LETTERS PATENT APPEAL

Before S. B. Capoor and Inder Dev Dua, J.J. B

SURJIT KAUR ALIAS SANTO AND ANOTHER,—*Appellants*

versus

JARNAIL SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No: 322 of 1963.

1965

April, 23rd

Punjab Security of Land Tenures Act (X of 1953)—S. 17A—Protection to tenants granted under—Extent of—Tenant consenting to a decree for pre-emption and surrendering possession—Whether protected—Pre-emption decree passed against law and executed with consent of parties—Executing Court—Whether has inherent jurisdiction to restore posession—Tenant unilaterally associating others in joint cultivation—Those others—Whether can claim status of a tenant.

Held, that the public policy involved in section 17-A of the Punjab Security of Land Tenures Act, 1953, is confined to protecting the tenants against forcible dispossession, by means of pre-emption decrees, of the land comprised in their tenancy and purchased by them, and it is to this extent alone that it may not be open to them to waive the right conferred on them so as to disable the Court from enforcing this statutory inhibition. But there is no failure of the public policy underlying the section if the tenant voluntarily and of his free will allows a decree for pre-emption to be passed and hands over possession under the decree receiving the pre-emption money.

Held, that an executing Court, after executing the pre-emption decree in the presence of the parties and without any objection and indeed with their consent, does not possess any inherent power to order restoration of possession on payment of the pre-emption money. Existence of such a power in a case, where there is no question of any abuse of process of the Court, or any attempt to overreach the Court or to play fraud, might well be fraught with serious consequences. If the parties had agreed that possession be taken by the decree-holders on payment of the purchase price or the pre-emption money and if it was so taken, then, merely because the decree is against law, or the executing Court could not have executed the decree and in this sense the order is not in accordance with law, does not by itself and without more, always clothe the executing Court with inherent jurisdiction, to re-open the matter at the instance of one of the consenting parties and after reviewing its earlier order, to direct restoration of possession on return of the pre-emption money. Every inadvertent breach or violation of

mandatory provision of law does not necessarily attract jurisdictional infirmity so as to attach to the resulting orders the fatal characteristic of nullity in contradistinction with mere illegality.

Held, that mere unilateral association in cultivation of others by a tenant does not clothe those others with the status of tenants of the land-holder. Tenancy requires bilateral agreement between a tenant and a land-holder.

Letters Patent Appeal under clause 10 *of the Letters Patent against the judgement of the Hon'ble Mr. Justice P. C. Pandit passed in E.S.A. No.* 1353 *of* 1962, *affirming that of Shri Jagwant Singh, Senior Sub-Judge, Ferozepur, dated the* 18*th November,* 1962, *who had affirmed the judgment of Shri C.D. Vashista, Sub-Judge,* 1*st Class, Moga, dated the* 4*th November,* 1961, *ordering the applicants to deposit the sale price of Rs.* 10,000 *in his court on or before* 18*th November,* 1961, *for payment to the decree-holders and further ordering that on such deposit the applicants shall be entitled for the possessions of the land in dispute by restoration and the warrants of possession will be issued; in case the amount is not deposited the application will be dismissed with costs.*

B. S. JAWANDA AND S. L. PURI, ADVOCATES for the Appellant.

K. N. TEWARI, ADVOCATE for the Respondents.

JUDGMENT

DUA, J.—This Letters Patent Appeal is directed against a judgement of a learned single Judge dismissing the second appeal on the ground that the case is concluded by a finding of fact which, not being vitiated by any error of law, cannot be interfered with on second appeal. Dua, J.

The circumstances giving rise to this controversy are that on 13th August, 1957 Smt. Bishni sold the land in dispute to four brothers Bikkar Singh, Jarnail Singh, Lahora Singh and Pashora Singh for a sum of Rs. 10,000. Smt. Surjit Kaur and Smt. Chanan Kaur appellants along with their father Natha Singh thereupon instituted a suit for a declaration that the sale was without consideration and legal necessity and would not affect their reversionary rights. In the alternative, it was claimed that the appellants were entitled to pre-empt the sale on payment of Rs. 6,000, basing their claim on the assertion that they were

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heirs of the deceased husband of Smt. Bishni, the vendor. According to their averments, the sum of Rs. 10,000 had been fictitiously entered in the sale-deed and that amount was neither paid nor fixed in good faith. The suit for declaration, it appears, was later withdrawn but in respect of their claim for possession by pre-emption, Bikkar Singh made a statement that the appellants were the daughters of Natha Singh and his counsel admitted that they had a superior right of pre-emption. The plaintiffs' counsel also made a statement that the entire consideration of Rs. 10,000 mad been paid and fixed in good faith. In the result, a decree for possession of the land in dispute was passed in favour of the plaintiffs against the defendants on payment of Rs. 10,000 to the vendees. The amount had to be deposited on or before 31st May, 1960 failing which the suit was to stand dismissed. Till 31st May, 1960, the defendants were not to be dispossessed of the land. The sum of Rs. 10,000 was, it is common ground, actually deposited by the plaintiff-pre-emptors in accordance with the order, and in execution proceedings the possession of the land in dispute was delivered to them on 7th June, 1960 by the vendees after withdrawing the pre-emption money. On 31st August, 1960, the vendees filed an application in the executing Court under sections 47/144 and 151, Civil Procedure Code, read with section 17-A of the Punjab Security of Land Tenures Act, 1953 praying for restoration of the possession of the land in dispute on payment of Rs. 10,000 to the pre-emptor-decree-holders. This averment was made on the allegation that they had been cultivating the land in dispute under Smt. Bishni for nearly six years and, therefore, the sale of the said land in their favour by her was not pre-emptible under Section 17-A. This provision of law had come into force with effect from 19th January, 1959, whereas the pre-emption decree was passed on 3rd July, 1959, with the result that this decree could not be executed and they were entitled to the restoration of possession of the land in question.

The pre-emptors contested this application pleading that the Court had no jurisdiction to entertain the same on the ground that it was maintainable in the Court of the Assistant Collector of the 1st Grade under section 17-A (2) of the Punjab Security of Land Tenures Act; that the application was barred by limitation; that the executing Court had become *functus officio* after the decree had

been fully executed and that the applicants were not the tenants of the land in dispute.

The following issues were settled by the executing Court for trial:—

(1) Has this Court jurisdiction?

(2) Is the petition competent?

(3) Were the judgment-debtors tenants as alleged and its effect?

(4) Are the petitioners entitled to possession?

(5) Is the petition within time; and

(6) Relief.

The executing Court held the applicants to be tenants of Shrimati Bishni at the time of the sale in question. It also upheld its jurisdiction, and the competency of the application and further found it to be within limitation. Holding the applicants to be tenants of Shrimati Bishni, the Court found them entitled to restoration of possession of the land on payment of the sale-price to the decree-holders. The applicants were directed to deposit the sum of Rs. 10,000 in Court on or before 18th November, 1961; on failure to so deposit this amount, the application was to be deemed to have been dismissed with costs.

The decree-holders took the matter on appeal to the learned Senior Subordinate Judge where the findings of the Court of first instance on issue No. 3 were seriously contested. The Court of first appeal observed in the judgment that Jamabandi for the year 1955-56 showed Shrimati Bishni to be the owner of the land in suit and Bikkar Singh along with one Jai Singh as tenants-at-will under her. Bikkar Singh and Jai Singh continued to cultivate the land in dispute excepting rectagle No. 45, Khasra Nos. 2/2 and 12/2 upto *kharif* 1958. After *kharif* 1958 upto *Rabi* 1960, Bikkar Singh along with his brothers Jarnail Singh, Lahora Singh and Pishora Singh, etc. cultivated the land. Relianoe for these observations was placed by the Court of first appeal on exhibits O.1, O.2, O.4 and O.5. Exhibits O.4 and O.5,

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Khasra Girdawaris, according to the learned Senior Subordinate Judge, showed that rectangle No. 45, *killas* 2/2 and 12/2 were cultivated by Bikkar Singh and Jai Singh from *Kharif* 1955 to *Rabi* 1957, which means that immediately before the sale dated 13th August, 1957 this area was in these persons' possession. It was further observed that there was nothing on the record to show that Jai Singh was dispossessed after *Rabi* 1957. Bikkar Singh was accordingly held to be in cultivating possession of this area at the time of the sale. From Khasra Girdawaris Exhibits O.1, and O.2, it was discerned that Bikkar Singh and Jai Singh were in cultivating possession of the remaining land at the time of sale. On this basis, Bikkar Singh vendee was found to be a tenant in respect of the land in dispute at the time of the sale by Smt. Bishni in favour of Bikkar Singh, etc. Then occurs the following observation in the judgment of the learned Senior Subordinate Judge:—

> "Bikkar Singh, Jarnail Singh, Lahora Singh and Pishora Singh vendees are real brothers and it has been admitted by Bikkar Singh that he was cultivating the land in dispute along with his brothers and the cultivation was joint. Hence I hold that judgement-debtor-respondents were tenants of Mst. Bishni at the time of the sale in question as alleged by them."

Holding it to be unnecessary that under Section 17-A, Punjab Security of Land Tenures Act, the sale by the landowner should be in favour of his tenant alone, the sale was held not to be pre-emptible. Bikkar Singh, in the opinion of the Court, could not lose his right merely by joining his brothers in the purchase. The sale was also held to be indivisible. The execution of the pre-emption decree being forbidden by the Punjab Security of Land Tenures Amendment Act, the appeal was dismissed. The appellants then presented a second appeal in this Court which was dismissed by a Learned Single Judge. According to the learned Single Judge, the co-vendee-brothers of Bikkar Singh were of course not recorded as tenants of the land before this sale on 13th August, 1957, but Bikkar Singh having deposed as a witness that he along with his brothers was jointly cultivating the land in dispute, and this statement having been believed by the Courts below, their conclusion was considered to be one of the fact and,

therefore, unassailable on second appeal. Some other points were also unsuccessfully raised before the Learned Single Judge. Those points were repelled on the merits with an additional remark that they had not been raised in the Courts below.

On Letters Patent Appeal, the appellants' learned counsel has addressed arguments mainly on four points. To begin with, he has urged that the pre-emption decree in fa\ ur of the appellants was in reality a consent decree. The appellants as pre-emptors had actually paid the money and possession was also received by them. The vendees who are now claiming to be tenants must, therefore, be deemed to have waived the plea under Section 17-A, Security of Land Tenures Act. According to the argument, there is no public policy involved in this section and it is open to a party entitled to claim its benefit to waive it. Allied with this contention is the second point which emphasises the submission that the executing Court has no jurisdiction to go behind the decree which cannot be considered to be without jurisdiction in the sense of being a nullity which must be ignored by the executing Court. It is then urged that only Bikkar Singh was a tenant and not the other co-vendees. The sale in their favour is in the circumstances not protected against the appellants' claim of pre-emption, for it is only the tenants who have been clothed with a superior right both of purchase and of pre-emption against others. Lastly, stress has been laid on the submission that the executing Court had become *functus officio* after delivering possession of the land in dispute to the appellants.

These four points in substance really centre round three aspects. The first one emphasises the fact that the decree had been passed with the consent of the parties and also executed with the the consent of those affected; the second point that the decree and its execution was by no means a nullity and the executing Court has no jurisdiction to go behind the decree and to withdraw the execution; and the third point is based on the submission that Bikkar Singh alone was the tenant and the sale in favour of the other co-vendees even though they may have been cultivating jointly with him is not within the statutory exemption.

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On the first point, it is contended that the pre-emption decree being a consent decree is as such outside the purview of section 17-A. This submission raises the question of the true scope and effect of the protection secured to the tenants in 1959 by the insertion of section 17-A in that year in the Security of Land Tenures Act. This section reads as under:—

"17-A. Certain sales of tenancy lands not pre-emptible—(1) Nothwithstanding 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 landowner.

(2) Where, after the commencement of this Act, a tenant, to whom the land comprising his tenancy is sold by the landowner, has been dispossessed of such land by a pre-emptor in execution of a decree for pre-emption or otherwise, the tenant so dispossessed shall in the prescribed manner have the option either to purchase the land from the pre-emptor on payment of the price paid to the tenant by the pre-emptor or to be restored to his tenancy under the pre-emptor on the same terms and conditions on which it was held by him immediately before the sale, on an application made by him to an Assistant Collector of the first grade having jurisdiction within a period of one year from the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958.

(3) An application received under sub-section (2) shall be disposed of by the Assistant Collector of

the first grade in the manner laid down in sub-section (2) of section 10."

Section 17 of this Act, it may be remembered, had already conferred on certain tenants of landowners other than small landowners right to pre-empt certain sales or foreclosures of land in certain circumstances mentioned therein. This section overrides other law, usage or contract but is subject to section 18 of the Act which entitled certain tenants to purchase land comprised in their tenancy in certain circumstances and the right of pre-emption thus conferred is in preference to the right of other pre-emptors provided in the Punjab Pre-emption Act, 1913, except the descendants of vendors' grandfather. It appears that the provisions of the Security of Land Tenures Act prohibiting ejectment of tenants were circumvented by some landlords by *mala fide* creating sale transactions, etc., in favour of their tenants and then getting those sales collusively pre-empted by eligible pre-emptors under the Pre-emption Act. It is apparently to remedy this mischief and to effectuate protection to such tenants that section 17-A was added in 1959. It is argued on behalf of the appellants that section 17-A merely enacts an overriding provision that sales of tenancy lands in favour of tenants are not pre-emptible and pre-emption decrees in respect of such lands passed after the commencement of the Security of Land Tenures Act are not to be executed by any Court. It does not prohibit the tenants from voluntarily selling the tenancy land purchased by them and if they are free to do so, then it should logically be open to them to agree to the purchase of such land by the pre-emptors as well. Having voluntarily consented to the decree and having voluntarily withdrawn the pre-emption money and delivered possession of the land, the tenants, so proceeds the submission, cannot later turn back and ask the executing Court to get restored to them possession of the land on payment back of the pre-emption money by them to the appellants. The tenant must be held estopped from doing so. The appellants' learned counsel indeed goes to the length of submitting that there is no discernible public policy involved in enacting section 17-A and the rule of estoppel can legitimately be attracted. The learned counsel has in support of his submission referred us to *Basangouda* vs. *Basalingappa* (1) and *Allahabux Pindok, etc.* vs. *Nusserwanji and Co.* (2).

(1) A.I.R 1936 Lah. 301.
(2) A.I.R. 1936 Sind 99.

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Both these decisions support the view that the plea of estoppel by *res judicata* may prevail even when the result of giving effect to it will be to sanction what is illegal in the sense of being prohibited by statute. Our attention has also been drawn to *Matam Basawa* v. *Hanumantha Reddi, etc.* (3), which lays down that an agriculturist not claiming protection under section 60(1) (c), Code of Civil Procedure, at the time of sale and attachment cannot later do so and to *Chittar Mal* v. *Mt. Ram Devi* (4), which lays down that an agriculturist voluntarily mortgaging his house cannot invoke in aid the protection under Section 60, Civil Procedure Code. In so far as the Lahore decision is concerned, it may be pointed out that in *Prem Parkash* v. *Mohan Lal* (5), a Full Bench of the Lahore High Court while considering section 60(1) proviso (i) construed it to be mandatory and based on considerations of public policy, with the result that this protection could not be bartered away or waived and an agreement having such effect was held to be void and unenforceable by law.

On behalf of the respondents, it has been very strongly urged that this point has been raised for the first time in this Court and had never been pressed in the Courts below. An objection is, therefore, raised to its being pressed at this late stage. It is, however, conceded that the tenants did not assert their right as tenants at the time of the passing of the decree or at the time of its execution because they were not aware of it and it is greatly emphasised that even the Court passing the decree and executing the same was perhaps also unaware of the tenants' preferential rights as also of the statutory prohibition directing the Court not to execute such decrees. According to the respondents' counsel as the daughter of the landowner-vendor was pre-empting the sale the tenant-vendees merely admitted her right of pre-emption. Stress is laid on the submission that section 17-A embodies a public policy and there can be no waiver of the right based on such policy nor can the beneficiary under it be held estopped by any conduct based on ignorance of that right.

In my view, it may perhaps not be quite correct to say that there is no discernible public policy involved in Section 17-A. But I am inclined, as at present advised,

(3) A.I.R. 1944 Mad. 548.
(4) A.I.R. 1934, Lah. 164(1).
(5) A.I.R. 1943 Lah. 268.

to think that the public policy embodied in this section is confined to protecting the tenants against forcible dispossession, by means of pre-emption decrees, of the land comprised in their tenancy and purchased by them, and it is perhaps to this extent alone that it may not be open to them to waive the right conferred on them so as to disable the Court from enforcing this statutory inhibition. The question, however, arises as to when a tenant voluntarily consents by a positive statement to a decree for pre-emption and of his own free volition surrenders possession on receiving the pre-emption money, can he be held entitled to again approach the executing Court to get back the land on returning the pre-emption money? I am only considering the position in regard to the executing Court. The question posed raises several important aspects. The tenant's right to sell the land purchased by him has not been shown to be restricted or taken away by the statute. The right of pre-emption is also largely understood to be after all a right of substitution of the pre-emptor for the original vendee in the sale pre-empted. Looked at from this point of view it may be argued that there is no failure of public policy underlying section 17-A when the tenant voluntarily and of his free will allows a decree for pre-emption to be passed and hands over possession under the decree on receiving the pre-emption money. It is pressed by the respondents that this precise point of estoppel and waiver was not urged in the Courts below and is not even raised in the memorandum of the present appeal. In my opinion, the substance of the argument raised by the appellants is really another aspect of the challenge to the competency of the executing Court and I will, therefore, revert to it when I deal with that aspect.

The appellants have next urged that it was not open to the executing Court to decline to execute the decree because the decree was not a nullity. It is indisputable that the validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it would not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or some such other ground which may have the effect of rendering the Court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it; the executing Court is otherwise in law bound to

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execute the decree and has no power to go behind it except where the Court passing it had no jurisdiction. In the case in hand, however, it is clear that section 17-A also prohibits execution by any Court of a decree of pre-emption passed after the commencement of the Security of Land Tenures Act in respect of any such sale which is exempted from pre-emption. There would thus be little doubt that the executing Court was enjoined not to execute the decree, but the question arises that the decree having been executed can the executing Court now pass the impugned order?

This brings me to the second part of this challenge. It is submitted that if the execution has been effected without any objection, and, as indeed, it has been executed with the positive consent of the tenant, then the executing Court has no jurisdiction to order restoration of possession of the land on payment of the pre-emption money. This submission is connected with two other submissions. One of them relates to the right conferred on a dispossessed tenant to approach the Assistant Collector under Section 17-A (2) of the Security of Land Tenures Act for getting possession restored to him, and it is submitted that this is the only remedy open to a dispossessed tenant. The Learned Single Judge has taken the view that in the case in hand that remedy is not open to the tenants and I agree that this sub-section cannot possibly cover cases in which dispossession of the tenants takes place after one year from the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958. The second connected submission is based on the plea that the executing Court is *functus officio* having completely executed the decree and done all that was necessary to do for satisfying the decree in its entirely. The Learned Single Judge has, while dealing with the plea of the executing Court being *functus officio*, observed that the decree and the delivery of possession being contrary to law, the executing Court, which was also the Court passing the decree, was competent to rectify the error made by it in ignorance of the provisions of section 17-A. It was also represented before the Learned Single Judge that this point had not been taken before the Courts below. I, however, find that the argument of the executing Court being *functus officio* after the satisfaction of the decree was apparently raised before, and actually discussed by, the learned Senior Subordinate Judge while dealing

with the appeal from the order of the executing Court and, indeed, this point had also been raised in the executing Court itself. The Court of first appeal repelled the submission by holding that the decree being illegal could not be executed according to law and the order of execution being also illegal the Court had inherent power to restore possession even after the satisfaction of the decree. In the executing Court too this objection had been expressly urged, as is clear from paragraph 5(iv) of the judgment. That Court had also repelled this contention on the ground of the decree being illegal and inexecutable according to law with the observation that the Court should possess inherent power to restore possession under Sections 151/47, Civil Procedure Code. It was in this connection emphasised that no person should be prejudiced by the act of Court. Indeed, I find that even in the reply filed by the present appellants on 5th November, 1960 to the tenants' application for restoration of possession it was emphasised more than once that possession having been delivered to the decree-holders, the execution application had been consigned to the record room and the present application was thus incompetent.

In my view, it is extremely doubtful if the executing Court, after executing the decree in the presence of the parties and without any objection and indeed with their consent, can be deemed to possess any inherent power to order restoration of possession on payment of the pre-emption money. Existence of such power, in a case like the present, might well be fraught, at times, with serious consequences. There is no question of any abuse of the process of the Court in this case and there is no suggestion that any attempt was made to overreach the Court or to play fraud on the parties or the Court. If the parties had agreed that possession be taken by the appellants-decree-holders on payment of the purchase price or the pre-emption money and if it was so taken, then merely because the decree was against law, or the executing Court could not have executed the decree and in this sense the order was not in accordance with law, may not by itself and without more, always clothe the executing Court with inherent jurisdiction, to reopen the matter at the instance of one of the consenting parties and after reviewing its earlier order, to direct restoration of possession on return of the pre-emption money. Every inadvertent breach or violation of a mandatory provision of law does not necessarily

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attract jurisdictional infirmity so as to attach to the resulting orders the fatal characteristic of nullity in contradistinction with mere illegality. It is not shown that the pre-emption decree in question appeared on the face of it to be a nullity; nor that the order granting possession to the decree-holders so appeared on its face. And then, when the Court does possess inherent jurisdiction, it is not as a matter of law bound in all cases to exercise it merely for the asking; the exercise of the inherent power calls for judicial discretion after considering all the facts and circumstances. The Court's power to pass the decree and to execute the same could be successfully questioned only on showing that the respondents were tenants at the relevant time and, as such, had a preferential right of purchase, or a superior right of pre-emption. If these pleas were not raised or pressed at the relevant time and the orders became final, those orders can scarcely be treated to be nullities. I am, therefore, inclined to think that in the present case even if the executing Court had any inherent jurisdiction, it should not have been allowed to be invoked by the respondents.

On behalf of the respondents, *Sansar Chand* V. *Sham Lal* (6), and *Jagan Nath* v. *Custodian Property, etc.* (7), have been cited for the proposition that section 47, Civil Procedure Code, applies even when the question relating to execution, discharge or satisfaction of a decree is raised after the execution of the decree. The facts of these two decisions appear to be peculiar, but granting that section 47 is widely worded it does not mean that the Court must recall its previous orders merely because on further argument they are considered to be wrong in law.

Coming to the next submission the appellants' counsel has urged that the sale in favour of Bikkar Singh and his brothers is not protected by section 17-A, because they are not joint tenants and it is only the tenant who is given protection. In support of this submission, reliance has been placed on *Gurbachan Singh* Vs. *Mohinder Singh* (8), which followed an earlier Bench decision of this Court in

(6) 1957 P.L.R. 450.

(7) A.I.R. 1951 Pb. 106 (2).

(8) 1963 P.L.R. 102.

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Jang Singh v. *Hardyal Singh* (9). It is urged that admittedly vendees other than Bikkar Singh are not entered in revenue papers as tenants of the land in dispute before the sale in question and merely because of Bikkar Singh's assertion that his brothers had been jointly cultivating the land with him would not make them tenants of the landholders. The respondents' counsel has controverted this submission with the argument that the question of Bikkar Singh and his brothers, the co-vendees, being co-tenants, is a question of fact and it was rightly so treated on second appeal. The correctness of the view teken by the Bench *in the case of Gurbachan Singh* has also been questioned by the respondents. It is contended that even though a tenant associates with himself non-tenants, the sale must be held protected in its entirety. The findings on appeal given by the learned District Judge as the final Court of fact have already been stated by me. The co-vendee brothers of Bikkar Singh were not recorded as tenants prior to the sale in question, but as a result of Bikkar Singh's admission that his brothers were jointly cultivating the land along with him they have all been considered to be joint tenants. According to section 2(6) of the Punjab Security of Land Tenures Act, 1953, the word 'Tenant' has the meaning assigned to it in the Punjab Tenancy Act, 1887, and includes a sub-tenant and self cultivating lessee. Section 4(5) of the Punjab Tenancy Act defines a 'Tenant' to mean a person who holds land under another person who is or, but for a special contract, would be liable to pay rent for that land to that other person. Our attention has not been drawn to any evidence establishing the liability to pay rent by the other co-vendees. This test has been ignored by the Courts below thereby rendering their conclusion vulnerable and open to question on second appeal and *a fortiori* on Letters Patent Appeal. Unless the facts found by the final Court of fact satisfy the statutory test, the finding cannot be conclusive and may even be described to be founded on wrong legal grounds. If any inference from facts does not logically accord with and follow from them then one must say that there is no evidence to support it and to come to a conclusion which there is no evidence to support is to make an error in law. Indeed, from this point of view the question of tenancy would be a mixed question of fact and law and the infirmity being legal

(9) 1962 P.L.R. 1152.

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would be open to challenge in second appeal. Section 100, Civil Procedure Code, would accordingly not stand in the way of the appellants. The mere fact that Bikkar Singh has unilaterally associated with his brothers in joint cultivation does not seem in law by itself to confer on them the status of tenants of the landholders for the purpose of claiming a preferential right of purchase or a superior right of pre-emption. Tenancy seems to require bilateral agreement. No provision of law nor any precedent or principle has been brought to our notice in support of the view that mere unilateral association in cultivation of others by a tenant clothes those others with the status of tenants of the land-holder. Neither any contractual nor any legal basis for the alleged tenancy has been established on the record. The conclusion of the learned Senior Subordinate Judge on this point is thus clearly vitiated by an error of law. It would thus follow that in any event out of the vendees it was only Bikkar Singh, who was the tenant, and it was only the sale in his favour which could be held to be protected. But in view of our conclusion that this is not a fit case in which the executing Court's inherent power could legitimately be exercised, this appeal should prevail and allowing the same we set aside and reverse the orders of the Courts below and dismiss the respondents' application, dated 31st August, 1960. In the peculiar circumstances of the case the parties should bear their own costs throughout.

Capoor, J

S. B. CAPOOR, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

THE FOODGRAIN DEALERS' ASSOCIATION AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2429 of 1964:

1965

April, 27th.

Essential Commodities Act (X of 1955)—S. 3—Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964—Permit for purchase and movement of wheat issued in pursuance of which wheat purchased—State Government—Whether can acquire that wheat.

Held, that there is no legal bar in the way of the Government to acquire the wheat in respect of which import permit has been