

Comrade
Chanan Singh,
v.
The Union of
India etc.,
Mehar Singh, J.

any authority authorised in that behalf to prohibit the bringing into Punjab of any newspaper, periodical, leaflet or other publication, and this provision their Lordships found it difficult to hold as valid because no time limit for the operation of the order was made under the section nor was there any provision made for any representation being made to the State Government to have it set aside. This dictum tends to lend support to the conclusion that has been reached above. I would, therefore, hold that section 3(a) and (c) of Act No. 19 of 1876 places restriction on the fundamental right of freedom of speech and expression and that restriction is not reasonable because no opportunity is provided to the person against whom order is made under this section to have the same removed by showing that it could not or should not have been made.

In consequence, the impugned order is quashed. In this petition respondent No. 2 will bear the costs of the petitioner, counsel's fee being Rs. 60.

CAPOOR, J.—I agree.

K.S.K.

APPELLATE CIVIL.

Before Tek Chand and Prem Chand Pandit, JJ.

ARJAN SINGH,—Appellant.

versus

MOHAN SINGH AND ANOTHER,—Respondents.

Regular First Appeal No. 173 of 1958

1960

Oct. 5th.

*Punjab Pre-emption (Amendment) Act (X of 1960)—
Section 31—Appeal and Cross-objections arising out of a
pre-emption suit pending when the Act came into force—*

Appeal withdrawn—Cross-objections—Whether can be disposed of in accordance with the Amending Act—Cross-objections—Whether continuation of the suit.

Held, that the Punjab Pre-emption (Amendment) Act can be relied upon by the appellate Court when disposing of cross-objections under Order 41 Rule 22 (4) of Code of Civil Procedure after the withdrawal of the appeal. Whether the cross-objections are accepted or rejected, the decree passed by the trial Court would either be varied or confirmed by the appellate Court and then the decree of the appellate Court would be the final decree and capable of execution. If the cross-objector is a person who has no right of pre-emption under the Amending Act, then the appellate Court, according to the provisions of section 31, shall not pass a decree for pre-emption in his favour, because it would be inconsistent with the provisions of the Amending Act. So long as the cross-objections are not decided one way or the other, the suit filed by the pre-emptor is not finally disposed of. The moment the cross-objections are filed by the respondent, the matter becomes *sub judice* and, therefore, the appellate Court is seized of the whole case.

Held, that like an appeal, the cross-objections are also a continuation of the proceedings in the trial Court and amount to a re-hearing of the matter.

Ram Lal *v.* Raja Ram and another (1), relied upon.

Regular First Appeal from the decree of the Court of Shri Morari Lal Puri, Additional District Judge, Faridkot, dated the 5th day of June, 1958, granting the plaintiff a decree with costs for possession by pre-emption of the agricultural land in dispute against Munshi Singh (Vendee) on depositing Rs. 19,550 in Court by or on the 5th August, 1958, failing which his suit would stand dismissed with costs and further directing that Rs. 4,000 would be paid by the plaintiff to Hamir Singh (Mortgagee) when he would seek possession of that part of the land in dispute which was with him under mortgage.

J. N. SETH, ADVOCATE, for the Appellant.

K. C. PURI, ADVOCATE, for the Respondents.

JUDGMENT

C. Pandit, J.

P. C. PANDIT, J.—Mohan Singh, defendant No. 1, sold the land in dispute to Munshi Singh, defendant No. 2, for Rs. 23,000. This sale led to a suit for pre-emption by Arjan Singh on the ground that he was a collateral of the vendor. He also, pleaded that the entire amount mentioned in the sale deed had not been paid. The suit was contested by the vendee on a number of pleas which gave rise to the following issues:—

- (1) Whether the plaintiff has a preferential right of purchase of the land in dispute on the ground that he is an heir of the vendor Mohan Singh?
- (2) Whether the sale consideration of Rs. 23,000 has been paid or fixed in good faith?
- (3) In case of non-proof of issue No. 2, what is the market-value of the land in dispute?
- (4) Whether the suit of the plaintiff is barred on grounds of waiver?
- (5) To what relief, if any, is the plaintiff entitled?

The trial Judge (Subordinate Judge Second Class, Faridkot), after recording some evidence, held that the plaintiff had a right of pre-emption which had not been waived. He, however, did not decide issues Nos. 2 and 3 because he had not the requisite jurisdiction to pass a decree in the case. Consequently, he forwarded the case to the learned District Judge, who sent it to the

Additional District Judge for disposal. The learned Additional District Judge, after recording the remaining evidence, found issue No. 2 in favour of the vendee and held that, in view of his finding on issue No. 2, the question of deciding issue No. 3 did not arise. Consequently, he passed a decree for possession by pre-emption in favour of the plaintiff on his depositing the amount of Rs. 19,550 in Court on or before the 5th August, 1958, failing which his suit would stand dismissed with costs. It was further ordered that a sum of Rs. 4,000 would be paid by the plaintiff to one Hamir Singh mortgagee, when he would seek possession of the land from the latter.

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The plaintiff has filed the present appeal in this Court claiming that the amount, on the payment of which he had been given a decree for possession, should be reduced by Rs. 3,700 and has paid *ad valorem* court-fee on this amount.

The vendee, on the other hand, has filed cross-objections praying that the decree passed by the trial Court may be set aside and the plaintiff's suit be dismissed. His main grounds are that the trial Judge had no jurisdiction to decide issues Nos. 1 and 4 and consequently these findings are void and of no legal effect, and that the decree passed by the learned Additional District Judge cannot be sustained because he had given no independent findings of his own on issues Nos. 1 and 4 in favour of the plaintiff and had given his findings on issues Nos. 2 and 3 only.

During the pendency of the regular first appeal in this Court, the Punjab Pre-emption (Amendment) Act. No. 10 of 1960, came into force, and the learned counsel for the respondent has

Arjan Singh, submitted that the plaintiff's suit for pre-emption
v. Mohan Singh, should be dismissed, because he is claiming a
and another, right of pre-emption on the ground that he is a
fourth degree collateral of the vendor, and the
P. C. Pandit, J. right of pre-emption on this basis has now been
taken away by this amending Act.

Learned counsel for the appellant, on the other hand, prays that he wishes to withdraw his appeal and consequently, there being no appeal before this Court, the question of applying this amending Act will not arise. All that section 31 (which is added by this amending Act) says is—

“No Court shall pass a decree in a suit for pre-emption whether instituted before or after the commencement of the Punjab Pre-emption (Amendment) Act, 1959, which is inconsistent with the provisions of the said Act.”

When the appeal is withdrawn, this Court would not be passing any decree which is inconsistent with the provisions of the amending Act. Learned counsel for the respondent submits that even if the appeal is withdrawn, the cross-objections filed by the respondent are still there and they have to be disposed of. Order 41, rule 22(4), Civil Procedure Code, is in the following words:—

“Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.”

and it is conceded by the learned counsel for the appellants that even if the appeal is withdrawn, the cross-objections filed by the respondent are still entertainable by this Court.

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Now the question arises that when the cross-objections are being disposed of by this Court, can the respondent rely upon this amending Act and say that the suit should be dismissed, because if the suit is decreed this Court would be passing a decree which would be inconsistent with the provisions of the amending Act, the plaintiff's right of pre-emption, on the basis of being the fourth degree collateral of the vendor, having been taken away by this Act.

In my opinion, the respondent can take advantage of this amending Act. Whether we accept the cross-objections or reject them, the decree passed by the trial Court in either case would either be varied or confirmed by this Court and then the decree of this Court would be the final decree and capable of execution. If the cross-objector is a person who has no right of pre-emption under the amending Act, then this Court, according to the provisions of section 31, shall not pass a decree for pre-emption in his favour, because it would be inconsistent with the provisions of the amending Act.

The matter can be looked at from another point of view as well. So long as these cross-objections are not decided one way or the other, the suit filed by the pre-emptor has not been finally disposed of. The moment the cross-objections were filed by the respondent, the matter became *sub judice* and thereafter this Court was seized of the whole case. Like an appeal, the cross-objections are also a continuation

Arjan Singh, of the proceedings in the trial Court and amount
 v. Mohan Singh, to a re-hearing of the matter.
 and another,

In *Ram Lal v. Raja Ram and another* (1), G. D.
 P. C. Pandit, J. Khosla, C.J., and Dulat, J., held as under:—

“That, quite apart from the fact that a change in law after the decision of the trial Court must be given effect to by the appellate Court, with regard to pre-emption cases the law has always been that the right of pre-emption must subsist not only on the date of the sale but also on the date when the suit is brought and finally on the date when the decree is passed.

That an appeal is a continuation of the original proceedings and a re-hearing of the matter.

“That the Punjab Pre-emption (Amendment) Act, 1960, must be given effect to not only in fresh suits filed or suits pending but also in those cases in which appeals are pending and have not been decided.”

The reasoning given in this authority also applies to a case where the cross-objections have been filed by the respondent, because cross-objections are also a continuation of the suit. Order 41, rule 22(1), Civil Procedure Code, provides that the respondent can take any cross-objection to the decree which the cross-objector could have taken by way of appeal. It is also not disputed that an appeal, which has been filed after the period of limitation, can be treated as

cross-objections under certain circumstances. Therefore, there appears to be no material difference between cross-objections and a cross-appeal.

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Finding as I do, that in cross-objections the respondent can take advantage of this amending Act, there is no necessity of deciding the cross-objections on merits, because even if there is no force in these cross-objections the provisions of the new section 31 of the Punjab Pre-emption Act will come into play and this Court will not pass a decree for pre-emption in favour of a fourth degree collateral of the vendor.

In view of what I have said above, the appeal is dismissed as having been withdrawn, but the cross-objections are accepted and the plaintiff's suit is dismissed. In the circumstances of this case, however, the parties are left to bear their own costs throughout.

TEK CHAND, J.—I agree.

APPELLATE CIVIL.

Before Mehar Singh and K. L. Gosain, JJ.

NAND SINGH *alias* TULA AND ANOTHER,—Appellants.

versus

RAM SARUP,—Respondent.

Regular Second Appeal No.193 of 1958.

*Custom—Mortgage of ancestral property created—
Revisioners challenging the same by a declaratory suit—
Decree passed that the mortgage will not be binding on the
reversioners except for a specified amount found for neces-
sity—Reversioners not availing themselves of the decree by*

1960

Oct. 6th.