to forego all claim to them. For these reasons we think the correct view is that compensation found to be equitably

(1) 96 P.L.R. 1912.
(2) I.L.R. 3 Lah. 386.

due to the vendee is not to be taken into calculation for the determination of the value of the suit, * * *."

The third case is *Sher Muhammad* v. *Ahmad and others* (1). But in that case the question was whether in a pre-emption suit value for purposes of court-fee and jurisdiction is to be taken at the date of the suit or at the date of the sale, and it was held that it was to be taken at the date of the sale and not at the time of the suit. This, though not directly coming in for consideration, lends support to the view that for the purposes of court-fee valuation in such a suit cannot include the value of improvements by the vendee for the simple reason that it is the value of the property at the date of the sale that is to be taken for purposes of court-fee and jurisdiction. The last case is *Giani Ram Singh* v. *Dalip Singh and others* (2), in which Eric Weston, C. J.. with whom Harnam Singh, J:, concurred. on consideration of the very question observes. at page 576,—

> "On the principle that the right of pre-emption is one of substitution it seems to me that the correct view is that all that the pre-emptor is entitled to as of right is the property in the state it existed at the time of the sale. If the vendee in the interval has made improvements and constructions I cannot understand that anything could debar him from removing those improvements and constructions and restoring the property to its state at the time of the sale. In most instances of course the vendee would prefer not to do so, but would

(1) A.I.R. 1924 Lah. 380.
(2) I.L.R. 1953 Punjab 572.

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seek to require that on grounds of equity the pre-emptor should be made to pay for those improvements. The point, however, is that he is not bound to do this. He is not bound that the materials he has used on constructions and improvements should go to the pre-emptor. The pre-emptor has no legal right to claim anything more than the bargain which the vendee obtained. If by his suit he claim in terms no more than the bargain which the vendee possessed, it is difficult to understand on what ground the pre-emptor can be required to pay court-fee upon improvements to which he has no claim in law and to which in fact he has made no claim."

I have expressed concurring opinion already above with what the learned Chief Justice says in this case, and I have no doubt in my mind that in a suit for possession to enforce a right of pre-emption, the plaintiff seeking only a right to be substituted for the vendee at the date of the sale and not having a right in law to claim anything more nor claiming anything more, cannot be forced or compelled to pay court-fee on the value of improvements made by a vendee after the sale and before the date of the suit because of an equitable claim by such a vendee to be compensated for the value of such improvements. Such improvements are no part of the claim of the plaintiff in such a suit, and I just cannot appreciate how he can be forced to pay court-fee on a subject-matter of dispute that arises not because of his claim but because of the defence of the defendant.

In consequence, both revision petitions succeed and the order of the learned trial Judge in

either petition is set aside. The cases will now go back to the learned trial Judge for trial on merits and according to law. The parties, through their counsel, are directed to appear in the trial Court on December, 18, 1958. There is no order as to costs in these petitions:

.....*R. S.*

REVISIONAL CIVIL

Before D. Falshaw and I. D. Dua, JJ.

JOINT HINDU FAMILY FIRM KNOWN AS RAM LAL-GANPAT RAI OF AMRITSAR AN' ANOTHER,—*Petitioners.*

versus

FIRM NARAIN DASS-FAQIR CHAND OF AMRITSAR. AND ANOTHER,—*Respondents.*

Civil Revision No. 410 of 1954.

1958

Nov., 21st

Provincial Insolvency Act (V of 1920)—Sections 69, 70 and 75—Order refusing to prosecute the insolvent under Section 69 at the instance of the Official Receiver and a creditor—Whether appealable under Section 75.

Held, that in order to have a right of appeal it is necessary for the Official Receiver or any of the other persons mentioned in Section 75 of the Provincial Insolvency Act to be aggrieved by the order against which an appeal is sought. The word "aggrieved" means something more than merely "disappointed" and it means "being deprived of something which the person who wishes to file an appeal was entitled to claim", which certainly cannot be said of the prosecution of an insolvent by the Court under Section 70 for any of the offences specified in Section 69 of the Provincial Insolvency cAt. The Official Receiver and a creditor have, thus, no right of appeal against the order refusing to prosecute the insolvent.

Case referred by Hon'ble Mr. Chief Justice A. N. Bhandari, on 26th August, 1955, to a larger Bench for