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pass a decree in favour of the plaintiff at the rate of Rs. 228 per mensem as claimed by him according to which the arrears come to Rs. 8,516-4-3. In the peculiar circumstances of the case, however, the parties are left to bear their own costs in this Court.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Inder Dev Dua and Prem Chand Pandit, JJ.

SANTA SINGH AND ANOTHER,—*Appellants*

versus

JAWAHAR SINGH AND OTHERS,—*Respondents*

Regular First Appeal No. 264 of 1958

1960

Dec., 21st

Punjab Pre-emption (Amendment) Act (X of 1960)—Sections 15 and 31—Pre-emptor succeeding in his suit—Vendee filing appeal from that decree—During pendency of appeal the right of pre-emption of the pre-emptor taken away by the Amending Act—Amending Act conferring right of pre-emption in another capacity held by the pre-emptor—Whether pre-emptor can plead such new right to sustain his decree—Pre-emptor—Whether can improve his position after the sale—Right of pre-emption—Nature of—Whether vested right.

Held, that the scope and effect of section 31 added to the Punjab Pre-emption Act by the Amendment Act, X of 1960, is that no decree in a suit for pre-emption, after the enforcement of the amending statute, can be passed which is inconsistent with its provisions. An appeal is a continuation of the suit and a re-hearing of the matter. Affirmance of a decree by the appellate Court amounts to "passing a decree" within the meaning of section 31 of the Act. It is, therefore, not correct to say that if the trial Court has passed a decree for pre-emption and the vendee has come up in appeal, the appellate Court cannot reverse the decree

on the ground that the pre-emptor has since been deprived of the right on the basis of which his suit was properly decreed under the then existing law.

Held that, unlike the vendee, a pre-emptor has no right to improve his status after the date of the sale. The right to pre-empt cannot be acquired subsequent to the sale, which a person wishes to pre-empt, with the result that effect of a subsequent improvement in his status cannot retrospectively affect the unassailable character of the sale which, when effective, was free from any right of pre-emption. The vendee on the other hand, being on the defensive, is entitled to arm himself with a shield in order to protect his right which has accrued to him on the basis of his contract, and the pre-emptor, who is an aggressor, must, in order to dislocate the vendee, show his superior right to purchase the property, or, in other words, to pre-empt the sale, which he possessed at the date of the sale and which must continue to remain superior at all relevant times If the plaintiff fails to show such continuous superiority, he must fail in his suit.

Held that a pre-emptor, who has been deprived of his right to pre-empt during the pendency of the appeal cannot be heard to say that the same Act which has taken away his right has conferred the right to pre-empt on him in another character which he possessed at the date of the sale, although that right did not exist at the date of the sale, to sustain the decree in his favour. An appeal to equitable considerations on behalf of the pre-emptor is equally unavailing because Courts cannot contravene a provision of law merely on grounds of hardship or in the name of equity. Besides a pre-emptor, who from the very nature of his right, is an aggressor, can hardly be permitted to enforce his aggressive right by having resort to rules of equity.

Held, that the right of pre-emption, which is a weak right, is not looked at with favour by the Courts, presumably, because it tends to operate in derogation of the right of the owner to alienate his property at his sweet will. It is indeed sometimes described to be a piratical or an aggressive right and the pre-emptor described as an aggressor, whose sole object is to unsettle a transaction legally entered into. It is thus neither illegal nor fraudulent nor otherwise

objectionable to avoid or defeat a claim for pre-emption by all legitimate means. A right of pre-emption, being a creation of statute cannot be described as a vested right in the sense that it is inviolable or that it cannot be retrospectively altered. Nor can a right recognized by a decree be so described. A 'vested right' cannot mean more than a right which under particular circumstances would be protected from legislative interference. But as this doctrine rests upon equities, it must, from its very nature, have reasonable limits and restrictions, regard being had to public policy.

First appeal from the decree of the Court of Shri Ranjit Singh Sarkaria, District Judge, Barnala, dated the 29th day of July, 1958, granting the decree (in both the suits filed by Jawahar Singh and the other by Rajinder Singh and Hardaman Singh, respectively, which were consolidated later on) for possession by pre-emption to the effect that Rajinder Singh and Hardaman Singh would have the first preference to get possession of the equity of redemption of the suit land lying mortgaged, and actual possession of the un-encumbered land, on payment of Rs. 6,500 to the credit of the vendee-defendants before or on the 10th September, 1958, otherwise their suit would stand dismissed with costs and further ordering that if the plaintiffs, Rajinder Singh and Hardaman Singh, failed to deposit the suit amount to the credit of the vendee-defendants in Court, by the said date, then the rival plaintiff, Jawahar Singh, would deposit the amount of Rs. 6,500 to the credit of the vendee-defendants on or before the 15th October, 1958, otherwise his suit, too would stand dismissed with costs and further ordering that the possession of the suit land would, in either case of compliance, passed on to the pre-emptors on the 1st of November, 1958.

J. N. KAUSHAL, D. C. GUPTA AND J. V. GUPTA, ADVOCATES, for the Appellants.

SHRI D. S. NEHRA, ADVOCATE, for the Respondents.

JUDGMENT

DUA, J.—The only question which arises for determination in this case is the scope and effect of the recent amendment in the Punjab Pre-emption Act effected by the Punjab Pre-emption (Amendment) Act No. 10 of 1960 on the rights of the parties to the present dispute. Dua, J.

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The facts out of which the present controversy has arisen may be briefly stated. On 7th of August, 1957, Hazura Singh and Kapur Singh sold the suit land measuring 81 Bighas and 19 Biswas by a registered deed for a sum of Rs. 18,000 to Arjan Singh and Santa Singh. On 9th August, 1957, Jawahar Singh instituted a suit for possession by pre-emption on the ground that he was a proprietor in the estate as also in the *patti* or Sub-Division whereas the vendees were strangers. About two months later, on 14th October, 1957, Rajinder Singh and Hardaman Singh, also instituted a suit for pre-empting the sale in question on the ground that they were sons of Kapur Singh, co-vendor, and nephews of Hazura Singh, co-vendor. They impleaded Jawahar Singh, the rival pre-emptor, as a defendant. On the application of Jawahar Singh, he was allowed on 20th November, 1957, to implead Rajinder Singh and Hardaman Singh as defendants in his suit as well. Both the suits were consolidated on 1st April, 1958. The learned District Judge, Barnala, who finally disposed of the suit, decreed both the suits but gave to Rajinder Singh and Hardaman Singh first preference to get possession of the equity of redemption of the suit land which was subject to mortgage and to get actual possession of the unencumbered land on payment of Rs. 6,500 on or before the 10th of September, 1958, failing which their suit was to stand dismissed with costs. In case Rajinder Singh and Hardaman Singh failed to deposit the suit amount to the credit of the vendeee-defendants in Court by the date mentioned above, the rival plaintiff Jawahar Singh was given a right to deposit the same amount to the credit of the vendee-defendants on or before the 15th October, 1958, failing which his suit too was to stand dismissed with costs. The possession of the suit land was in case of compliance with the decree to pass on to the pre-emptors

concerned on the 1st of November, 1958. It may here be noticed that a sum of Rs. 10,300 was found by the Court below to be the previous mortgage amount and the pre-emptors were called upon to pay the amount of Rs. 6,500 in addition to the mortgage charge.

Santa Singh and Arjan Singh, vendees, have preferred the present appeal on 19th September, 1958, against the judgment and decree of the Court below. During the pendency of this appeal, the Punjab Pre-emption (Amendment) Act No. 10 of 1960 came into force. This Act received the assent of the Governor of Punjab on 2nd February, 1960, and was published in the *Punjab Gazette* Extraordinary, dated 4th February, 1960. By virtue of this Act, *inter alia*, sections 15 and 16 of the Punjab Pre-emption Act of 1913 were amended in some material particulars and a new section 31, which is in the following terms, was also added.

> "31. *Punjab Pre-emption (Amendment) Act, 1959, to apply to all suits.*—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."

It is the scope and effect of the amended section 15 and of the newly added section 31 with which we are directly concerned in the instant case.

After the enforcement of the Punjab Pre-emption Amendment Act, an application was filed in this Court by Shri Jagan Nath Kaushal on behalf of the appellants under section 151. Code of Civil Procedure stating that the only question involved in this appeal is whether a suit for pre-emption is competent on the ground of the plaintiff being a proprietor in the estate or in the *patti*.

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This matter, according to the petition, was concluded by a Division Bench autrority of this Court with the result that the whole controversy in this appeal could be decided without the printing of the record. It was in the circumstances prayed that the appeal be fixed for decision forthwith. Daya Krishan Mahajan, J., on 19th May, 1960, passed an order directing the appeal to be fixed for hearing in the following week. It appears that the appeal, for certain reasons not apparent on the record, could not be fixed for hearing as directed by the learned Judge and after the summer vacation in August, 1960, an application was filed by Shri D. S. Nehra on behalf of Jawahar Singh stating that Jawahar Singh had been a tenant under Kapura Singh and Hazura Singh from the years 1954 to 1957 and that he was also a tenant at the time of the sale of the land. It was averred that by virtue of section 15(1)(c) fourthly of the Punjab Pre-emption Act as amended in 1960, Jawahar Singh in the capacity of a tenant had a right of pre-emption in his favour and, therefore, the decree passed by the Court of first instance was liable to be upheld in respect of 33 Bighas of land held by him as a tenant. On this ground, a prayer was made by Shri Nehra that the appeal of the vendees be dismissed and in the alternative the plaintiff be awarded a decree in respect of 33 Bighas of land comprising of field Nos. 263, 264, 266 and 345 on the ground of the plaintiff being a tenant of the said land under the vendors. On this petition, Prem Chand Pandit, J., issued notice to the counsel for the opposite party on the 12th September, 1960. On 7th October, 1960, the matter was placed before Gurdev Singh, J., who passed the following order :—

> "The prayer in the application is for the dismissal of the appeal. As it relates to a Regular First Appeal the application

should be placed before a Civil D. B. for necessary orders".

It is in these circumstances that this matter has been placed before us for final disposal without any printing of the record and as I have already observed the sole question relates to the scope and effect of the amendments made in the Punjab Pre-emption Act by Punjab Act No. 10 of 1960.

Before dealing with the question which we are called upon to decide, I may state some of the settled principles with respect to the law of Pre-emption, as prevailing in the Punjab. The right of pre-emption, which is a weak right, is not looked at with favour by the Courts, presumably, because it tends to operate in derogation of the right of the owner to alienate his property at his sweet will. It is indeed sometimes described to be a piratical or an aggressive right and the pre-emptor described as an aggressor, whose sole object is to unsettle a transaction legally entered into. It is thus neither illegal nor fraudulent nor otherwise objectionable to avoid or defeat a claim for pre-emption by all legitimate means. See *Radha Krishan* v. *Shri Ram Chandra*, C. A. 167 of 1955, decided on 23rd August, 1960, by the Supreme Court; *Bishan Singh, etc.*, v. *Khazan Singh, etc.* (1), *Rati Ram, etc.* v. *Mam Chand, etc.* (2), and *Mst. Dhapan* v. *Shri Ram, etc.* (3).

Vendee in a pre-emption suit can improve his status even after the sale. In *Thakur Madho Singh and another* v. *Lt. James R. R. Skinner and another* (4), a Full Bench consisting of Bakhshi Tek Chand, Din Mohammad and Beckett, JJ., on a consideration of the scheme, scope and effect of

(1) A.I.R. 1958 S.C. 838.
(2) A.I.R. 1959 Punj. 117.
(3) (1959) P.L.R. 774.
(4) I.L.R. 1942 Lah. 151.

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the Punjab Pre-emption Act, held, *inter alia,* that a vendee can improve his status effectively right up to the date of adjudication of the suit against him. The same Bench in another case in *Ali Mohammad* v. *Mohammad Din* (1), reiterated this position, and further held that the vendee could do so even after the expiry of limitation for a suit for pre-emption. I may here notice that as a result of this decision, the legislature enacted section 21-A in the Punjab Pre-emption Act in which it is laid down that any improvement otherwise than through inheritance or succession made in the status of a vendee defendant after the institution of a suit for pre-emption would not affect the right of the pre-emptor plaintiff in such suit. The present position, thus, is, that the legislature has by express legislation fixed the period before which the vendee is entitled to improve his status otherwise than through inheritance or succession.

Pre-emptor is, however, not entitled to claim this privilege and he has no right to improve his status after the date of the sale. See *Faiz Mohammad* v. *Fajar Ali Khan* (2). The reason for this distinction appears to be obvious. The right to pre-empt can clearly not be acquired subsequent to the sale, which a person wishes to pre-empt, with the result that the effect of a subsequent improvement in his status cannot retrospectively affect the unassailable character of the sale, which, when effected, was free from any right of pre-emption. Besides, the vendee, being on the defensive, is entitled to arm himself with a shield in order to protect his right which has accrued to him on the basis of his contract, and the pre-emptor, who is an aggressor, must, in order to dislocate the vendee, show his superior right, to purchase the property, or, in other words, to pre-empt the sale, which he possessed at the date of

(1) A.I.R. 1941 Lah. 444.
(2) I.L.R. (1944) 25 Lah. 473 (F.B.).

the sale and which must continue to remain superior at all relevant times. If the plaintiff fails to show such continuous superiority, he must fail in his suit.

Coming to the merits of the controversy, the matter is not *res integra* and in this Court the scope and effect of the recent amendment has been analysed and laid down by a Division Bench (*G. D. Khosla, C.J., and Dulat, J.*) in *Ram Lal* v. *Raja Ram and another* (1). The head-note of this judgment reads thus :—

> "Held 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."

Mr. Nehra has, however, tried to assail the correctness of this decision and has contended that the learned Judges there did not correctly construe the scope and effect of section 31 added to the Punjab Pre-emption Act by the recent amendment which has been reproduced above. It is contended that the decree, which is referred to in this section, is a decree for pre-emption passed by the trial Court and that the retrospectivity of the amendment introduced in section 15 of the Act is only confined to the stage of proceedings in the trial Court. In other words, the argument is that if the trial Court has passed a decree for pre-emption and the vendee has come up on appeal, then the

(1) 1960 P.L.R. 291.

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amending Act 10 of 1960 cannot govern the hearing of the appeal and the appellate Court cannot reverse the decree on the ground that the pre-emptor has since been deprived of the right on the basis of which his suit was properly decreed, under the then existing law. The legislature, so says Mr. Nehra, could not have intended to deprive a decree-holder of the right which became vested in him by virtue of the decree on the date when it was passed.

Now the expression 'vested right' is not capable of a clear cut definition and any endeavour to attempt to assign to this expression a precise meaning would tend merely to lead to conflicting decisions. Broadly speaking, a 'vested right' cannot mean more than a right which under particular circumstances would be protected from legislative interference. But as this doctrine rests upon equities, it must from its very nature have reasonable limits and restrictions, regard being had to public policy. A right of pre-emption being a creation of statute, it is difficult to describe such a right to be vested in the sense that it is inviolable or that it cannot be retrospectively altered. Nor can a right recognized by a decree be so described.

Construing section 31 of the Punjab Pre-emption Act in the light of what has been stated above, no decree in a suit for pre-emption, after the enforcement of the amending statute, can be passed which is inconsistent with its provisions. An appeal, according to the law of this Republic, is a continuation of the suit and a re-hearing of the matter. The correctness of this proposition, as affirmed by the Division Bench in *Ram Lal's* case, has not been questioned by Mr. Nehra. Once, therefore, it is held that the present appeal is a continuation of the suit for pre-emption, the only question that remains to be determined is, whether

or not affirming a decree for pre-emption amounts to "passing a decree" so that this Court must satisfy itself that the decree so affirmed is not inconsistent with the provisions of the Punjab Pre-emption Act as amended. Apart from the bare assertion that an appellate decree which affirms a decree of the Court below should not be construed to amount to the passing of the decree, no precedent or well-recognized principle has been brought to our notice by Mr. Nehra in support of this contention; nor has any compelling or convincing argument been advanced casting doubt on the correctness of the view expressed in the Bench decision in *Ram Lal's* case so as to necessitate a reference to a large Bench. That decision is binding on us and we must follow it.

The next point raised by Mr. Nehra that the decree for pre-emption should at least be affirmed to the extent of the land, of which his clients have shown themselves to be tenants, because the present law has conferred a right of pre-emption on tenants, is clearly without substance. As observed earlier, the right of pre-emption in order to be effective must necessarily exist, *inter alia*, on the date of the sale, and it is not denied that on the date of the sale in question in the instant case there was no such right possessed by Mr. Nehra's client. But then the counsel contends that his client did possess a right to pre-empt the sale though based on different grounds and, therefore, the mere variation by the legislature in the grounds which constitute the basis of the right is immaterial and that he should, in equity, be held entitled, on appeal, to claim the benefit of the amended law. In my opinion, this argument, though attractive on the surface, is, if scrutinised more deeply, without merit. Looking at the scheme of the Pre-emption Act, it is fairly obvious

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that the right to pre-empt sales is essentially equated with, the grounds on which it is based, or; the qualifications of the person claiming the right; and it is these grounds or qualifications which truly serve as sources of the right. If, therefore, Mr. Nehra's client did not possess the status of a tenant, who is clothed with the qualifications on the basis of which the right to pre-empt could be claimed, it is difficult to see how a subsequent conferment on him of those qualifications could retrospectively entitle him to claim the right of purchase in substitution of the vendee. Such a position being in direct contravention of the well-established rule of the law of pre-emption, in my view, if the legislature really intended such a drastic variation of the settled rule of law, it would certainly have expressed its intention more explicitly. An appeal to equitable considerations on behalf of the pre-emptor is equally unavailing because Courts cannot contravene a provision of law merely on grounds of hardship or in the name of equity. Besides, a pre-emptor, who from the very nature of his right, is an aggressor, can hardly be permitted to enforce his aggressive right by having resort to rules of equity.

For the reasons given above, this appeal succeeds and setting aside the judgment and decree of the Court below, I would dismiss the plaintiff-respondents' suit for pre-emption. In the peculiar circumstances of the case, however, there would be no order as to costs either here or in the Court below.

In view of our decision allowing this appeal and dismissing the plaintiff's suit, the cross-objections must also fail which are hereby dismissed, but without any order as to costs.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.