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

surplus area. In view of the conditional order they will not be considered as tresspassers on the land with effect from the date of the order and the landlord cannot eject them on the basis of the order. They remain tenants of the landlord and their status will not change at the time of passing of the order. If the landlord sells the land such tenants will have preferential right of pre-emption under section 15(1)(a) Fourthly of the Punjab Pre-emption Act, 1913.

Regular Second Appeal from the decree of the Court of Shri Ved Parkash Sharma, Additional District Judge, Sangrur, Ex-Officio Additional District Judge, Hissar, dated the 13th day of May, 1966, affirming that of Shri Bharat Bhushan Gupta, Sub-Judge 1st Class, Bhiwani, dated the 8th November, 1965, dismissing the plaintiffs suit and leaving the parties to bear their own costs.

P. C. Khunger, Advocate, *for the appellants.*

D. N. Aggarwal, Advocate, *for the respondents.*

JUDGMENT

PANDIT, J.—Haria was the owner of agricultural land, measuring 136 Bighas 4 Biswas, situate in village Jui Khurd, District Hissar. He sold the same to Mansukh and his two brothers Ram Saroop and Tara Chand for Rs. 14,000 by a registered sale-deed. This sale led to a suit for pre-emption by Hira Singh, Birbal and Harmukh. All of them claimed that they were the tenants on the land in dispute under the vendor and, therefore, they had a preferential right to acquire this land. According to them, the sale had actually taken place for Rs. 7,000 and not Rs. 14,000 as mentioned in the deed.

(2) The suit as resisted by the vendees on a number of grounds. But, in the present second appeal, we are only concerned with one of them, namely, that the plaintiffs had no preferential right of pre-emption.

(3) Both the Courts below have dismised the suit, holding that the plaintiffs had no right of pre-emption. This decision is being challenged in this second appeal.

(4) The Courts have decided the case against the plaintiffs on the basis of an order, Exhibit D.A., passed by the Assistant Collector, 1st Grade, Bhiwani, District Hissar, on 31st December, 1958. Haria, landlord, the present vendor, had made an application against his tenants Hira Singh, Birbal, Harmukh, the present pre-emptors, and

Gugan another tenant, for their ejectment from some agricultural land, including the one, which is now in dispute, under section 9-A read with section 14-A of the Punjab Security of Land Tenures Act, 1953, as amended by Act XI of 1955, on the ground that the applicant was a small land-owner. By the said order, the Assistant Collector decided as under:—

> "In view of the above facts I order that Birbal be ejected *from 1 standard acre and 5¼ units of land out of the suit land. The portion measuring 1 standard acre and 5¼ units out of the suit land will be ejected by himself and the ejectment will take place between 1st May and 15th June, 1959. The other respondents will be ejected from their respective portions of the suit land as and when they are accommodated on some surplus area by the Collector."

(5) Both the Courts below have come to the conclusion that by the passing of the above order by the Assistant Collector, the relationship between Haria, landlord-vendor, and the three tenants-pre-emptors came to an end, with the result that the latter could not now claim the land by pre-emption on the basis of their being the tenants of a part of the land sold. This finding was based on the judgment of a learned Single Judge of this Court in *Hans Raj and others* v. *Shrimati Brahmi Devi* (1), where it was observed:—

> "The moment the Court on the landlord's petition passes a decree or order for ejectment, it clearly does no more than to declare that henceforth the parties cease to be landlord and tenant. The fact that the decree or order has to be executed in order to dispossess the tenant and put the landlord in physical possession does not and cannot mean that till the decree or order is not executed the status of the parties *qua* one another has not been determined. The decree or order determines the rights of the parties *inter se* and the execution of that decree or order merely gives effect to that determination. Thus on first principles it cannot but be held that the final order of ejectment puts an end to the relationship of landlord and tenant and the tenant canot after the date of the order be held to be occupancy tenant on the ground that the tenant remained in possesion or that the tenant was illegally dispossessed in execution of the order."

(1) 1960 P.L.J. 71.

(6) Learned counsel for the appellants has submitted that *Hans Raj's ruling* does not apply to the facts of the instant case. There, the tenant was guilty of non-payment of rent and, therefore, the landlord on that ground had to file an application for his eviction, which was ultimately accepted and it was under those circumstances, that the learned Judge observed that the mere passing of the decree of ejectment against the tenant put an end to the relationship of landlord and tenant between the parties and it was not necessary that the said decree should be actually executed and the tenant dispossessed from the land. In the instant case, according to the counsel, a conditional decree of ejectment had been made, because it was stated therein that Hira Singh and Harmukh would be evicted from the suit land as and when they were accommodated on the surplus area by the Collector. The two tenants, viz. Hira Singh and Harmukh have not up till now been accommodated on any surplus area and they are still holding the land as tenants. Their status, so long as they are not accommodated on the suplus area, will remain as tenants of Haria, landlord, and this relationship will not end merely on the passing of the order by the Assistant Collector. The argument was that it was by virtue of the provisions of the Punjab Security of Land Tenures Act, 1953, that a small landowner could eject the tenants for no fault of theirs and even when they were regularly paying the rent to their landlord, but this could be done only after the said tenants were accommodated on the surplus area. If no surplus area was available, they would remain on the land as tenants. Their status will not change even after the order has been made by the Assistant Collector. If and when they are accommodated on surplus area, they will become the tenants of that land as well.

(7) Learned counsel for the respondents, on the other hand, contends that *Hans Raj's ruling* fully covers this case and according to the said decision, the moment the order of ejectment is passed, the status of the tenant ceases. He also relies on an authority of the Supreme Court in *Bhagwan Dass (dead) by his legal representatives and others* v. *Chet Ram* (2). In para 7 thereof, it was mentioned :

> "It must be remembered that sale alone does not and cannot divest the tenant of his right to hold the land of which he is in possesion by virtue of his tenancy under the vendor. But if his tenancy is determined by a decree for

(2) A.I.R. 1971 S.C. 369.

eviction he loses his status of a tenant. He then does not satisfy the first requirement of section 15(1)(a) Fourthly that he is a tenant who holds the land. In that situation, he cannot succeed in a pre-emption suit if the decree for eviction has been passed after the sale but before the institution of the suit or during its pendency and before the date of the decree. This would be so by applying the well-established rule, which, as stated earlier, has become a part of the law relating to pre-emption."

(8) The point to be determined is whether the rule of law laid down in the above-mentioned two cases is applicable to an order of this nature and whether the status of the plaintiffs-tenants in the present case came to an end merely on the passing of the order, Exhibit D.A.

(9) It is true that on the basis of the two decisions referred to above, when a decree of ejectment is passed against a tenant, his status as a tenant comes to an end. In other words, from that day, he will be considered to be a trespasser. If he does not leave the land of his own accord, he will be dispossessed by taking out execution of that decree. Will this principle be applicable to a case of the present nature where only a conditional order of ejectment has been made against a tenant? There is no denying the fact that the Assistant Collector on 31st December, 1958, held that Hira Singh and Harmukh would be ejected from their respective portions of the suit land as and when they were accommodated on some surplus area by the Collector. In view of this conditional order, will they be considered as trespassers on the land with effect from 31st December, 1958? A trespasser, in my view, is a person, who, if he does not leave the land on his own, can be thrown out of possession by the process of law, i.e., by taking out the execution of the decree for his ejectment. Could the landlord, on the basis of the order of the Assistant Colector, take out execution of that order on the very day it was made and dispossess the tenants ? The reply will obviously be in the negative, because they could very well take their stand on the order itself and say that they could not be evicted unless the Collector had accommodated them on some surplus area. What will be the status of these persons till they are settled on the surplus area? They cannot be called trespassers, as I have already said. They, admittedly, are not the owners of the land. They, therefore, will be deemed to be the tenants of the landlord. In other words, their status will not change on the mere passing of the order by the

Assistant Collector. They entered on the land as tenants and they will continue to be so either till they are accommodated on the surplus area by the Collector or perhaps if and when it is proved on the record that the Collelctor had made available some surplus area for their settlement, but they had refused to go there. This, in my opinion, is the difference between the consequencs of a simple decree of ejectment and a conditional one of the present nature. The two cases relied upon by the learned counsel for the respondents talk of the former type of a decree and, therefore, the rule laid down therein cannot apply to the facts of the instant case. Finding, as I do, that Hira Singh and Harmukh remained the tenants of the land and did not lose their status of being so merely by the passing of the order by the Assistant Collector, they had, indisputably, a right of pre-emption, being the tenants of a part of the land sold. The case, on this finding, will, admittedly, be then covered by section 15(1) (a) Fourthly of the Punjab pre-emption Act, 1913. That being so, according to the learned counsel, Hira Singh and Harmukh would be entitled to pre-empt, out of the land sold, only 59 Bighas, which was under their tenancy. They will, however, get possession of this land on paying proportionate share of the sale consideration together with the conveyance charges and this amount, according to the learned counsel, comes to Rs. 8,792.

(10) The consequence is that this appeal is accepted, the judgments and decrees of the Courts below reversed and the suit of only Hira Singh and Harmukh decreed on payment of Rs. 8,792. This amount has to be deposited by them in the trial Court for payment to the vendees on or before 4th February, 1974, failing which their suit will stand dismissed. In the circumstances of this case, however, I wil leave the parties to bear their own costs in this Court as well.

N. K. S.

REVISIONAL CIVIL

Before P. C. Pandit, J.

SANYUKTA WIFE OF PREM KUMAR MADAN,—*Petitioner.*

versus

PREM KUMAR MADAN, ETC.,—*Respondents.*

Civil Revision 380 of 1974.

November 2, 1973.

Code of Civil Procedure (Act V of 1908)—Order 33 Rule 1 and 2—"Pauper"—Meaning of—Suit by a wife in receipt of maintenance