

APPELLATE CIVIL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

GURDIAL SINGH ETC.,—Appellants

versus

SEWA SINGH ETC.,—Respondents

L.P.A. No. 83 of 1972.

October 30, 1972.

Punjab Security of Land Tenures Act (X of 1953)—Section 17-A—Punjab Pre-emption Act (I of 1913)—Section 3(5)(a)—Agreement to sell land in favour of tenants thereon—Sale deed not executed by the vendor—Tenants obtaining decree for specific performance of the agreement—Sale deed executed by the Court in execution of the decree—Tenant-vendees not in possession of the land on the date of the execution of the sale-deed—Such sale—Whether in favour of the tenants and not pre-emptible under section 17-A—Sale in execution of decree of specific performance—Whether pre-emptible.

Held, that where an agreement to sell land is made in favour of the tenants thereon, but the vendor does not execute the sale-deed and the tenants obtain a decree for specific performance of the agreement, it is on the date of the decree for the specific performance that the rights of the parties as purchasers and sellers of land are crystallised. If on that date the vendees are in possession of the land as tenants, the sale in their favour is not pre-emptible. The execution and registration of the sale deed was an act which had to be done by the vendors and on their failure, by the executing Court or its nominee thereafter in execution of the decree of specific performance. If in the meantime, the vendees leave possession of the land, that will not affect the status of the vendees as tenants on the land. For the purposes of section 17-A of the Punjab Security of Land Tenures Act, the sale shall be deemed to have been made in favour of the tenants on the date of the decree for specific performance and is, therefore, not pre-emptible.

Held, that when a Court passes a decree for specific performance of a contract, it only gives effect to the previously agreed to contract which one of the parties thereto fails to carry out. The Court only directs the defaulting party to carry out its obligation under that contract within a certain time, failing which the Court will carry it out acting for and on its behalf. Instead of executing the sale deed itself, the Court appoints one of its officers to perform that ministerial act. The vendor and the vendee are pre-determined in such a case. Hence a sale in execution of the decree for specific performance of the agreement to sell is pre-emptible.

(Para 5)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Bhopinder Singh Dhillon passed in R.S.A. No. 1293 of 1967, affirming that of Shri M. L. Mirchia, Senior Sub-Judge, with enhanced appellate powers, Ferozepur, dated the 10th day of October, 1967, reversing that of Shri Nanak Chand Khichi, Sub-Judge, IInd Class, Fazilka, dated the 15th June, 1967, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs.

H. S. Wasu, Senior Advocate, with L. S. Wasu, Advocate, for the appellants.

D. S. Kang, Advocate, for the respondents.

JUDGMENT

The judgment of the Court was delivered by :—

Tuli, J.—Makhan Singh, Joginder Singh, Mohinder Singh and Meja Singh agreed to sell the land in dispute to Sewa Singh, Kirpal Singh and Phoola Singh by an agreement dated April 15, 1959, for a sum of Rs. 11,000.00 out of which Rs. 3,600.00 were paid at the time of the execution of the agreement. The sale deed was to be executed by the vendors till May 20, 1959. The vendors, however, did not execute the sale deed with the result that the vendees filed a suit for specific performance of the agreement of sale on October 22, 1959. That suit was decreed in their favour on August 29, 1960, by the Subordinate Judge 1st Class, Fazilka. The vendors were directed to execute the sale deed and get it registered on or before October 10, 1960, on receipt of the sum of Rs. 7,400.00 from the vendees on account of the balance of the sale price. Instead of obeying that decree the vendors filed an appeal in this Court and obtained the stay of execution of the decree passed by the learned Subordinate Judge. The appeal was dismissed by this Court on January 5, 1965, and thereafter the sale deed was executed on January 15, 1966, by the Ahlmad of the Court in favour of the vendees in execution of the decree for specific performance as was passed by this Court. On March 1, 1966, Gurdial Singh, Rachhpal Singh and Kulwant Singh, sons of Makhan Singh, and Mahal Singh, son of Mohinder Singh, filed the suit for possession by pre-emption of the land purchased by Sewa Singh, Kirpal Singh and Phoola Singh in pursuance of the decree for specific performance in their favour. All the plaintiffs were minors on the date of the suit. The plea on behalf of the defendant-vendees was that they were the tenants on the land in dispute and the sale in their favour was not pre-emptible in view of the provisions of section

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17-A of the Punjab Security of Land Tenures Act, 1953. The learned trial Court decided that issue against the vendees and decreed the suit of the plaintiffs on June 15, 1967, on payment of Rs. 11,660.00. The appeal against that decree filed by the defendant-vendees was accepted by the learned Senior Subordinate Judge, Ferozepore, on October 10, 1967. Against that decree, R.S.A. 1293 of 1967 was filed in this Court which was dismissed by the learned Single Judge on September 13, 1971. The present appeal under clause 10 of the Letters Patent has been filed against the judgment and decree of the learned Single Judge with his leave.

(2) The point requiring determination is whether the sale in favour of the defendant-vendees could not be pre-empted by the plaintiff-pre-emptors on the ground that the sale of the land in suit was in favour of the tenants. The admitted facts are that the defendant-vendees were the tenants on the entire land in suit on April 15, 1959, when the agreement for sale was entered into but before the suit for specific performance was filed, they had been deprived of the possession of 5 *bighas* and 6 *biswas* of land comprised in Khasra No. 642 *min* measuring 3 *bighas* 15 *biswas* and Khasra No. 643 *min* measuring 1 *bigha* 11 *biswas*. They were in possession of the remaining land as tenants on the day they filed the suit and continued to be the tenants in occupation of that land on the day the decree for specific performance was passed in their favour in August, 1960. During the pendency of the appeal against that decree in this Court, the defendant-vendees were ejected from the entire land in pursuance of an order of ejectment passed by the revenue Court. At the time the sale deed in favour of the defendant-vendees was executed and registered in January, 1966, by the Ahlmad of the Court, they were not in possession of any part of the land in suit. On these facts, it is submitted by the learned counsel for the plaintiff-appellants that the sale took place in January, 1966, and the status of the defendant-respondents has to be seen on that date. According to section 54 of the Transfer of Property Act, the ownership of the land in suit was transferred to the defendant-vendees on the execution of the sale deed in their favour and till then the vendees remained the owners of the land. Admittedly, on the date of the execution of the sale deed, the defendant-vendees were not in possession of the land as tenants. In our view, this submission of the learned counsel is fallacious and cannot be accented. The rights of the parties as purchasers and sellers of land crystallised on the date the decree for specific performance of the

contract was passed in favour of the defendant-vendees on August 29, 1960. Admittedly, on that date, the defendant-vendees were in possession of the entire land and except 5 *bighas* 6 *biswas*, mentioned above, as tenants and, therefore, the sale in their favour shall be deemed to have taken place on August 29, 1960, the date on which the decree for specific performance was passed in their favour. The execution and registration of the sale deed was an act which had to be done by the vendors and on their failure, by the executing Court or nominee thereafter. As the defendant-vendees were admittedly tenants of that land, the sale in their favour except to the extent of 5 *bighas* 6 *biswas* was not pre-emptible. Whatever happened after the passing of the decree for specific performance by the trial Court did not affect the status of the vendees as tenants on the land for the reason that the vendors had obtained an order from this Court staying the execution of that decree till the decision of the appeal. The vendors cannot take advantage of their own act in postponing the execution of the sale deed in order to deprive the vendees of their right to have an absolute sale free from the right of pre-emption of the plaintiff-appellants. It is for this reason that we hold that for the purposes of section 17-A of the Punjab Security of Land Tenures Act, the sale shall be deemed to have been made in favour of the tenants and, therefore, not pre-emptible.

(3) If the view propounded by the learned counsel for the appellant is to be accepted, it will defeat the intention of the Legislature in enacting section 17-A of the Punjab Security of Land Tenures Act. When the agreement to sell was entered into on April 15, 1959, the vendees were the tenants of the entire land agreed to be sold but according to section 54 of the Transfer of Property Act, they did not acquire proprietary rights in the land merely because of that agreement. That agreement had to be enforced and converted into a sale. That sale, in our view, took place on August 29, 1960, because it was on that date that the rights of the parties as vendors and vendees were determined and crystallised and the vendors were ordered to execute the necessary sale deed. The sale deed would have been executed if the appeal had not been filed or the stay order had not been issued by this Court on the application of the vendors. The vendees cannot be allowed to suffer because of the judicial orders passed by this Court. The affirmance of the decree passed by the learned trial Court by this Court related back to the date of the decree of the trial Court and, therefore, it has to be deemed as if the sale took place on

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August 29, 1960, on which date admittedly the defendant-respondents were tenants of the land except an area of 5 *bighas* 6 *biswas*. In this view of the matter, the following judgments relied upon by the learned counsel for the appellants are of no avail to him:—

- (1) *Mrs. Christine Pais v. K. Ugappa Shetty and another* (1),
- (2) *Hakim Enayat Ullah v. Khalil Ullah Khan and another* (2),
and
- (3) *Shewantabai and others v. Vishwasrao Govindrao* (3).

(4) We are, however, unable to hold that the sale shall be deemed to have taken place on April 15, 1959, the date of the agreement for sale, as has been held in *Dina and another v. Gujaba* (4), which judgment has been relied upon by the learned Single Judge in support of his decision. The defendant-vendees had to retain their status as tenants till the date of the decree of the learned trial Court and if prior to that date they lost that status with regard to any part of the property, the sale of that part of the property in their favour cannot be said to be in the status of a tenant. According to the agreement dated April 15, 1959, the vendees had the right either to sue for specific performance or for damages, the amount of which was specified. They had, therefore, the option to choose one or the other. Till they made up their mind to choose the relief for specific performance of the agreement, they had to retain their status as tenant. Even it was open to them to compromise the suit till it was decreed by accepting damages and, therefore, till the decree for specific performance was passed in favour of the vendees against the vendors, it cannot be said that their rights as vendors and vendees came into being and were determined by the Court. The plaintiff-appellants are, therefore, entitled to a decree for possession of 5 *bighas* 6 *biswas* of land of which the vendee-defendants had lost possession before the decree for specific performance was passed in their favour on payment of proportionate price.

(5) The learned counsel for the defendant-respondents has, however, urged that the plaintiff-appellants are not entitled to any decree

- (1) A.I.R. 1966 Mysore 299.
- (2) A.I.R. 1938 All. 433.
- (3) A.I.R. 1953 Nag. 167.
- (4) A.I.R. 1926 Nag. 95.

because the sale having been effected in pursuance of the decree of the civil Court, it could not be pre-empted. Reliance is placed on section 3(5)(a) of the Punjab Pre-emption Act, 1913, according to which 'sale' does not include a sale in execution of a decree for money or of an order of a civil, criminal or revenue Court or of a revenue officer. It is urged by the learned counsel for the respondents that the sale in their favour by the vendors was in execution of a decree or order of a civil Court and, therefore, was not pre-emptible. The words are not 'in execution of any decree' but 'in execution of a decree for money'. The decree for specific performance was not a decree for money and, therefore, is not covered by sub-clause (a) of clause (5) of section 3 of the Punjab Pre-emption Act. It can also not be said that it was in execution of an order of a civil Court merely because the Ahlmad of the Court executed the sale deed in favour of the vendees in pursuance of an order passed by the civil Court. The order directing the Ahlmad to execute the sale deed cannot be construed as an order of a civil Court in execution of which the sale took place. The sale in execution of an order of a civil Court takes place when the property is brought to sale by the order of the Court and the sale so held is confirmed by the Court. At such a sale every member of the public has the right to bid and the purchaser is not a pre-determined person. When a Court passes a decree for specific performance of a contract, it only gives effect to the previously agreed to contract which one of the parties thereto fails to carry out. The Court only directs the defaulting party to carry out its obligation under that contract within a certain time, failing which the Court will carry it out acting for and on its behalf. Instead of executing the sale deed itself, the Court appoints one of its officers to perform that ministerial act. The vendor and the vendee are pre-determined in such a case. This matter was considered by Khanna, J. (now an Honourable Judge of the Supreme Court), in *Balbir Singh and others v. Kulwant Singh and others* (5), wherein the matter was discussed from all angles. We are in respectful agreement with the view taken by that learned Judge and hold that the sale in execution of the decree for specific performance of the agreement to sell passed in favour of the vendees was pre-emptible.

(6) For the reasons given above, the suit of the plaintiff-appellants is liable to dismissal except to the extent of 5 *bighas* 6 *biswas* on payment of proportionate price. It is not clear on this record as to

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what land had been allotted to the defendant-vendees in lieu of Khasra Nos. 642 *min* (3 *bighas* 15 *biswas*) and 643 *min* (v *bigha* 11 *biswas*) of which they were not the tenants on August 29, 1960. Accordingly, the case is remitted to the learned trial Court to determine the land allotted to the defendant-vendees in lieu of the land measuring 5 *bighas* 6 *biswas* and comprised in Khasra Nos. 642 *min* and 643 *min* and the proportionate price payable by the plaintiff-appellants to the defendant-vendees. The trial Court shall determine the above matter after affording an opportunity of hearing to the parties who are directed through their counsel to appear before it on November 27, 1972. The trial Court shall submit its report to this Court within four months of that date. This appeal will then be set down for hearing for passing the proper decree.

K. S. K.

APPELLATE CIVIL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

KHUSHI RAM GILL,—Appellant.

versus

THE STATE OF PUNJAB, ETC.,—Respondents.

L.P.A. No. 97 of 1972.

October 30, 1972.

Punjab Civil Service Rules, Volume II—Rules 5.7, 5.8, 5.9, and 5.10—Government employees selected for discharge under rules 5.7 and 5.8—Rules 5.9 and 5.10—Whether apply only to such employees—Notice of discharge under rules 5.9 and 5.10—Whether can be given to all Government employees.

Held, that rule 5.9 of Punjab Civil Service Rules, Volume II applies to a Government employee holding a permanent post before his services are dispensed with on the abolition of his post. This may refer to the selection made under rules 5.7 and 5.8, but rule 5.9(b) deals with a person holding a temporary post and is unconcerned with rules 5.7 and 5.8. Similarly, rule 5.10 cannot be said to apply to Government employees selected under rules 5.7 and 5.8. Notice of discharge as mentioned in rules 5.9 and 5.10 deals with all kinds of Government employees, whether in permanent employment or temporary employment or for a fixed term under a contract of employment. Hence rules 5.9 and 5.10 do not apply *only* to