FULL BENCH

Before S. S. Dulat, Bishan Narain and I. D. Dua, JJ.

GAJJA SINGH AND ANOTHER,—*Appellants*

versus

GURDIAL SINGH AND OTHERS,—*Respondents*

Regular First Appeal No. 471 of 1958:

1960

Jan., 4th

Punajb Courts Act (VI of 1918)—Sections 3(4) and 39—"Value of the original suit"—meaning of—Suits Valuation Act (VII of 1887)—Section 3 and the Rules made thereunder—Valuation of a pre-emption suit in respect of agricultural land fixed according to those Rules—Whether determines the forum of appeal—Price payable—Whether affects the jurisdiction of the Court.

A suit for possession by pre-emption of agricultural land was filed which was valued for purposes of Court-fee at Rs. 200, ten times the land revenue and for purposes of jurisdiction at Rs. 500, thirty times the land revenue. The price payable was found to be Rs. 5,375. Appeal against the decree was filed in the High Court. The question referred to the Full Bench was whether the appeal lay to the High Court or the District Court.

Held, that section 3(4) of the Punjab Courts Act defines the value of a suit as meaning the amount or value of the subject-matter of the suit. This amount or value depends on the value of the property or right claimed in the suit. From these provisions it follows that the forum of an appeal is to be determined according to the original value of the suit, and that the suits and appeals are to be filed in the Court of the lowest grade.

Held, that jurisdictional value of a suit relating to pre-emption in respect of agricultural land throughout the litigation remains the same, that is, thirty times the land revenue, and that the forum of appeal is also to be determined by this value. This valuation is a notional value and has no relation to the actual market value of the land

in suit. This notional value is considerably less than the market value as is clear from the difference in the two values in the present case. There is no provision in the Suits Valuation Act which lays down that the jurisdictional value of a suit can ever be altered. The direction relating to the deposit of the sale-price or market value of the land in litigation has no relevancy in determining the forum of suit or apeal in a pre-emption suit relating to agricultural land.

Held, that the value of the suit for purposes of jurisdiction in the present case was Rs. 500 and such a suit could have been instituted, tried and decided by the court of the lowest grade having pecuniary jurisdiction up to Rs. 500 and the appeal from the decree passed on the suit lay to the District Court and not direct to the High Court although the decree directed the pre-empters to pay an amount which exceeded Rs. 5,000.

Regular first appeal from the decree of the Court of Shri Udham Singh, Sub-Judge, 1st Class, Patiala, dated the 10th day of December, 1958, passing a decree of Rs. 5,375 in favour of the plaintiff.

Suit for possession by way of pre-emption of agricultural land situated in Narangwala number khewat khata 7 Khasra Nos. 468/5-10 barani 470/5-13, 471/6-5, 472/5-6, 473/5-10, and 475/5-13 kita 6 measuring 34 bighas 16 biswas jamabandi for the year 1952-53 situated in the narangwala, tehsil Patiala with rights of land and Gohar Number Qila 481 to 470, breadth 2 Giraha.

PURAN CHAND,—for Appellants.

D. C. GUPTA AND J. V. GUPTA,—for Respondents.

JUDGMENT

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BISHAN NARAIN, J. By a registered document dated the 14th September, 1956 Gurbux Singh sold his agricultural land now in suit to Gajja Singh and others for Rs. 5,375. Gurdial Singh and Hardial Singh filed the present suit on the 13th September, 1957 for possession of this land by pre-

emption on the ground that the plaintiffs and the vendors were collaterals, while the vendees were strangers. The plaintiffs alleged in the plaint that the actual sale consideration was Rs. 3,375/- and not Rs. 5,375/-. They claimed a decree for possession by pre-emption on payment of Rs. 3,375 only. The suit was valued for purposes of court-fee at Rs. 200 (ten times of the land revenue) and for purposes of jurisdiction at Rs. 500 (thirty times of the land revenue payable on the land in suit). The suit was filed in the Court of Subordinate Judge Fourth Class, Patiala. The defendant-vendees contested the suit on merits but accepted as correct in law and in fact the valuation fixed for purposes of court-fee and jurisdiction by the plaintiffs. The learned Subordinate Judge tried the suit and came to the conclusion that the plaintiffs were entitled to a decree for possession of the land in suit on payment of Rs. 5,375. He then sent the case to the District Judge Patiala, for transfer of the case to a Court of competent jurisdiction on the ground that he had no jurisdiction to pass a decree for payment of Rs. 5,375 because the limit of his pecuniary jurisdiction was only Rs. 1,000/-. The case was then transferred to Subordinate Judge First Class, who passed the pre-emption decree in favour of the plaintiffs on payment of Rs. 5,375. Dissatisfied with this decree the vendees filed the present appeal in this Court.

When the appeal came before the Division Bench, the plaintiff-respondents raised a preliminary objection to the hearing of this appeal on the ground that the appeal did not lie direct to this Court as the value of the original suit was only Rs. 500 As the Division Bench considered the point raised to be important, it referred it to a larger Bench, and the case has now come before us for decision.

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It is common ground between the parties that the value of the suit was correctly calculated on the basis of land revenue, and that the value of the original suit for jurisdictional purposes was Rs. 500. The plaintiff-respondents' case is that the appeal did not lie to this Court, as the value of the scit was less than Rs. 5,000. The vendee-appellants' case, on the other hand, is that the appeal lay direct to the High Court because the decree under appeal had directed delivery of possession to the pre-emptors on payment of Rs. 5,375, which amount exceed Rs. 5,000. It is necessary to determine which of the rival contentions is correct in law.

Section 6 of the Code of Civil Procedure lays down that no Court has jurisdiction over a suit in which the amount or value of the subject-matter exceeds its pecuniary jurisdiction, and section 15 of the Code provides that every suit shall be instituted in the Court of the lowest gared. This Code, however, does not constitute various grades of subordinate Courts, nor does it prescribe the pecuniary limits of subordinate Courts constituted under law. This is left to be done by State Legislatures. The Punjab State has enacted the Punjab Courts Act, (VI of 1918). Its section 26 gives these powers to the High Court. Accordingly, our High Court has by a notification prescribed four grades of Courts of Subordinate Judges and has also fixed the pecuniary limits of each grade of such Courts. Then section 39 of the Punjab Courts Act lays down rules for determining the forum of appeals. Its relevant portion reads.

> "39. (1) Save a aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—
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> (a) to the District Judge where the value of the original suit in which the decree

or order was made did not exceed five thousand rupees; and

(b) to the High Court in any other case."

We are at present concerned with the expression "value of the original suit" occurring in section 39 (1) (a). Now section 3(4) of the Punjab Courts Act, defines the value of a suit as meaning the amount or value of the subject-matter of the suit. This amount or value depends on the value of the property or right claimed in the suit. From these provisions it follows that the forum of an appeal is to be determined according to the original value of the suit, and that the suits and appeals are to be filed in the Court of the lowest grade.

The question, however, arises as to how the jurisdictional value of a pre-emption suit is to be determined. For this purpose we have to turn to the Suits Valuation Act, VII of 1887) and see if there is any provision in that enactment which prescribes the mode of valuing a pre-emption suit.

Before considering the Suits Valuation Act, I may point out that a pre-emption suit is a suit for possession of a property in dispute on payment of its sale-price or market value. A decree enforcing the pre-emption right must direct the vendee to deliver possession of the property to the pre-emptor-plaintiff on condition and subject to the plaintiff paying the sale price or market value of the property in Court for the benefit of the vendee (*vide* Order XX, rule 14, Civil Procedure Code). The decree must further direct that if the plaintiff does not pay the said amount within the time specified in the decree, then the suit shall stand dismissed. The direction in the decree relating to payment of the amount in Court cannot be enforced by the vendee-defendant or by the vendor-defendant if the plaintiff is unwilling to do so. It

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follows that the original value of the pre-emption suit is the value of the property involved in the litigation unless there is any provision in the Suits Valuation Act, which is inconsistent with this mode of computing jurisdictional value.

In the present case the property in dispute is agricultural land. Paragraph VI of section 7 of the Court-Fees Act (VII of 1870) lays down that the value of a pre-emption suit is to be computed in accordance wih the provisions contained in paragraph V of section 7 of this Act. Paragraph V(a), (b), (c) and (d) of section 7 furnish rules for ascertaining the value of a suit for possession of agricultural land. The same rules, therefore, apply for computing the value of a pre-emption suit relating to agricultural land. Under these rules the valuation for purposes of court-fee is to be made on the basis of land revenue, that is, ten times the revenue payable on the land in suit. The court-fee in such a suit is not to be computed or calculated on the basis of its market value. It is to be observed that under paragraphs V and VI of section 7 of the Court-fees Act, a pre-emption suit relating to a house or a garden is to be valued according to the value of the subject-matter, that is, according to its market value or sale-price. The Legislature, therefore, for reasons best known to it has laid down that a pre-emption suit relating to a house or a garden is to be valued according to its market value or sale-price as the case may be, but that such a suit relating to agricultural land is to be valued on the basis of land revenue. This valuation, as I have already said, is for purposes of court-fee only.

This brings me to jurisdictional value of a pre-emption suit relating to agricultural land.

This value is fixed in accordance with the provisions of the Suits Valuation Act, 1887. Section 3 of this Act empowers the State Government to make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in paragraphs V, VI and X (d) of section 7 of the Court-Fees Act. By this provision the State Government is empowered to fix the jurisdictional value of a pre-emption suit relating to agricultural land. Such rules have been made by the Punjab Government—,*vide* Punjab Government Notification 255, dated the 4th March 1889). Rule 2 prescribes the mode of valuing such a pre-emption suit. Its value is to be calculated in accordance with Rule 1. Under Rule 1 the value is to be calculated on the basis of land revenue, and a suit like the present one is to be valued at thirty times the land revenue payable on the land in suit. In the present case the amount on calculation of this basis admittedly comes to Rs. 500/-. The value of the suit for purposes of jurisdiction in the present case, therefore, is Rs. 500, and such a suit could have been instituted, tried and decided by the Court of the lowest grade having pecuniary jurisdiction up to Rs. 500. It is to be noticed that this valuation is a national value and has no relation to the actual market value of the land in suit. This national value is considerably less than the market value as is clear from the difference in the two values in the present case. There is no provision in the Suits Valuation Act which lays down that the jurisdictional value of a suit can ever be altered. It follows that the value so fixed is not tenative but is fixed once for all. It is needless to add that this valuation can always be altered if the arithmetical calculation on the basis of thirty times the land revenue is erroneous. With such an error we are not concerned in the present case. Section 8 of the Suits Valuation Act, which lays

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down that the value of a suit on *ad valorem basis* shall be the same for purposes of court-fee and jurisdiction, specifically excludes its application to a pre-emption suit. That being so, the forum of appeal under section 39 of the Punjab Courts Act must also be determined on the basis of jurisdictional value fixed in accordance with the rules made by the Punjab Government under section 3 of the Suits Valuation Act. It may be pointed out here that section 39 of the Punjab Courts Act does not lay down anywhere that the forum of appeal is to be determined by the amount of the sale-price or by the market value of the land in dispute in the litigation, nor does it lay down that the form of a decree has anything to do with the forum in which the appeal is to be filed. As the jurisdictional value in the present case is Rs. 500, the appeal obviously lay to the District Court and not direct to the High Court although the decree directs the pre-emptors to pay an amount which exceeds Rs. 5,000.

This brings me to the case-law on the subject. The learned counsel for the appellants based his reliance in support of his contention on the decision of the Full Bench of the Punjab Chief in *Muhammad Afzal Khan and others* v. *Nand Lal* (1), reported in (1). It was held in this Full Bench case that a Court cannot grant a pre-emption decree for possession on payment of a sum of money which exceeds the pecuniary limits of its jurisdiction, and that in such a case the Court should return the plaint for presentation to a competent Court. The reasons that led the Full Bench to this conclusion are—

(1) The value of a pre-emption suit fixed in accordance with the provisions of the Suits Valuation Act is a tentative value as it is in suits on accounts, and when the

(1) 16 P.R. 1908

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Court comes to the conclusion that the value of the property exceeds its pecuniary jurisdiction then it ceases to have jurisdiction to pass a decree.

(2) The direction for deposit of money in a pre-emption decree is a part of the decree, and when the amount mentioned in that direction exceeds the Court's pecuniary jurisdiction then it has no power to pass such a decree.

There can be no doubt that if this decision is correct, then it follows logically that the forum of appeal will also be determined on the basis of the market value or the sale-price of the agricultural land in suit. With great respect, however, I find it impossible to subscribe to the above views expressed by the learned Judges. I take up the first reason. The value of a pre-emption suit relating to land is fixed according to the provisions of the Suits Valuation Act, and the rules made thereunder fix its value once for all. This valuation computed on the basis of thirty times the land revenue is not subject to alteration subsequently (excepting the arithmetical calculation). It is not a tentative value. The analogy of account suits is not relevant for purposes of determining the jurisdictional value of a pre-emption suit relating to agricultural land. The account suits are valued on an entirely different basis and that basis cannot be applied to a case like the present one. Order VII, rule 2 of the Cod of Civil Procedure provides that in an account suit the plaint shall state approximately the amount which the plaintiff claims.The plaint, therefore, states only a tentative value. This becomes the value of the suit for purposes of court-fee under section 7, paragraph IV (f) of the Court-Fees Act. This is then also the value of the

(1) I.L.R. 15 Lah. 151 (F.B.)

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suit for jurisdictional purposes under section 8 of the Suits Valuation Act. Section 11 of the Court-Fees Act then lays down that if the amount decreed in such a suit exceeds the approximate value fixed in the plaint, then such a decree shall not be executed until the consequent difference in court-fee is paid. Construing these provisions it has been held in *Ganga Ram* v. *Hakim Rai* (1) and also in earlier cases that in account suits the value fixed in the plaint is "the value of the original suit" except when the trial Court finds that a higher amount is due in which case it is the latter amount which automatically becomes the value of the suit and as such determines the forum of appeal. No such consideration arises in a pre-emption suit relating to agricultural land, as in such a suit there is no statutory provision permitting fixation of an approximate or tentative value at the time of the filing of the suit. Moreover, neither section 8 of the Suits Valuation Act nor section II of the Court-Fees Act applies to a pre-emption suit relating to agricultural land. Similarly, redemption suits are governed by different provisions. There is no rule or provision regulating the jurisdictional value of a redemption suit, and for this reason it was held in *Jaswant Ram* v. *Moti Ram* (2), that the ordinary rule is that the jurisdictional value of a suit depends upon the value of the subject-matter thereof, and that under section 8 of the Suits Valuation Act the jurisdictional value of the suit is the amount found by the Court to be due to the mortgagee and not the amount alleged to be due to the mortgagee by the plaintiff-mortgagor. It is obvious that in view of the absence of any rules regulating the mode of valuing a redemption suit, it is impossible to say that the mode of its valuation is relevant for valuing a pre-emption suit like the present one.

(1) I.L.R. 15 Lah. 15 (F.B.)
(2) A.I.R. 1926 Lah. 376 (F.B.)

The additional reason given by Rattigan, J., in *Muhammad Afzal Khan's case* (1), also does not appeal to me. There can be no doubt that the direction in the pre-emption suit, that the pre-emptor shall deposit the specified amount in Court within a specified time, is a part of the pre-emption decree, but that amount in my view does not effect the jurisdictional value of the suit nor does it affect the Court's power to incorporate this amount in the pre-emption decree. The reason is this that the jurisdictional value of a suit is to be fixed in accordance with the amount or value of the subject-matter of the suit. The forum of appeal is determined by this value. It is open to the Legislature to fix this value at its market value or at any notional or artificial figure. When the Legislature fixes a jurisdictional value, then that value must regulate the forum of the suit and also the forum of the appeal or appeals, and the Court of the lowest grade with jurisdiction of this value has jurisdiction to entertain and decide the same. This is obvious and cannot be denied. A pre-emption suit or an appeal, in which the pre-emption right is claimed, is no exception. Now a preemption suit has one special feature. It cannot be decreed without direction of payment of market value or sale-price by the pre-emptor-decree-holder. It is obviously open to the Legislature to fix the value of a pre-emption suit at the market value or sale-price of the property in suit or at a national figure. The Legislature has fixed market value or sale-price (as the case may be) as the value of the suit when the property involved is a house or a garden. In the case of a suit for pre-emption relating to agricultural land the Legislature, however, has fixed a notional value and has ignored its market value or sale-price for purposes of computing its jurisdictional value. In spite of the Legislature's fiat that

(1) 16 P.R. 1908

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the value of such a suit shall be notional, that is, on the basis of land revenue, it is not open to a Court of law to take into consideration its market value or sale-price simply on the ground that such a market value or sale-price has to be the subject-matter of a direction in the pre-emption decree. The Legislature at the time of enacting the Court Fees Act and the Suits Valuation Act knew full well the special feature of a pre-emption suit that the market value or sale-price must necessarily be directed in the decree to be paid by the pre-emptor, and yet it chose to ignore the value or price for purposes of court-fee and jurisdiction in suits relating to agricultural land, but not in suits relating to a house or a garden. It is, therefore, not open to us to take notice of a value which the Legislature has chosen to ignore for this purpose. If it is correct that a pre-emption suit must be decided only by a Court which has jurisdiction to decree a suit on the market value or sale-price of the land in suit, then it will mean that the value of the original suit will have to be considered to be the value of the land in suit and not the notional figure fixed under section 3 of the Suits Valuation Act read with Rules 1 and 2 made thereunder. Such a conclusion is obviously erroneous and is contrary to legislative intent expressed in the Suits Valuation Act and the statutory rules made thereunder.

In this context it must not be forgotten that when a suit for pre-emption is filed then, besides such jurisdictional value of the suit, the pre-emptor also gives in the plaint the sale-price or the market value of the property in dispute. From the reading of the plaint, therefore, it is clear to the Court, where the suit has been filed, that the jurisdictional value of the suit is considerably lower than the market value of the property in dispute. In most cases the trial Court will find

that it has power to entertain the suit as its jurisdictional value is within its pecuniary limits, though the market price of the property very likely is far in excess of its pecuniary jurisdiction. It appears to me that the conclusion, that in such a case the trial Court must try the suit and go through the formality of a decision and then return the plaint for presentation to another Court, makes nonsense of the whole position. It is no solution to this inconvenience that the suit may be tried by a court with unlimited pecuniary jurisdiction, because section 15, Civil Procedure Code, lays down that a corut of the lowest pecuniary jurisdiction must entertain and decide a suit.

For these reasons I am of the opinion that the direction relating to the deposit of the sale-price or market value of the land in litigation has no relevancy in determining the forum of suit or appeal in a pre-emption suit relating to agricultural land, and that the same is governed by the jurisdictional value fixed under the Suits Valuation Act. Accordingly, I hold, with great respect to the learned Judges of the Full Bench, that the decision in *Muhammad Afzal Khan and others* v. *Nand Lal* (1), is not in accordance with law.

It is interesting to note that four years later a Division Bench of the Punjab Chief Court in *Iftikhar Ali and others* v. *Thakar Singh etc.*, (2), held that the forum of appeal cannot be affected by the amount which the Court directs the pre-emptors to pay. This Division Bench also held that the analogy of an account suit or a redemption suit has no application to a pre-emption suit governed by section 3 of the Suits Valuation Act.

(1) 16 P.R. 1908
(2) 83 P.R. 1912

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I am in respectful agreement with this decision of the Division Bench. The learned Judges of this Division Bench, however, distinguished the Full Btnch case on the ground which I am unable to appreciate. If the value of the original suit does not change for purposes of determining the forum of appeal, then it cannot change for purposes of final decision by the Court which admittedly had jurisdiction to entertain the suit, merely because a direction of payment of a sum of money more than its jurisdictional value is involved in the suit. After the 1912 decision the Punjab Chief Court and the Lahore High Court followed Iftikhar Ali's case (1), for determining the forum of appeal and distinguished the Full Bench case on the ground that it related to a suit and not to an appeal (*vide Teja Singh* v. *Sundar Singh* (2), *Jagdish Ram* v. *Mt. Chinto* (3), and *Hakim Ali* v. *Shiv Narain,* (4). This distinction was probably drawn by the learned Judges to avoid a reference of the point to a larger Bench. This consideration has no application to us as decisions of the Punjab Chief Court are no longer binding on this Court. It is significant that the learned counsel for the appellants was unable to bring to our notice any decision in which *Muhammad Afzal Khan's case* (5), was followed in preference to *iftikhar Ali's case* (1).

For all these reasons I hold that jurisdictional value of a suit relating to pre-emption in respect of agricultural land throughout the litigation remains the same, that is, thirty times the land revenue, and that the forum of appeal is also to be determined by this value. I may make it

(1) 83 P.R. 1912
(2) 23 I.C. 89
(3) A.I.R. 1936 Lah. 133
(4) A.I.R. 1938 Lah. 765 (all Division Bench Cases)
(5) 16 P.R. 1908

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clear that in this judgment I have not taken into consideration an appeal filed in a pre-emption suit relating to agricultural land in which the only dispute relates to its market value or sale-price, because it does not arise in the present reference. That being so, the present appeal lay to the District Judge, Patiala, and could not be filed direct in this Court.

In the circumstances I would direct that the memo of appeal filed in this Court be returned for presentation to competent Court. Costs of this appeal will be the costs in the cause.

Dulat, J.—I agree.

Dulat, J.

DUA, J.—So do I.

Dua, J.

APPELLATE CIVIL

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

B. L. CHOPRA,—*Appellant.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents*

Regular First Appeal No. 165 of 1954:

1960

Jan., 8th

Limitation Act (IX of 1908)—Section 15(2)—Code of Civil Procedure (V of 1908)—Section 80—Interpretation and object of—Suit for malicious prosecution against Government officers—Notice under Section 80 C.P.C., sent on the last day, i.e., September 18, 1953—Suit filed on November 18, 1953—Whether maintainable.

Held, that the suit was premature by a day. The limitation for the suits remains the same and under section 15(2) of the Limitation Act it is only the period of the notice that is excluded and nothing more. The period of the notice under section 80 of the Code of Civil Procedure is two months, that is entire or clear two months excluding the day on which the service or delivery of the