FULL BENCH

Before, S. S. Sandhawalia, C.J., Prem Chand Jain & G. C. Mital, JJ.

CHANDRUP SINGH and another,—*Petitioners.*

versus

DATA RAM and another,—*Respondents.*

Civil Revision No. 2276 of 1981.

July 20, 1982.

Punjab Pre-emption Act (I of 1913)—Section 15(1)—Suit for pre-emption by a blood relation of the vendor pending—Pre-emptor dying during the pendency of the suit—Heirs of the deceased—Whether could continue the suit—Right of pre-emption resting on blood relationship alone—Whether personal or heritable.

Held, that a close analysis of the language of First, Secondly and Thirdly of clause (a) of section 15(1) of the Punjab Pre-emption Act 1913 and the corresponding provisions of First, Secondly and Thirdly of clauses (b) & (c) thereto makes it plain that the statute herein confers the right of pre-emption purely on the basis of blood relationship and the very existence of the right stems from the kinship or otherwise of the pre-emption with the vendor of the property. Apart from the existence of the *right itself even the inter se preference therefor* betwixt the various pre-emptors again depends entirely on the degree of proximity of his blood relationship with the vendor. If it can be established that the blood relationship specified by the statute does not exist betwixt the parties, the claim of the right of pre-emption would equally cease to exist. Now it seems to necessarily follow that a right which is rooted entirely in the blood relationship of the parties is a right personal to each particular relation because of the *inter se* competing right of the pre-emptors. If the preferential pre-emptor does not choose to sue, the right passes on to the next preferential pre-emptor as spelt out by the statute seriatim as First, Secondly, Thirdly, Fourthly etc. It does not pass on or vest in the heirs of the preferential pre-emptor who refuses or fails to exercise his right of pre-emption. In the presence of the other preferential pre-emptors the heirs of the one who does not sue, do not come into the picture at all. It has been rightly said that where by custom the right of pre-emption is rooted in the ownership of land then the right might pass with such land but where it is rooted in blood relationship there can be no passing of the specific blood relationship prescribed with precision by the statute. Another test whether the right is heritable or not is that of its alienability. While a personal right cannot be passed on, transferred or

alienated to another, an impersonal or general right can ordinarily be so done. The right of pre-emption is neither transferable during the life time of the person having the same and it could not be alienated in favour of another. If such a right is incapable of transfer or alienation during the life time, it stands to reason that the same results would ensue by the death of the pre-emptor and his right rooted in blood-relationship would not be transferred or inherited by the heirs who independently would not have even a remote claim to such a right and in any case not in the presence of the preferential pre-emptors. The basic principle which calls for application herein stems from the hallowed maxim *Actio-personalis moritur cum persona*—a personal right of action dies with the person. Now if it is once held that the right of pre-emption founded wholly in blood-relationship, is a personal right then it necessarily follows that the right of action based thereon would inevitably die with the plaintiff. Again, it has been authoritatively reiterated that the pre-emptor must retain his right of pre-emption at all three stages, namely, at the date of the sale, at the time of the filing of the suit and at the date of the decree. If he loses the right at any one of the stages then he cannot successfully prosecute his claim for pre-emption Now if that be so, where the pre-emptor's right is rooted entirely in blood-relationship, then after his death (where he dies during the pendency of the suit) he would not be able to retain this primary qualification thereof at the time of the passing of the decree. Therefore, the suit becomes impossible to be carried to a successful conclusion. From this angle also, it would be plain that the pre-emptor claiming on the basis of blood-relationship alone, being not in a position to hold that right at the time of the decree, could not be successful and inevitably his heirs, whether having independent right of pre-emption or otherwise, cannot be in a better position. To conclude, on the particular language of the statute, on principle and on the weight of precedent, it is held that the purely statutory right of pre-emption, resting wholly on blood relationship alone under section 15(1) of the Punjab—Pre-emption Act, is not a heritable right and does not devolve on the heirs on the death of the plaintiff-pre-emptor before the grant of the decree in the suit.

(Paras 10, 11, 12, 14 & 21).

1. *Joginder Kaur and another* vs. *Jasbir Singh and others* 1965 *Punjab Law Reporter* 1158.

2. *Gurdev Kaur and others* vs. *Smt. Chanan Kaur and others* A.I.R. 1971 *Punjab & Haryana* 416.

3. *Jhabbu* v. *Multan Singh and others*, 1979 *Punjab Law Reporter* 636 *Overruled.*

Case referred by a Single, Judge, Hon'ble Mr. Justice Gokal Chand Mital, dated the 18th November, 1981 to a Full Bench for the decision of the important question of law involved in this case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice G. C. Mital finally decided the case on 20th July, 1982.

Petition Under section 115 C.P.C. for the revision of the order of the Court of Shri R. C. Gupta Sub-Judge 1st Class, Rewari, dated the 19th August, 1981 allowing the application and directing the applicants to amend the plaint.

H. S. Hooda, Advocate, *for the Petitioner.*

G. C. Garg, Advocate with Hemant Kumar, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the purely statutory right of pre-emption conferred by section 15 of the Punjab Pre-emption Act, 1913, resting on blood relationship alone, is a heritable right at all—has come to be the core question at the very threshold in this reference to the Full Bench.

2. On July, 1978, Jaila sold land in dispute to Chandroop Singh and Megh Singh defendant-petitioners for a sum of Rs. 7,000. On July 16, 1978, Data Ram filed a suit for pre-emption on the factual plea that he was the father's brother's son of the vendor obviously resting his claim under section 15(1) (a). Thirdly, of the Punjab Pre-emption Act, 1913 (hereinafter called 'the Act'). While the suit was still pending in the trial court, Data Ram aforesaid died on June 7, 1980. Later, on August 2, 1980, the suit was dismissed in default by the trial court on the basis that the plaintiff-pre-emptor had expired. However,, on August 26, 1980, within a month of the aforesaid dismissal, Ishwar, son of the deceased-plaintiff, pre-emptor Data Ram, put in an application claiming to continue the suit along with the widow, sons and daughters as the legal representatives of the deceased-plaintiff. The application was opposed by the vendee-defendants on the firm ground that Data Ram deceased, had claimed to pre-empt the land as the father's brother's son of the

vendor, and since none of the legal representatives had an independent right of pre-emption, therefore, they could not be substituted in place of the pre-emptor. The trial court relying no *Jhabhu* v. *Multan Singh & Ors.* (1), allowed the application and brought the legal representatives on record, in place of the plaintiff-pre-emptor. Vendee-defendants then preferred the present civil revision.

3. This case first came up before my learned brother G. C. Mittal, J. sitting singly. In a remarkably lucid reference order, he noticed an apparent conflict of authority betwixt the two Division Bench decisions of this Court reported in *Smt. Joginder Kaur and another* v. *Jasbir Singh & Ors.* (2), and *Gurdev Kaur and others* v. *Smt. Chanan Kaur and Ors.* (3). Consequently, the matter was referred for an authoritative decision by the Full Bench, apparently on the assumption that the right of pre-emption under section 15 of the Act had some attributes of heritability, it was opined that the substantial question of law arising in the revision was as under:—

> "Whether the heirs of the pre-emptors who die during the pendency of the suit in the trial court can continue the suit even if all or any of them did not have independent right of pre-emption ?"

4. Now at the very out-set, it would call for pointed notice that the afore-quoted question can possibly arise only, if it is first assumed, that the particular statutory right of pre-emption under sectin 15, resting entirely on blood relationship, is heritable right. It was admitted on all hands that if it is once held that the same is not at all heritable, then no further issue would arise in this context. Inevitably, therefore, one must first advert to this primary question posed at the very out-set.

5. However, before I proceed further it is best to pinpoint that the facts herein raise the question only in the context of the statutory right of pre-emption resting squarely on the blood relationship betwixt the parties. It is a well-settled and indeed a

(1) 1979 P.L.R. 636.
(2) 1965 P.L.R. 1158.
(3) A.I.R. 1971 Pb. & Hy. 416.

hallowed rule that the courts would not pronounce on academic questions which do not directly arise for determination and this is more so when the matter is being authoritatively considered by the Full Bench. I would, therefore, wish to make it clear that we are taking into consideration only the question of the statutory right of pre-emption based on blood relationship alone and excluding from our ken any such right which may be rooted in either co-ownership or tenancy.

6. What next calls for highlighting is that we are examining the matter within the narrow field where the plaintiff-pre-emptor dies during the pendency of the trial and before a decree is made in his favour. Cases where a decree has been obtained, turn entirely on a different principle and are settled beyond cavil by the precedent of the final Court. This is so on the well established rule that once a decree has been obtained in court, then it becomes property or the estate of the decree-holder. There is little or no manner of doubt that property or estate arising from a decree of a court having jurisdiction, are clearly heritable rights which can be enforced or continued by the heirs or the legal representatives. To repeat, cases after the grant of a decree of pre-emption appear to us on a distinct footing and are entirely out of our ken.

6-A. Equally for the sake of clarity, it has to be borne in mind that what falls for examination here is within the narrow confines of a right of pre-emption conferred expressly by the statute alone. Therefore, we do not and in fact cannot consider the issue in the light of any customary rights of pre-emption or the earlier Muslim law of pre-emption which may be its precursor, because inevitably these rights must turn on the pecularities of the special custom or the canons of Muslim Personal Law. This circumspection has both the sanctity of rationale, as also the authority of precedent because in a similar situation in *Hazari and Ors.* v. *Neki (dead)* by his legal *representatives and others* (4), their Lordships rightly declined to be trammeled into the intricacies of the Sunni Law of Pre-emption and the customary law, with the following observations:—

> "It is necessary to emphasize that we are dealing in this case with the statutory right of pre-emption under Punjab

(4) AIR 1968 S.C. 1205.

Act 1 of 1913 and its subsequent amendment and not with the right of pre-emption under the Mohammadan Law....."

7. With the aforesaid prologue, it seems to be apt, because the matter is to be examined on the plain language of the statute itself, to read the same forthwith.—

"15. Person in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property:—

(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest—

(a) where the sale is by a sole owner,—

FIRST, in the son or daughter or son's son or daughter's son of the vendor;

SECONDLY, in the brother or brother's son of the vendor;

THIRDLY, in the father's brother or father's brother's son of the vendor;

FOURTHLY, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,—

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors;

SECONDLY, in the brothers or brother's son of the vendor or vendors;

THIRDLY, in the father's brothers or father's brothers' sons of the vendor or vendors;

FOURTHLY, in the other co-sharers;

FIFTHLY, in the tenants who hold under tenancy of the vendor or vendors the land or property or a part thereof;

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly,—

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendors;

SECONDLY, in the brothers or brother's sons of the vendors;

THIRDLY, in the father's brothers or father's brother's sons of the vendors ;

FOURTHLY, in the tenants who hold under tenancy of the vendors or any of them the land or property sold or a part thereof.

(2) Notwithstanding anything contained in sub-section (1)—

* * * * *

* * * * *

8. In interpreting the aforesaid provisions one must keep in mind with particularity that it is a pre-emption right which we are called upon to expound. Time and again authoritative pronouncements of this Court as also of the final Court have reminded us that this is a piratical right being in the nature of a fetter on the right to hold property and has to be strictly and narrowly construed. Indeed observations have gone to the extent of saying that all legitimate means may be taken to defeat a right of pre-emption, if possible. It is unnecessary to elaborate this aspect because it has the affirmance of a recent Full Bench of Seven Judges of this Court in *Kalwa* vs. *Vasakha Singh & others* (5) in the following terms :—

"Now the true principle for the construction of pre-emption statutes is not in doubt and is well settled beyond cavil by binding precedents within this Court as also of the final

(5) R.S.A. 67 of 1969 decided on 2-1-1982.

Court. These have totally tilted to the view that in essence the right of pre-emption is a piratical right and a fetter and a clog on the right of ownership which merely has its roots in out-moded custom and archaic history which had to be countenanced as a relic of a feudal past."

9. Equally it would deserve highlighting that herein the right of pre-emption is the mere creature of the statute. It deserves recalling that within the State of Punjab this right has been abolished by the Legislature which had granted the same by Punjab Act No. 11 of 1978. However, it remains in force as yet in the State of Haryana. It is true that the right of pre-emption may have had its roots in custom and antiquity but what has to be kept in the fore is the fact that all that has been substantially deviated from and now the right is governed entirely by the Act and at places completely overrides and abolishes the customary concepts. Therefore, the question before this Full Bench primarily is whether the legislature in conferring this right of pre-emption rooted in blood relationship alone was granting it as a heritable right or as a personal one only.

10. Clearly alive to the statutory nature of the right and with the aforementioned canon of construction in the context of pre-emption law one may now proceed to construe the plain provisions of sub-section (1) of section 15 of the Act. Now closely analysing the language of First, Secondly and Thirdly of clause (a) thereof and the corresponding provisions of First, Secondly and Thirdly of clauses (b) and (c) thereto it seems plain that the statute herein confers the right of pre-emption purely on the basis of blood relationship and the very existence of the right stems from the kinship or otherwise of the pre-emptor with the vendor of the property. Apart from the existence of the right itself even the *inter se preferences* thereto betwixt the various pre-emptors again depends entirely on the degree of proximity of his blood relationship with the vendor. If it can be established that the blood relationship specified by the statute does not exist betwixt the parties, the claim of the right of pre-emption would equally cease to exist. Now it seems to necessarily follow that right which is rooted entirely in the blood relationship of the parties is a right personal to each particular relation because of the *inter se* competing right of the pre-emptors. If the preferential pre-emptor does not choose to sue, the right passes on to the next

preferential pre-emptor as spelt out by the statute seriatim as First, Secondly, Thirdly, Fourthly etc. It does not pass on or vest in the heirs of the preferential pre-emptor who refuses or fails to exercise his right of pre-emption. In the presence of the other preferential pre-emptors the heirs of the one who does not sue, do not come into the picture at all. It has been rightly said that where by custom the right of pre-emption is rooted in the ownership of land then the right might pass with such land but where it is rooted in blood relationship there can be no passing of the specific blood relationship prescribed with precision by the statute. All this is a very strong pointer to the fact that the statutory right of pre-emption based on blood relationship is in essence a purely personal right and as such would normally not be heritable.

11. Another test whether the right is heritable or not is that of its alienabiliy. While a personal right cannot be passed on, transferred or alienated to another, an impersonal or general right can ordinarily be so done. It was the common case before us that the right of pre-emption is neither transferable during the lifetime of the person having the same and it could not be alienated in favour of another. If such a right is incapable of transfer or alienation during the life-time, it stands to reason that the same results would ensue by the death of the pre-emptor and his right rooted in blood-relationship would not be transferred or inherited by the heirs who independently would not have even a remote claim to such a right and in any case not in the presence of the preferential pre-emptors.

12. The basic principle which calls for application herein stems from the hallowed maxim *Actio-personalis moritur cum persona* — a personal right of action dies with the person. Now if it is once held that the right of pre-emption founded wholly in blood-relationship, is a personal right then it necessarily follows that the right of action based thereon would inevitably die with the plaintiff. A sharp analogy in this context is provided by the statutory tenancy laws with regard to the claim of the landlord to evict the tenant for personal necessity. It has been held that this statutory right is personal in nature and, therefore, is not heritable. *In Smt. Phool Rani and others* v. *Sh. Naubat Rai Ahluwalia* (6) *Chandrachud, J.*

(6) 1973 R.C.R. 364.

(as the learned Chief Justice then was) speaking for the Court has already held as follows:—

> "The survival of the right to sue on the death of a plaintiff is a problem that has often to be solved on a permutation of several facts and circumstances. But it would be out of place in this judgment to embark upon an abstract disquisition of the question as to in what classes of cases, the right to sue survives in favour of the legal representatives. In some cases under the Rent Acts, the maxim *Actio-Personalis moritur cum persona*, has been attempted to be applied on the death of a necessary party to a suit or proceeding but that oft-quoted maxim is oft misunderstood. The plain meaning of that common law maxim is that a personal action dies with the parties to the cause of action.....and then.
>
> Thus, the requirement pleaded in the ejectment application and on which the plaintiff has founded his right to relief is his requirement, or to use an expression which will effectively bring out the real point, his personal requirement. If the ejectment application succeeds—we will forget for a moment that the plaintiff is dead—the premises in the possession of the tenant may come to be occupied by the plaintiff and the members of his family but that does not make the requirement pleaded in the application anytheless a personal requirement of the plaintiff. That the members of his family must reside with him is his requirement, not theirs. *Such a personal cause of action must perish with the* plaintiff."

13. On the identical principle it is equally well settled that a claim of damages in tort being in essence a personal action it does not descend to the heirs and would die with the claimant. The legal position is the same with regard to contracts which are personal in nature. For instance, a claim for personal employment against the employer does not devolve on the heirs and would finish with the death of the plaintiff. It is unnecessary to multiply instances in this context. In all these cases, clearly enough, the right to sue does not survive and I do not see how that statutory right of pre-emption,

which is rooted entirely in blood-relationship, being in essence a personal right, can possibly be on a different footing.

14. Particularly worth recalling in this context is the dictum of their Lordships of the Supreme Court in *Bhagwan Das (Dead) by Lrs. and others* v. *Chet Ram* (8). Therein it was authoritatively reiterated that the pre-emptor must retain his right of pre-emption at all three stages, namely, at the date of the sale, at the time of the filing of the suit, and at the date of decree. If he loses the right at any one of the stages, then it was held that he could not successfully prosecute his claim for pre-emption. In *Bhagwan Das's case (supra)* these observations were made in the context of a tenant's right of pre-emption given by clause Fourthly of section 15(1)(a) of the Act. Now if that be so, it would follow even with greater force that where the pre-emptor's right is rooted entirely in blood relationship, then after his death (where he dies during the pendency of the suit) he would not be able to retain this primary qualification thereof at the time of the passing of the decree. Therefore, the suit becomes impossible to be carried to a successful conclusion. From this angle also, it would be plain that the pre-emptor claiming on the basis of blood relationship alone, being not in a position to hold that right at the time of the decree, could not be successful and inevitably his heirs, whether having independent right of pre-emption or otherwise, cannot be in a better position.

15. Adverting now to some precedents in the field of the pre-emption law itself, what deserves highlighting is that such a right of pre-emption may flow either from blood-relationship alone or from ownership of land by the pre-emptor. The different considerations may well apply in this context, seems to be plain on principle as also by the weight of precedent. Reference may first be made to *Mohammad Hussain* v. *Niamat-Un-Nissa and others* (9) where the Division Bench in the context of Muslim Pre-emption Law was categoric in the following terms :—

> "The short point which we have to decide is—did the right of pre-emption determine upon the death of Muhammad Hasan? All the authorities of which we are aware show

(8) 1970 P.L.J. 780.

(9) (1898) 20 I.L.R. (Allahabad) 88.

that it did; that the right of pre-emption is gone when the pre-emptor is a Sunni of a Hanifi sect, and has not obtained his decree during his life-time, and that the right to sue does not survive to his heirs. The authorities will be found at page 505 of Baillie's Moohumudan Law, Hanifeea (2nd edition); Hamilton's Hedaya by Grady, (2nd edition, p. 560); Tagore Law Lectures 1873 (Shama; Charan Sarcar) p. 534; Tagore Law Lectures, 1884, (Ameer Ali) 2nd edition, Vol. I, p. 603."

The aforesaid view has been quoted with approval and re-affirmed by the Full Bench in *Mohd. Ismail* v. *Abdul Rashid and others*, (9). The twin reasons for the view that the right of pre-emption does not survive to his heirs if the pre-emptor dies before obtaining a decree in his favour were analysed as under:—

"(1) That the pre-emptor must be possessed of the property on account of which he claims pre-emption on the date of the sale. This condition is not satisfied by the heirs.

(2) that the pre-emptor must be firmly possessed of his own property till the date of the decree in his favour, and if he dies before that date, this condition is not fulfilled."

On further analysis of principle and precedent, it was held as follows:—

"There is nothing illogical in the right being not personal and attached to properly and at the same time not being heritable or transferable after the sale has been made to a stranger but before a decree has been passed in favour of the pre-emptor. There are many interests in land which are neither heritable nor transferable and the bare right of pre-emption after the sale has been effected but before it has ripened into a decree of Court, seems to be such a right.

The same thing might be put in another way. It can be said that although the right of pre-emption runs with the land

(9) A.I.R. 1956 Allahabad 1.

and is not initially personal it assumes a personal aspect for the purposes of enforceability in a court of law. From the moment of the sale in favour of the stranger till the date of the decree in favour of the pre-emptor, the right can be enforced only by the person who was the owner of the pre-emptive property on the date of the sale of the property sought to be pre-empted."

On the aforesaid line of reasoning it was concluded categorically that under the Hanafi School of Muhammadan Law the right of pre-emption does not survive to the heirs if the pre-emptor dies before obtaining a decree in his favour. The same view holds the field in Bombay where the Division Bench in *Dahyabhai Motiram Bhat and others* v. *Chunilal Kishoredas Pandya and others* (10) has observed as follows:—

"Generally speaking, the right of pre-emption is a personal right which, under the Mohammadan Law, would not descend to heirs."

16. Even in the context of a right of pre-emption running with the land Banerji, J. in the Full Bench judgment in *Wajid Ali and another* v. *Shaban and others*, (11), has observed as follows :—

"——It is argued, that the right of pre-emption is a right of running with the land and therefore whoever acquires the land acquires right of pre-emption. As to this argument, it may be observed in the first place, that in every case of pre-emption under a custom entered in the *wajib-ul-arz* the right does not arise from the ownership of land, for example, where a brother or other relative who is not a co-sharer has the right to pre-empt. In the next place, it seems to me that when we talk of pre-emption running with the land what is meant is that the land sold is subject to the right of pre-emption of a person who has such right at the date of the transfer in respect of which the right is claimed. It does not follow that the right devolves by inheritance. As has been already stated, a Full Bench of this Court has held that the right does not pass to a purchaser from the person

(10) A.I.R. 1914 Bombay 120.

(11) (1909) 31 I.L.R. (Allahabad) 623.

who possessed it. In my opinion the principle which applies in the case of a purchaser equally applies in the case of a devolution of interest by inheritance. We must therefore hold that a person who had no right of pre-emption at the date of the transfer in question cannot acquire that right by reason of his subsequently inheriting the property of the person who had the right, but did not seek to enforce it....."

To the same tenor are the brief observations of the Division Bench in *Partab Singh and others* v. *Daulat and others* (12).

17. Within this Court, specifically under Section 15 of the Act, where the right was claimed on the basis of blood-relationship as a collateral, it has been observed categorically in *Bharat Singh and another* v. *Kallu Singh and others*, (13) as under :—

"——It is a settled rule that the right of pre-emption is a purely personal right. Therefore, the right of Kalu Singh to get possession of the land by pre-emption came to an end with his death.....The learned counsel for the respondents contends that legal representatives of Kalu Singh have not brought on the record...Kalu Singh had died before the pre-emption decree was passed. Therefore, on his death, the right of pre-emption did not survive to to his legal representatives and there would be no question of the legal representatives continuing the suit for pre-emption....."

Before adverting to some other and the earlier precedents on the point, it again deserves highlighting that sometimes a fallacy is introduced in assuming certain omnibus generalisations with regard to the right of pre-emption. That it may vary in its origin, nature, scope and purpose, seems to be axiomatic. Where the fountain-head thereof is immemorial custom, it must rest on the peculiarities of such a custom either established or judicially recognized. Where it rests on the personal law, e.g., Mohammedan Law, then it is controlled entirely by the incidents thereof. It is unnecessary to advert to the

(12) (1914), 36, I.L.R. (Allahabad) 63.
(13) 1966 Current Law Journal 124.

peculiarities of the different branches of Mohammedan Law itself e.g., Shia, Suni, and further sects within the latter, like the Hanafis. That different considerations may well apply in each category can hardly be disputed. Again, where the right of pre-emption is entirely a conferment of the statute, then obviously the question will depend upon the particular statute applicable and the intendment of the Legislature evidenced therefrom. Even with regard to the statutory right of pre-emption, it may flow from different sources. Without pretending to be exhaustive, the right of pre-emption may arise therein from :

(i) Tenancy under the vendor or vendors.

(ii) Co-ownership with the vendor.

(iii) Vicinage with the vendor.

(iv) Blood-relationship with the vendor.

It bears repetition and reiteration that herein we are considering only the last aspect of the right of pre-emption. Plainly this is rested on blood-relationship and not on the ownership of any land or the pre-emptive tenement. That different considerations might flow (and we are not called upon to pronounce thereon here) where the right is rooted in the pre-emptive tenement alone as against the pre-emptive right rested on blood-relationship alone, deserves to be sharply kept in mind.

18. One may now advert to *Hazari* v. *Neki*, (14). Therein the three sales of land effected by Dhara Singh vendor were sought to be pre-empted by the vendor's father's brother Neki. The pre-emptor succeeded in all the three suits which were decreed in his favour. The first appellate Court affirmed the aforesaid decrees of pre-emption. The vendee preferred three second appeals and it was only during the pendency of these appeals in the High Court that Neki plaintiff died on April 7, 1963. His legal representatives were then brought on the record and later all the three second appeals were dismissed by the learned Single Judge. The Letters Patent Appeals against the said judgment were also dismissed (AIR 1966 Punjab 348), and the

(14) A.I.R. 1968 S.C. 1205.

Bench distinguished some of the cases relied upon by the appellant on the ground that therein the question arose either before the institution of the suit or during the pendency of the suit, but before the decree of the trial Court and, therefore, they were not relevant to the issue. It would thus be manifest that the securing of the decree by the pre-emptor both at the trial stages and at the first appellate stage was the material factor therein. Their Lordships of the Supreme Court affirmed the judgment of the Letters Patent Bench and observed as follows:—

> " ..It is true that the right of pre-emption under section 15(1)(a) of the Punjab Act of 1913 is a personal right in the sense that the claim of the pre-emptor depends upon the nature of his relationship with the vendor."

It is correct that they qualified the aforesaid statement but that was in the particular context of the case, where they were dealing with the decree of pre-emption granted by the trial Court and affirmed by the first appellate Court. Thereafter the pre-emptor had died. They were not seized of a case where the inchoate right of pre-emption rested on blood-relationship alone was merely pending trial and the plaintiff dies before the decree. Their Lordships expressly referred to *Mohammad Husan* v. *Niamat-Un-Nissa's case* (supra), wherein under the Muhammedan Law it has been held that in a pre-emption suit the right to sue does not survive to the heirs of the plaintiff.

19. It becomes necessary to advert to and distinguish some of the older cases where the right of pre-emption rested wholly on the pre-emptive tenement or on the ownership of the land within the village estate and in a way was attached thereto. It is possible to take the view that where the right of pre-emption itself springs from the pre-emptive tenement, it passes with the pre-emptive tenement It is in this light that the statutory right of pre-emption specifically and separately rooted in blood-relationship has to be distinguished from the right springing from the ownership of land in the estate. Whilst such a pre-emptive tenement might pass on to the heirs and consequently the right attached thereto, there can be no passing on of the particular blood-relationship, which is the prescriptive qualification for the pre-emptive right under the First, Secondly and Thirdly of clause (a), (b) and (c) of sub-section (1) of

section 15 of the Act. It is in this light that the Full Bench in *Faqir Ali Shah* v. *Ram Kishen and others*, (15), has to be viewed. There the whole question turned on the ownership and passing of the property in the pre-emptive tenement from which the right arose under section 12 of the Punjab Laws Act seems to be manifest from the very opening words of Chief Justice Clark as follows:—

> "Where a right of pre-emption is claimed under section 12 of the Punjab Laws Act in virtue of being a land-holder the right is inherent in the land. No questions are asked as to the nature of the land, as to whether it is ancestral or acquired, or as to how it was obtained, by inheritance or purchase; it is sufficient that the claimant owns the land.
>
> (20) It is clear, therefore, that ordinarily a transfer of land passes the right of pre-emption, and the loss of the land involves the loss of the right of pre-emption. So much so that a right of pre-emption already acquired is lost if the land which gave rise to it is parted with."

Plainly enough, the ratio of the aforesaid case cannot possibly be applicable to the right of pre-emption based on blood-relationship alone. The same applies to the Single Bench view in *Fateh Khan* v. *Muhammad & others*, (16), wherein also the right was claimed under section 5 of the Punjab Laws Act, 1872, and apparently rested on the pre-emptive tenement.

20. The only direct, though cryptic authority to the contrary, are the observations of Almond, Judicial Commissioner, in *Sarfraz Khan* v. *Mohd. Yakub Khan and others*, (17). It was noticed by the learned Judge that there was no direct authority on the point. Yet he observed as follows:—

> "....In my opinion, it is just and equitable that the present petitioners should be entitled to exercise the right which their predecessor-in-interest had exercised during his life-time."

Neither any principle nor any precedent was cited in support of this view and obviously the question was not fully canvassed or debated.

(15) 133 P.R. 1907.
(16) 98 P.R. 1898.
(17) A.I.R. (29) 1942 Peshawar 23.

The observation is in the nature of a dictum without adequate support. With respect and in view of the detailed reasons recorded above, I must record a dissent therefrom.

21. To conclude, on the particular language of the statute, on principle, and on the weight of precedent, it is held that the purely statutory right of pre-emption, resting wholly on blood-relationship alone under section 15(1) of the Punjab Pre-emption Act, is not a heritable right and does not devolve on the heirs on the death of the plaintiff-pre-emptor before the grant of the decree in the suit. The answer to the question posed at the very outset is thus rendered in the negative.

22. It remains to advert to *Smt. Joginder Kaur and another* v. *Jasbir Singh and others,* (supra). Therein with respect to the claim for pre-emption under section 15(2)(b) of the Act it has been held that the sons of the plaintiff-pre-emptor, who died during the pendency of the suit, were entitled to be brought on the record to continue the same. With the greatest respect, in view of the legal conclusion arrived at above, the said judgment does not lay down the law correctly and is overruled. For identical reasons, the later judgment in *Gurdev Kaur and others* v. *Smt. Chanan Kaur and others,* (supra) taking the same view, must also be overruled. A perusal of the judgment would indicate that the learned Judges took the view that *Hazari* v. *Neki's case* (supra) wholly governed the issue. With great respect, it appears to me that the real ratio of the aforesaid case was misconstrued and the sharp distinction between the right of pre-emption rooted in the ownership of land alone, against that flowing from blood-relationship only. was altogether missed. Further, there appears to be some confusion with regard to the pre-emptive tenement *stricto sensu,* as against the land sought to the pre-empted. The Single Bench judgment in *Jhabbu* v. *Multan Singh and others,* (supra) had only followed the view in *Gurdev Kaur case* (supra) and because of the above it has to be inevitably overruled.

23. In the light of the view taken above, the question of any of the heirs continuing the suit on the basis of an independent right of pre-emption does not at all arise for consideration. It has, therefore, to be held that the application preferred by the legal representatives of the plaintiff-pre-emptor would not be maintainable, and setting

aside the order of the trial Court (allowing the same) we dismiss the said application. Inevitably, the suit for pre-emption must also fail.

24. The Civil Revision is allowed but in view of the intricacies of the question involved, the parties are left to bear their own costs.

Prem Chand Jain, J.—I agree.

Gokal Chand Mital, J.—I also agree.