to be strong in Gurdaspur, where they are mainly returned as Hindus and in Ambala, Ferozepore and Amritsar where they are mainly returned as Sikhs. It is supposed that they are to be found in some numbers in Patiala, but our tables would intimate that they are as strong in Faridkot. They are looked on as unorthodox by most true Sikhs, and it will be observed that more of them are returned in the censure as Hindus than as Sikhs."

(12) From the above discussion, it is clear that the land was donated to the appellant-Akhara by the rulers of Patiala, Jind and Nabha States for religious purposes, that Guru Granth Sahib is kept and worshipped there and all persons are permitted to pay respect and worship in the Akhara. The Nirmala Sadhus started as a section of Sikhs, who were followers of Guru Gobind Singh and their principal Akhara is at Hardwar, but subsequently in the period of about 300 years that has since elapsed, they veered away from the Sikh religion and in some part of the country the Nirmala Sadhus are treated as Sikhs while at other places, they are treated as Hindus. In the appellant Akhara Guru Granth Sahib is maintained and worship is allowed there to Nirmala Sadhus and other members of the public. Thus, Nirmala Sadhus is a religious sect and the appellant-Akhara is a religious place of public nature within the meaning of clause (iii) of the explanation to Section 51(1) (c) of the Act and its land is exempt from the operation of the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955. Therefore, the decision of the learned Single Judge cannot be sustained.

(13) As a result, we accept the Latters Patent Appeal and the judgment dated 24th May, 1971 of the learned Single Judge is set aside and the writ petition filed by Kehar Singh, Respondent No. 1 is dismissed. There will be no order as to costs.

MAHAJAN, J.—I agree.

B.S.G.

APPELLATE CIVIL

Before D. K. Mahajan and P. S. Pattar, JJ.

CHANAN SINGH, ETC.,—*Appellants.*

versus

LAL SINGH,— *Respondent.*

E.S.A. 1639 of 1970.

November 1, 1973.

Punjab Security of Land Tenures Act (X of 1953)—Section 17-A(1)—Pre-emption suit—Defendant-vendee not raising the plea

of his tenancy over the suit land—Decree for pre-emption passed—Such plea of tenancy—Whether can be raised at the stage of the execution of the decree.

Held, that section 17-A of the Punjab Security of Land Tenures Act, 1953 takes away the right of pre-emption, where the sale is to a tenant and the vendee can defeat the pre-emption suit on that ground. But if he does not choose to raise the plea of his tenancy over the suit land at the stage of the suit and a decree for pre-emption is passed without adjudicating the claim of the vendee as a tenant, such a decree passed after the commencement of the Act cannot be executed. The bar is a statutory bar and being bar to the execution of the decree, it will prevail over the constructive plea of *res judicata*. Hence when, in a suit for pre-emption, the tenant does not plead his tenancy and suffers a decree it is open to such a tenant to raise that plea at the stage of execution of that decree.

Case referred by Hon'ble Mr. Justice D. K. Mahajan on 17th April, 1972 to a Larger Bench for decision of an important question of law involved in the above noted appeal. The Larger Bench comprising of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice Pritam Singh Pattar finally disposed of the aforesaid execution second appeal on 1st November, 1973.

Execution Second Appeal from the decree of the Court of Shri Aftab Singh, Additional District Judge (III), Ludhiana, dated 9th July, 1970, reversing that of Shri S. S. Kanwal, Sub-Judge II Class, Ludhiana, dated 27th April, 1970, remanding the objection petitions back to the learned Executing Court with the direction that proper issues arising from the pleadings be framed and the objection petitions be decided after giving the parties full opportunity to lead evidence on the points in controversy.

M. S. Jain, Advocate, *for the appellants.*

V. P. Sharda, Advocate, *for the respondent.*

REFERRING ORDER

MAHAJAN, J.—This order will dispose of E.S.As. Nos. 1639 and 1640 of 1970.

(2) These appeals are directed against the decision of the lower appellate Court which reversed on appeal the decision of the executing Court rejecting the objections of the vendee on the ground that the vendee was a tenant of the land in dispute and the pre-emption decrees could not be executed against him. In both these appeals

the vendee and the pre-emptors are the same, but as there were two sales, two suits for pre-emption were filed.

(3) During the course of the trial the vendee did not lead evidence that he was a tenant of the land in dispute forming the subject-matter of both the sales and, therefore, under section 17-A of the Punjab Security of Land Tenures Act, the pre-emption suits were liable to be dismissed. However, during the trial some evidence was led as to the vendee being a tenant of the suit land and the trial Court over-ruling the plea of the pre-emptor that the question of section 17-A could not be raised without there being a plea to that effect, found that the vendee was a tenant of the disputed land. In this view of the matter the pre-emptors' suits were dismissed. The pre-emptors preferred two appeals to the lower appellate Court and it took the view that as the plea of section 17-A of the Punjab Security of Land Tenures Act had not been raised in the trial Court, it could not be taken notice of. The Court, however, did not stop there, but proceeded to determine the question as to whether the vendee was a tenant of the land in dispute and found that he was not. The result was that the pre-emption suits were decreed. When the pre-emptors sought execution of their decrees the vendee again raised the objections based on section 17-A of the Punjab Security of Land Tenures Act. The trial Court rejected the objections and decided to proceed with the executions. On appeal by the vendee the decision of the executing Court was reversed and the executions had been remitted to the executing Court for decision of the objections of the vendee on merits. Against the remand orders, the present two appeals have been preferred.

(4) I would not have interferred with the orders of remand, but as the facts are not in dispute and the matter which requires determination is of considerable importance, I have thought it fit to refer both these appeals to a larger Bench. Two questions, which require determination, are :—

(1) What is the effect of the findings recorded on a matter by a Court in the absence of pleadings thereon. One Court found that the vendee was a tenant; the other negatived that finding and went further and held that a matter not raised in the pleadings could not be permitted to be agitated. This being so, such a finding on the question as to whether the vendee was a tenant or not, would be more or less *obiter dicta.* The question will then arise

whether the *obiter dicta* could operate as *res judicata* in execution proceedings.

(2) In case a pre-emption suit could fail on a plea under section 17-A of the Punjab Security of Land Tenures Act and that plea is not raised; can it be allowed to be raised at the stage of execution ? Would not exception (iv) of section 11 of the Code of Civil Procedure come into play and bar such a plea ?

The language of section 17-A clearly suggests that a suit for pre-emption must fail if the sale is to a tenant. But the section does not stop here. It further postulates that a decree, whether obtained before or after the coming into force of section 17-A, cannot be executed. There is thus a statutory bar to the execution of a decree when the judgment-debtor is a tenant vendee. The question still will arise as to whether the status of the judgment-debtor is a matter which having been determined would operate as a *res judicata* in subsequent proceedings.

(5) For the reasons recorded above I direct that the papers of these two appeals be laid before my Lord the Chief Justice for constituting a larger Bench to determine these appeals.

JUDGMENT

Judgment of the Court was delivered by :—

MAHAJAN, J.—(6) This order will dispose of Execution Second Appeals Nos. 1639 and 1640 of 1970. This order should be read in continuation of the order passed by me sitting in Single Bench on April 17, 1972, when these appeals were heard by me and referred to a larger Bench. Necessary facts have been stated in the said order and it is not necessary to restate them.

(7) The sole question that requires determination is what interpretation is to be placed on section 17-A of the Punjab Security of Land Tenures Act, 1953. The relevant part of this section for our purposes is sub-section (1) which is in the following terms :—

"Notwithstanding anything to the contrary contained in this Act or the Punjab Pre-emption Act, 1913, a sale of land comprising the tenancy of a tenant made to him by the landowner shall not be pre-emptible under the Punjab

> Pre-emption Act, 1913, and no decree of pre-emption passed after the commencement of this Act in respect of any such sale of land shall be executed by any Court :
>
> Provided that for the purposes of this sub-section the expression tenant includes a joint tenant to whom whole or part of the land comprising the joint tenancy is sold by land-owner."

The vendee did not specifically raise the plea in the two pre-emption suits that he was a tenant of the land which was the subject-matter of the pre-emption suits. In spite of this, the trial Court found that the vendee was a tenant and on that basis, dismissed the suits. The pre-emptor filed two appeals because there were two sales and two suits and the lower appellate Court, in the first instance held that the trial Court could not decide as to whether the vendee was a tenant inasmuch as that plea had not been raised. In spite of this finding, the lower appellate Court proceeded to determine on merits what it had objected to, namely, as to whether the vendee was a tenant. It found that the vendee was not a tenant. The result was that the appeals were allowed and the suits were decreed. These decrees became final. When the pre-emptor sought to execute these decrees, the tenant vendee pressed into service the provisions of section 17-A(1). The decree-holder raised the plea that the judgment-debtor could not raise the contention available to him under section 17-A(1). The objection of the decree-holder prevailed with the executing Court and the executing Court proceeded to execute the decrees. In the meantime, the vendee preferred two appeals to the lower appellate Court. The lower appellate Court took the view that the plea under section 17-A was available to the vendee in execution proceedings and the objection of the decree-holder that, that plea could not be raised was untenable. In this view of the matter, the lower appellate Court remanded the cases to the executing Court to determine whether the vendee was tenant of the land which formed the subject-matter of the two sales. Against the order of remand, the present second appeals have been preferred.

(8) As already observed, the short question is: What interpretation is to be placed on section 17-A, that is, whether in the case of a vendee tenant who does not plead his tenancy when a suit for pre-emption is filed and suffers a decree, is it open to such a tenant to raise that plea at the stage of execution of the decree that has been passed against him in the pre-emption suit. There can be

another case where the vendee does raise such a plea and on evidence, the Court finds that the vendee is not a tenant, and thereafter, the decree for pre-emption is passed. In this type of case, the question will again arise whether the provisions of section 17-A permit the vendee tenant to raise the same plea all over again in execution. So far as the present cases are concerned, they fall within the first and not the second category though the learned counsel for the appellants made a strenuous effort to bring them within the second category. It is obvious that the lower appellate Court while passing the pre-emption decrees observed that the plea, that the vendee was a tenant could not be allowed to be raised, and in spite of the finding that such a plea could not be allowed to be raised, proceeded to decide that very matter. In this situation the decision on the question whether the vendee was a tenant or not of the land sought to be pre-empted can, at best, be said to be *obiter*, and the rule is well settled that a finding which is *obiter* cannot operate as *res judicata*: See in this connection *Pritam Kaur* v. *State of Pepsu and others* (1). But this does not finish the argument of the learned counsel for the appellants. He contends that it was incumbent on the vendee to plead that he was a tenant of the land sought to be pre-empted, and thereby, defeated the suit sought to be pre-empted. His failure to raise the plea brings the case within the mischief of Explanation IV to section 11, Code of Civil Procedure. This would be an unanswerable argument but for the peculiar wording of section 17-A. Section 17-A takes away the right of pre-emption where the sale is to a tenant and a vendee can defeat the pre-emption suit on that ground. But if he does not choose to do so at the stage of the suit and a decree is passed without adjudication of the claim of the vendee as a tenant, the decree, according to section 17-A, which in the very nature of things has been passed after the commencement of the Punjab Security of Land Tenures Act, 1953, cannot be executed. Therefore, the bar is a statutory bar and being a bar to the execution of the decree, in our opinion, it will prevail over the constructive plea of *res judicata*. So far as the present appeals are concerned, they would stand concluded by the view we have taken of section 17-A. Any other view will destroy the latter part of this provision. However, difficulty will arise where the bar of section 17-A is specifically pleaded by the tenant vendee in the suit and the Court decreeing the suit adjudicates upon that bar. In other words, the Court gives a firm finding on evidence that the tenant vendee is in fact not a tenant of

(1) A.I.R. (1963) Pb. 9.

the land sought to be pre-empted, and thereafter, a decree for pre-emption is passed. In that situation, it appears to us to be extremely doubtful as to whether in execution proceedings such a judgment-debtor can plead the bar of section 17-A. As already observed, we are not called upon to determine the latter question and, therefore, we leave this question open. So far as the present appeals are concerned, they stand concluded by the view we have taken of section 17-A.

(9) For the reasons recorded above, these appeals fail and are dismissed, but with no order as to costs throughout. The parties are directed to appear before the executing Court on 3rd December, 1973.

B. S. G.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

HIRA SINGH, ETC.,—*Appellants.*

versus

HARIA, ETC.,—*Respondents.*

R.S.A. 1018 of 1966.

November 2, 1973.

The Punjab Pre-emption Act (1 of 1913)—Section 15(1)(a) Fourthly—Punjab Security of Land Tenures Act (X of 1953)—Sections 9-A and 14-A Small landowner making application for ejectment of his tenants on agricultural land—Collector passing ejectment order on the condition of the tenants being accommodated on some surplus area—Tenants not accommodated—Tenancy—Whether ends—Status of the tenants—Whether changes with the passing of the ejectment order—Such tenant—Whether have preferential right to pre-empt the sale of the land under their tenancy.

Held, that where a small landowner applies for ejectment of his tenants on the agricultual land under section 9-A read with section 14-A of the Punjab Security of Land Tenures Act, 1953 and the Collector passes an order that the tenants be evicted as and when they are accommodated on the surplus area, the tenancy does not end and the status of the tenants does not end with the passing of such an order unless the tenants are accommodated on the