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same effect as that of an alienation by a coparcener, who is neither a manager nor a father of a joint family."

(12) In view of the above, I have no hesitation in holding that in a proper case, i.e., where the property is a joint Hindu family property (assuming it is proved by the plaintiff) and the proposed alienation is not for the benefit of the family or for legal necessity, any of the coparceners can prevent such an illegal act by bringing a suit for injunction.

(13) For the aforesaid reasons, I find that the judgment and the decree of the lower appellate Court, proceeded on an altogether wrong view of the law leading to failure to exercise the jurisdiction. I, therefore, accept this revision with costs, set aside the order of the lower appellate Court and restore that of the trial Court Intimation will be sent to the Court below.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MESSRS THE PUNJAB COPRA CRUSHING OIL MILLS,  
JULLUNDUR.—*Petitioner.*

*versus*

THE STATE OF PUNJAB, ETC.—*Respondents.*

Civil Writ No. 734 of 1970.

August 4, 1971.

*Punjab General Sales Tax Act (XLVI of 1948)—Sections 2(ff) 5(2) (a) (i) and 5(3)—Assessee making purchase of declared goods through commission agents—Whether liable to pay purchase tax "Oil cakes"—Whether "fodder" and exempt from sales-tax.*

*Held*, that under section 5(3) of Punjab General Sales Tax Act, purchase tax is payable in respect of the declared goods at the stage of purchase of such goods by the last dealer liable to pay tax under this Act. If an assessee buys declared goods through a commission agent and the commission agent is taken to have acted as the agent for the assessee, then the purchaser of

the goods from third parties is not the commission agent but the assessee because the agent acts for and on behalf of the principal. The agent in such a case can only be considered as the storer of those goods on behalf of the assessee till they are supplied to him. The assessee having made the last purchase of the goods is liable to pay the purchase-tax. Moreover, the commission agents purchase goods in the market and supply them to the assessee in accordance with his orders. The commission agents do not act only for the assessee. They carry on their business of commission agents on behalf of their constituents according to their orders. Thus the supply of the goods to the assessee by the commission agents squarely falls within the definition of 'purchase' as given in section 2(ff) of the Act. All the ingredients mentioned in this definition of "purchase" exist in a transaction between the commission agents and the assessee. The assessee acquires goods from the commission agents by transfer of those goods in consideration of a price which had already been paid in advance or was paid after the goods were supplied or partly before and partly after. The goods are not supplied under a mortgage, hypothecation, charge or pledge. From that point of view, the transfer of goods by the commission agents to the assessee for a consideration amounts to purchase by the assessee. Hence he is liable to pay purchase tax on those purchases. (Paras 3 and 4)

*Held*, that oil cakes are used as a part of fodder and are given to the milch animals along with the fodder in order to get a better yield of milk from them. They are, therefore, used as fodder and nothing else. They may also be used, though to a very small extent, as a fertilizer. As the only uses of oil cakes are either as fodder for the milch cattle or as fertilizer, both of which are exempt from the payment of sales-tax under the Act, the oil cakes are also exempt from payment of sales-tax. (Para 7.)

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the assessment order dated 26th June, 1969 but actually pronounced on 8th February, 1970 (Annexure 'A') and directing the respondents not to charge the amount of tax from the petitioner, being illegal imposition and further directing the respondents not to realise the tax amount from the petitioner pending the decision of the writ petition.*

S. C. Goel, S. P. Jain and G. C. Garg, Advocates, for the petitioner.

M. S. Sandhu, Deputy Advocate-General (Pb.), for the respondents.

#### JUDGMENT.

TULI, J.—(1) The petitioner is a firm carrying on the business of crushing cotton seeds into oil at Jullundur and is registered as

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a dealer under the Punjab General Sales Tax Act 1948, (hereinafter referred to as the Act). For the purposes of its business, it purchases cotton seeds from commission agents at various places in the State of Punjab and outside. For the year 1965-66, the petitioner-firm claimed that the purchases made by it from the commission agents could not be regarded as purchases in its hands and were, therefore, not taxable. Oil-cakes are produced by way of by product from the crushing of the oil which are sold by the petitioner-firm in the market. The firm claimed that oil cakes were fodder and, therefore, were exempt from payment of sales tax. The Assessing Authority did not accept these contentions of the petitioner-firm and passed the assessment order on June 26, 1969. Without filing an appeal under the Act, the petitioner-firm has filed the present petition challenging that order.

(2) Written statement has been filed by the Excise and Taxation Officer, Jullundur, who made the assessment.

(3) The first point of law argued by the learned counsel for the petitioner is that the purchases made by the petitioner-firm from the commission agents cannot be termed purchases and, therefore, the firm is not liable to pay any purchase tax thereon. The value of the purchases of oil seeds made from commission agents was Rs. 17,02,208.97 in that assessment year. The argument of the learned counsel is that there was no contract of purchase or sale between the commission agents and the petitioner-firm and the goods passed from the commission agents to the petitioner-firm under a contract of agency and not under a contract of sale. The commission agents had purchased the oil seeds from third parties without disclosing that the purchases were being made by the commission agents for and on behalf of the petitioner-firm. On these facts, it is pleaded that the commission agents were the purchasers liable to pay purchase tax and not the petitioner-firm. Reliance is placed on a judgment of the Allahabad High Court in *Panna Lal Babu Lal v. Commissioner of Sales Tax, U.P., Lucknow*, (1), wherein the learned Judges observed :—

“A commission agent when he agrees to work for his principal as the latter’s agent and to obtain for his principal

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(1) (1956) 7 S.T.C. 722.

the goods which the latter wants, undertakes a duty which he has to discharge by purchasing the goods required and supplying them to his principal. The transfer of the goods purchased by him to his customer is an act done in the discharge of his duty as an agent. The contract between the principal and the commission agent is not, in our opinion, one of sale but of agency, and the transfer of the property in the goods is not a sale within the meaning of the Sale of Goods Act."

In that case, the assessee was a firm of commission agents which purchased goods and supplied them to their constituents and were paid commission on the goods so supplied. The firm was assessed to a tax on the turnover of the goods supplied to its constituents. On behalf of the assessee-firm it was pleaded that in supplying the goods to their principals they only acted as their agents and not as sellers of the goods to them. This contention was accepted by the High Court. In my opinion, this judgment is of no assistance to the petitioner-firm. Under section 5(3) of the Act, purchase tax is payable in respect of the declared goods (oil seed including cotton seeds are declared goods) at the stage of purchase of such goods by the last dealer liable to pay tax under this Act. In *Niamat Rai Milkh Raj Ahuja, v. State of Punjab and another*, (2), it was held by a Division Bench of this Court that :—

"It is thus apparent that 'the last purchase by a dealer liable to pay tax under this Act' will be the purchase by the dealer who himself consumes it or sells it to a consumer or to a dealer in the course of inter-State trade or commerce so that as long as the goods remain with him in the condition he purchased them, he does not become liable to pay the tax. Every dealer will thus be able to know whether he is liable to pay the tax under the Act or not and the stage having been prescribed, no machinery is required to be prescribed to ascertain that stage."

It is not denied by the petitioner-firm that the oil seeds were consumed by it in its factory by crushing them into oil and oil cakes. The firm is a registered dealer engaged in the business of manufacture of oil from cotton seeds and other oil seeds. It thus acted as

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the consumer of those goods and thus made the last purchase thereof in the State. If the commission agents are taken to have acted as agents for the petitioner-firm, then the purchaser of oil seeds from third parties was not the commission agent but the petitioner because the agent acted for and on behalf of the principal. The agent in such a case could only be considered as the storer of those goods on behalf of the petitioner-firm till they were actually supplied to it. Viewed in that light the petitioner-firm made the last purchase of those oil seeds and was, therefore, liable to pay the purchase tax.

(4) The second way of looking at the matter is that the commission agents purchased goods in the market and supplied them to the petitioner-firm in accordance with its orders. It is not claimed that the commission agents were acting only on behalf of the petitioner-firm. They carried on their business of commission agents on behalf of their constituents who placed orders with them for the supply of cotton seeds or other oil seeds and goods. They purchased those goods in bulk in the market and supplied them to their constituents according to their orders. The supply of the goods to the petitioner firm by the commission agents squarely falls within the definition of 'purchase' as given in section 2(ff) of the Act which is as under :—

"2(ff). 'purchase' with all its grammatical variations or cognate expressions, means the acquisition of goods specified in Schedule 'C' for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge."

All the ingredients mentioned in this definition of "purchase" exist in the transaction between the commission agents and the petitioner-firm. The petitioner-firm acquired cotton seeds and other oil seeds from the commission agents by transfer of those goods in consideration of a price which had already been paid in advance or was paid after the goods were supplied or partly before and partly after. The goods were not supplied under a mortgage, hypothecation, charge or pledge. From that point of view, the transfer of goods by the commission agents to the petitioner-firm for a consideration amounted to purchase by the petitioner-firm and this being the last purchase by a dealer in the State, the petitioner-firm has been rightly held liable to pay the purchase tax on those purchases.

(5) The learned counsel has relied on a judgment of a Division Bench of the Madhya Pradesh High Court in *The Commissioner of Sales Tax, Madhya Pradesh, Indore v. Nandram Ramkaran Agarwal*, (3), which, instead of helping him, goes against him. In that case the sales made by the commission agents to the mills for whom they purchased the cotton were held not to be liable to sales tax. Similarly, in the present case, the commission agents cannot be held liable to pay the purchase tax when they purchased cotton seeds and other oil seeds for and on behalf of the petitioner-firm and supplied the same to it.

(6) The learned counsel has then relied on a judgment of their Lordships of the Supreme Court in *Devi Dass Gopal Krishan and others v. The State of Punjab and others*, (4). In that case, the validity of section 2(ff) of the Act was challenged on the ground that the Legislature was not competent to enact it and their Lordships observed at page 444 as under :—

“The essential requisites of sale are (i) there shall be a transfer of property or agreement to transfer property by one party to another; and (ii) it shall be for consideration of money payment or promise thereof by the buyer. A sale and a purchase are different aspects of the same transaction. If we look at it from the standpoint of the purchaser, it is a purchase and if we look at it from the standpoint of the seller, it is a sale. Whether purchase or sale it shall have the said ingredients both in common law and under the Indian Contract Act. ‘Price’ has been defined in the Sale of Goods Act to mean money consideration for the sale of goods: see section 2(10) of the Indian Sale of Goods Act. It will, therefore, be seen that the definition of ‘purchase’ in the Act *prima facie* appears to be wider in the scope than ‘sale’. While transfer of goods from one person to another is the ingredient of ‘sale’ in general law, acquisition of goods, which may in its comprehensive sense take in voluntary as well as involuntary transfers, is an ingredient of ‘purchase’ in clause (ff). While ‘price’ i.e., money consideration, is the ingredient of ‘sale’, cash, deferred payment or any

(3) (1971) 27 S.T.C. 527.

(4) (1967) S.T.C. 430.

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valuable consideration is an ingredient of 'purchase'. But a closer scrutiny compels us to give a restricted meaning to the expression 'acquisition' and 'price'. Acquisition is the act by which a person acquires property in a thing. 'Acquirer' is to become the owner of the property. One can, therefore, acquire a property either by voluntary or involuntary transfer."

These observations are of no help to the learned counsel for the petitioner. I am, therefore, of the opinion that the petitioner-firm was liable to pay tax on the purchases of cotton seeds and other oil seeds from the commission agents and the assessment order in that respect is perfectly legal and valid.

(7) The second point argued by the learned counsel for the petitioner is that the Assessing Authority wrongly disallowed the petitioner's claim for exemption under section 5(2) (a) (i) of the Act in respect of oil-cakes by holding that oil-cakes were not fodder. The petitioner-firm filed affidavits of Shri Gurdas Ram Bedi, President, M.F.G. Jullundur City, Shri Roshan Lal, General Secretary, M.F.G. Jullundur City, Shri Waryam Singh, owner of dairy farm and member of Market Committee, Jullundur, and Shri Ajudhia Parshad, Attari Bazar, in support of its contention that the oil-cakes were nothing but fodder and that in common parlance *khal* (oil-cakes) is known to be fodder and is used as fodder for milch as well as non-milch animals. The Assessing Authority said:—

"Oil-cakes are used as stimulant for fodder and in that case this stimulant does not lose its identity.—*Khal* as such keeps its identity and by virtue of this it is a separate commodity which itself is marketable, not as fodder, but as stimulant to fodder for getting better yield of milk."

Frankly speaking, I have not been able to understand the logic employed by the Assessing Authority. It has not been mentioned by him that oil-cakes are used for any other purpose. He has drawn a distinction between a fodder and a stimulant for fodder. I have not been able to understand on what authority did he say that oil-cakes are not fodder but stimulant for fodder. Oil-cakes are used as a part of fodder and are given to the milch animals along with the fodder in order to get a better yield of milk from them. They are,

therefore, used as fodder and nothing else. The finding of fact, therefore, arrived at by the Assessing Authority, is clearly erroneous in law. The affidavits filed by the petitioner-firm clearly stated that *khal* (oil-cakes) was known to be fodder and was used as fodder for milch as well as non-milch animals. This assertion has not been denied by the Assessing Authority nor has he said that there is any other use of the oil-cakes. At the hearing, the learned counsel for the respondents stated that oil-cakes are also used as manure for mulberry trees which means that another use of oil-cakes is as fertilizer and even fertilizers are exempt from the payment of sales tax.

(8) The learned counsel for the petitioner has produced a photostat copy of the letter issued by the Senior Marketing Officer, In-charge, Northern Region of the Directorate of Marketing and Inspection, New Delhi, addressed to M/s. Bhagat Ram Amar Nath, of Jullundur City, dated August 14, 1969, reading as under:—

“Please refer to your letter dated the 4th August, 1969, asking for certain data regarding production and utilisation of oil-cakes etc., in India.

The Report on the Marketing of Cotton Seed in India has not yet been issued by the Directorate and will take some time before it is available.

Regarding usage of cotton seed cake in India it is mainly used as cattle feed and only to a very small extent as a fertilizer.”

The learned counsel for the petitioner has also referred to some paragraphs in the Report on the Marketing of Groundnuts in India issued by the Directorate of Marketing and Inspection, Ministry of Food and Agriculture, Government of India, in 1953. At page 204, reference is made to “groundnut cake” and it is stated:—

“In the year 1944, the Government of India with a view to utilising the entire quantity of oil cakes in the country and to meet shortages of cattle feed, imposed a ban on the exports of oil cakes from India. Since then all the groundnut cake produced is being utilized within the country.”

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On page 210, reference is made to groundnut cake, linseed cake, sesame cake, coconut cake and undecorticated cotton seed cake and it is stated:—

“During the war, the use of oil cake as manure increased considerably not only for sugarcane and coffee but also for other food crops, mainly paddy. This was the outcome of the scheme for the distribution of fertilisers and manures at subsidised rates sponsored by the Government of India under the ‘Grow More Food Campaign’.”

(8) In *Express Dairy Company Limited, Calcutta v. The Assessing Authority, Hissar, and others*, (5) I had observed :—

It is a well-known canon of interpretation of taxing statutes that if the language is clear and unambiguous, it has to be given its grammatical meaning, but if there is any vagueness or ambiguity in the identification of the subject of tax, the benefit has to be given to the tax payer and not to the Government. — — —... .. ~ ~

If a word is not defined in the Act, but is a word of everyday use, it must be construed in its popular sense which the subject-matter, with which the statute is dealing, would attribute to it.

I am also of the opinion that in addition to the popular sense, the Court can also have recourse to the use or the uses of the goods in question and if those goods are capable of more than one use, then the primary use will have to be seen while determining the taxability of the goods in a certain transaction, but if there is only one use to which the goods can be put, then that use will be decisive.”

Applying that principle, it has to be held that oil-cakes are fodder or fertilizer both of which are exempt from the payment of sales tax. The only uses of oil-cakes as mentioned above are either as fodder for the milch animals or as fertilizer. No third use of this commodity has been mentioned anywhere nor has it been brought to my notice.

(9) The learned counsel for the respondents, however, argues that from 1955 to 1958, there was a separate entry No. 43 "oil-cakes" in Schedule B to the Act which enumerates the goods which are exempt from the payment of sales tax. At that time entry No. 54 "Fodder of every type (dry or green)" was also there. If oil-cakes were considered as "fodder" there was no necessity to have two entries. Entry No. 43 "oil-cakes" was deleted from that Schedule in 1958, which means that the exemption allowed to oil-cakes till then was taken away. I find no force in this submission. It may be that the Legislature thought that there was no necessity of having a duplicate entry when oil-cakes were covered by the word "fodder" and fodder was exempt from payment of tax.

(10) Reference is then made to a Division Bench judgment of this Court in *Bhawani Cotton Mills Ltd., v. The State of Punjab and another*, (6) wherein the learned Judges dealt with this point whether oil-cakes were exempt from the payment of sales tax. After referring to certain cases, the learned Judges observed at page 312 of the report :—

“ — — — it is quite clear that where a taxpayer claim a relief from a section imposing liability, the burden of proving that in fact an exemption has been made would lie upon him and that if a word is not defined in an Act and is a word of every day use, it must be construed in its popular sense meaning that sense which people conversant with which the statute is dealing would attribute to it. In view of the above discussion it must be held that in ordinary parlance the words 'fodder (dry or green)' do not include 'oil-cakes'; that since the petitioners claim exemption, the burden is upon them to make out a case for exemption, that whether in ordinary parlance 'fodder (dry or green)' covers the word 'oil-cakes' is a question of fact and the Assessing Authority having come to a conclusion of fact, this Court will not interfere and that if there is any ambiguity or if two interpretations are possible, then no case has been made out for interference.”

In that case, the learned Judges accepted the argument of the respondents that dry fodder meant hay, straw etc., meant for stall-feeding of cattle and, therefore, the oil-cakes could not be included

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in the category of "fodder". Later on, another Division Bench of this Court in *Maman Chand Kundan Lal v. The State of Haryana and another*, (7) held :—

"Gram *chhilka*, which is nothing but the brown skin taken off the gram seed, is either gram husk covered by item 15 of Schedule B to the Punjab General Sales Tax Act, 1948, or fodder covered by item 14 of the same Schedule, and is, therefore, exempt from sales tax."

This judgment, therefore, leads to the conclusion that fodder can include goods other than hay, straw, etc., that is, green fodder in the dry state. I prefer to follow this Division Bench and hold that oil-cakes are exempt from the payment of sales tax, both as fodder (dry) and as fertilizer. While coming to this conclusion, I have been influenced by the fact that the only uses of oil-cakes are either as fodder for the milch animals or as fertilizer. No third use of the oil-cakes has been stated on behalf of the respondents. For these reasons, the order of assessment requires modification.

(11) For the reasons given above, I accept this writ petition only to the extent of directing the Assessing Authority to frame a new assessment order by deleting the sales tax on the turnover of oil-cakes. In other respects, the writ petition is dismissed. In view of the partial success, the parties are left to bear their own costs.

K.S.K.

LETTERS PATENT APPEAL

Before Prem Chand Pandit and Gopal Singh, JJ.

JAI SINGH,—Appellant.

versus

MOHINDER SINGH, etc.—Respondents.

Letters Patent Appeal No. 655 of 1970.

August 4, 1971.

*Punjab Pre-emption Act (1 of 1913)—Section 3(1)—Punjab Alienation of Land Act (XIII of 1900)—Section 2(3)(e)—Sale of agricultural land along with right of water—Suit for pre-emption of the sale—Omission*

(7) (1970) 25 S.T.C. 439.