

Jai Singh v. Mohinder Singh, etc. (Pandit, J.)

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.

of the plaintiff to include definitely the right of water in the plaint—Whether amounts to a suit for partial pre-emption.

Held, that by virtue of clause (e) of section 2(3) of the Punjab Alienation of Land Act, 1900, the right to water is included in the definition of "land". That being so, if a pre-emptor files a suit for pre-emption regarding the sale of agricultural land, he automatically pre-empts the right of water in such land unless the same is specifically excluded by the vendor in the sale-deed. The pre-emptor need not distinctly mention this fact in the plaint, because the right of the water enjoyed by the owner or occupier of the land as such is also included in the definition of "land". If a plaintiff can successfully pre-empt the agricultural land, the right of water therein will automatically be pre-empted by him. His failure to include this right definitely in the plaint will not result in partial pre-emption.

(Para 11)

Letters Patent Appeal under Clause X of the Letters Patent of the High Court against the judgment of Hon'ble Mr. Justice D. S. Tewatia dated the 27th March, 1970 passed in S.A.O. No. 112 of 1968 by which His Lordship reversed the order of Shri Ved Parkash Sharma, Additional District Judge, Bhatinda, dated 30th October, 1968 accepting the appeal and setting aside the judgment under challenge.

J. N. Seth, Advocate, for the appellant.

Harbans Lal, Advocate, for respondent No. 1.

JUDGMENT.

PANDIT, J.—(1) On 29th December, 1965, Ranga Singh sold agricultural land, measuring 11 Kanals 1 Marla, along with right of *khal* water and right of way (Arazi Maye Haq Pani Khal wa Raah) situate in village Gandhu Khurd, District Bhatinda, for Rs. 3,000 to Mohinder Singh. This sale was pre-empted by Jai Singh on the ground that he was the brother of the vendor. The plea of the vendee was that the suit was for partial pre-emption, because the plaintiff had not mentioned the right of *khal* water and right of way in the plaint and the same was, therefore, liable to be dismissed on that ground alone.

(2) One of the issues framed in the case was whether the suit was for partial pre-emption and its effect.

(3) The trial Court treated this issue as a preliminary one and holding the same in favour of the vendee dismissed the suit.

Jai Singh v. Mohinder Singh, etc. (Pandit, J.)

(4) When the matter came up in appeal before the learned Additional District Judge, Bhatinda, the plaintiff moved an application under Order 6 rule 17, Code of Civil Procedure, seeking amendment of the plaint by including the claim to the right of way and water in the land, which were also sold along with the agricultural land in dispute. This application was contested by the vendee, whose case was that the application should not be allowed at that stage as a valuable right had accrued to him in the meantime. The learned Additional District Judge came to the conclusion that the omission on the part of the plaintiff to include this claim in the suit was through inadvertence and not intentional. He, consequently, allowed this application on payment of Rs. 100 as costs to the vendee. The judgment and decree of the trial Court were set aside and the case remanded for redecision under Order 41, rule 23A, Code of Civil Procedure.

(5) Against this order, the vendee filed a second appeal in this Court, which came up for hearing before a learned Single Judge. The learned Judge was of the view that the right to water the land was recognised by the Punjab Pre-emption Act, 1913, hereinafter called the Act, as would be evident from the definition of "agricultural land" given in section 3(1) of that Act. The fact that the plaintiff had omitted to include the right of water in his claim for pre-emption was brought to his notice at the very outset and yet no steps were taken to amend the plaint till such time when the suit was dismissed and the matter was taken in appeal. All this, according to the learned Judge, showed that the omission on the part of the plaintiff was not inadvertent. The learned Judge further held that the plea that the plaintiff's counsel did not correctly advise him or pursue the case could not be considered as sufficient ground for holding that the omission was inadvertent. As a result, he came to the conclusion that the order of the learned Additional District Judge allowing the amendment was not in accordance with law. He accepted the appeal and set aside the judgment of the learned Additional District Judge. Against this decision, the present appeal has been filed by the pre-emptor under Clause X of the Letters Patent.

(6) Counsel submitted that in the grounds of appeal taken by the appellant before the learned Additional District Judge, he had definitely stated that his suit was not for partial pre-emption, because the right of khal water and the right of way went along

with the land. His intention was not to leave these rights, but he wanted to take the whole bargain of sale as it was. In the alternative, his case was that if the trial Court considered it essential to specifically mention these rights in the plaint, he ought to have been given opportunity to amend the plaint for including them in the same. He craved leave to amend the plaint in order to remove the technical difficulty, if there was one. Counsel argued that the learned Single Judge had not given a finding as to whether the suit was for partial pre-emption or not. If he was of the view that the Additional District Judge had erroneously allowed the amendment of the plaint, he should have either remanded the case to him for determining this question or himself given a decision thereon. The main argument of the learned counsel was that the right of water and way was appurtenant to the land and it was not necessary to specifically mention the same in the plaint. The suit was not one for partial pre-emption.

(7) Counsel for the appellant frankly conceded that he could not support the judgment of the learned Additional District Judge that the omission to include both these rights in the plaint was by inadvertence, because the vendee had taken this objection from the very beginning, with the result that an issue was also struck on this point.

(8) Learned counsel for the respondent, on the other hand, contended that the right of water was itself agricultural land within the meaning of this expression under section 3(1) of the Act and if the plaintiff did not include this right in the plaint, the suit was definitely for partial pre-emption and liable to be dismissed on that ground. He, however, conceded that if the plaintiff omitted to include the right of way in the plaint, that could not be taken against him, because this right could not be pre-empted under the Act.

(9) The question for decision, therefore, is whether the omission on the part of the plaintiff to include the right of water in the plaint would amount to partial pre-emption. If the reply be in the affirmative, the plaintiff must fail, because the omission to do so was admittedly not by inadvertence. The determination of this question will depend on whether the right of water will be appurtenant to the land sold and included in it, because if that be so then the person, who was pre-empting the land, was automatically

Jai Singh v. Mohinder Singh, etc. (Pandit, J.)

pre-empting the right of water in the same. Section 3(1) of the Act says:

“In this Act, unless a different intention appears from the subject or context—

(1) “Agricultural land” shall mean “land” as defined in the Punjab Alienation of Land Act, 1900 (as amended by Act I of 1907), but shall not include the rights of a mortgagee, whether usufructuary or not, in such land;”

(10) In the Punjab Alienation of Land Act, the expression “land” has been defined as:

“2. (3) the expression “land” means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes—

(a) the sites of buildings and other structures on such land;

(b) a share in the profits of an estate or holding;

(c) any dues or any fixed percentage of the land-revenue payable by an inferior landowner to a superior landowner;

(d) a right to receive rent;

(e) any right to water enjoyed by the owner or occupier of land as such;

(f) any right of occupancy; and

(g) all trees standing on such land.”

(11) It would, thus, be seen that by virtue of clause (e) of section 2(3) of the Punjab Alienation of Land Act, the right to water is included in the definition of “land”. That being so, if a pre-emptor files a suit for pre-emption regarding the sale of agricultural land, he would automatically be pre-empting the right of water in such land, unless the same was specifically excluded by the

vendor in the sale-deed. He need not distinctly mention this fact in the plaint, because the right of water enjoyed by the owner or occupier of the land as such is also included in the definition of land. If he could successfully pre-empt the agricultural land, the right of water therein would automatically be pre-empted by him. His failure to include this right definitely in the plaint will not result in partial pre-emption. It may be stated that the learned counsel for the respondent could not cite any decided case taking a contrary view. Moreover, a reading of the plaint will also show that the plaintiff was pre-empting the entire bargain and was not giving up any part thereof. He was prepared to pay the entire sale price, which, according to him, had actually been paid by the vendee.

(12) I would, therefore, hold that the suit in the present case was not one for partial pre-emption, if the plaintiff had omitted to specifically mention the right of *khal* water in the plaint. That was the only question debated before us.

(13) The result is that the appeal is accepted, the judgment of the learned Single Judge reversed and the case sent back to the trial Court for disposing of the suit after deciding the other issues framed therein. The parties are, however, left to bear their own costs.

GOPAL SINGH, J.—I agree.

B.S.G.

REVISIONAL CRIMINAL

Before S. S. Sandhawalia and Bhopinder Singh Dhillon, JJ.

RACHHPAL,—Petitioner.

versus

STATE OF HARYANA,—Respondent.

Criminal Revision No. 1047 of 1968.

August 6, 1971.

Essential Commodities Act (X of 1955)—Sections 3 and 7—Punjab Coarse Grains (Export Control) Order (1966)—Sections 2(d) and 3—Preparation