

THE INDIAN LAW REPORTS

PUNJAB SERIES

APPELLATE CIVIL

Before Khosla and Harnam Singh, JJ.

RAJA RAM,—*Plaintiff-Appellant,*

versus

ARJAN SINGH AND OTHERS,—*Defendants-Respondents.*

Regular Second Appeal No. 807 of 1947

1952

May 7th

Punjab Pre-emption Act (I of 1913)—Section 4—Right of pre-emption—Enforcement of—Pre-emptor, whether must possess the statutory superiority at the date of the sale, the date of the institution of the suit, and the date of the first Court's decree.

Held, that in order to enforce the right of pre-emption a plaintiff has to show that he possessed the right of pre-emption sought to be enforced on three dates, namely the date of sale, the date of institution of the suit and the date of the first Court's decree. That being so, if the vendee possesses a status equal to that of the plaintiff on the date of the institution of the suit or on the date of the decree of the court of first instance, the plaintiff must fail. A pre-emptor cannot be allowed to enforce a right of pre-emption which he did not possess on the date of the sale.

Het Ram and others v. Dal Chand and others (1), and Faiz Mohammad v. Fajjar Ali Khan and another (2), relied upon.

Second Appeal from the decree of Shri Mela Ram. District Judge, Karnal, dated 9th January, 1947, affirming that of Shri Jagan Nath Kapur, Senior Sub-Judge, Karnal, dated the 5th December, 1945, dismissing the suit and leaving the parties to bear their own costs, the appellate court allowing costs of his court.

SHAMAIR CHAND and PARKASH CHAND, for Appellant.
TEK CHAND, for Respondents.

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- (1) I. L. R. (1933) 14 Lah. 421.
(2) I. L. R. (1944) 25 Lah. 473 (F. B.)

JUDGMENT

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Harnam Singh,
J.

HARNAM SINGH, J. In order to appreciate the point of law arising in Regular Second Appeal No. 807 of 1947 the facts of the case may be set out in some detail.

On the 25th of July, 1942, Paras Ram, defendant No. 3, sold one half of the land comprised in khewat No. 102 situate in village Mihra, Tehsil Thanesar, District Karnal, to Arjan Singh and Sahib Ditta, defendants Nos. 1 and 2, for rupees 2,600. That sale was attested by the Revenue Officer in the register of mutations on the 14th of February, 1944. On the 25th of July, 1942, Raja Ram was an owner of the estate and the vendees became owners of the estate on the 2nd of March, 1944. On the 22nd of March, 1944, Paras Ram, defendant No. 3, sold one half of the land comprised in khewat No. 102 to Raja, Babu, Munshi, Mangal, Des Raj and Ram Singh, sons of Kalu Ram, for rupees 8,501. By this sale Raja Ram became a co-sharer in khewat No. 102.

On the 22nd of August, 1944, Raja Ram instituted Civil Suit No. 195 of 1944 claiming a right of pre-emption superior to that of the vendees on two grounds, namely, (1) that on the 25th of July, 1942, he was an owner of the estate while the vendees became owners of the estate on the 2nd of March, 1944, and (2) that he was a co-sharer in khewat No. 102 while the vendees were not.

On the 1st of October, 1945, counsel for Raja Ram conceded that the plaintiff could not maintain the suit to pre-empt the sale on account of his being owner of the estate but maintained the plaintiff's claim on the ground of his having right of pre-emption superior to that of the vendees by reason of his being a co-sharer in khewat No. 102. In other words, Raja Ram sought to enforce the right of pre-emption defined in section 15 (b) fourthly read with section 4 of the Punjab pre-emption Act, 1913, hereinafter referred to as the Act.

As stated above, Raja Ram became a co-sharer in the land sold on the 2nd of March, 1944, whereas the sale which was sought to be pre-empted

was made on the 25th of July, 1942. In this connection certified copies of mutations, Exhibits P. 2 and P. 3, may be seen.

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Defendants Nos. 1 and 2 resisted the suit pleading *inter alia* that on the 25th of July, 1942, Raja Ram plaintiff did not possess the right of pre-emption defined in section 15 (b) fourthly read with section 4 of the Act.

Harnam Singh.
J.

In deciding civil suit No. 195 of 1944 the Court of first instance found that the plaintiff possessed the right of pre-emption that he sought to enforce, but finding that the suit was not within time dismissed the suit leaving the parties to bear their own costs.

From the decree passed in civil suit No. 195 of 1944 Raja Ram, plaintiff, appealed under section 96 of the Code of Civil Procedure.

In deciding civil appeal No. 302 of 1945 the District Judge found the suit to be within time, but maintained the decree under appeal on the finding that on the 25th of July, 1942, Raja Ram, plaintiff, did not possess the right of pre-emption that he sought to enforce in civil suit No. 195 of 1944. In the result, the District Judge dismissed the appeal with costs.

In these circumstances Raja Ram, plaintiff, has come up in further appeal to this Court under section 100 of the Code of Civil Procedure.

Now, Regular Second Appeal No. 807 of 1947 was originally laid for disposal before Achhru Ram, J. In arguments counsel for the appellant urged that it is not necessary that the superiority of the right of pre-emption on the date of the institution of the suit and on the date of the decree of the Court of first instance should be on the basis of the statutory qualification which gave him a superior right on the date of the sale. Finding that the point raised was of considerable importance, Achhru Ram, J., has referred the case for decision to a Division Bench of this Court.

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 J.

Now, in order to enforce the right of pre-emption a plaintiff has to show that he possessed the right of pre-emption sought to be enforced on three dates, namely (1) the date of sale, (2) the date of institution of the suit, and (3) the date of the first Court's decree. On this point *Het Ram and others v. Dal Chand and others* (1), may be seen.

In the present case the right of pre-emption which is sought to be enforced was not possessed by the plaintiff on the 25th of July, 1942, when the sale was made by Paras Ram, defendant No. 3, to Arjan Singh and Sahib Ditta, defendants Nos. 1 and 2. Clearly, the present suit does not satisfy the conditions laid down in I.L.R. 14 Lah. 421.

Mr. Shamair Chand appearing for Raja Ram, plaintiff, argues that on the 25th of July, 1942, the plaintiff possessed the right of pre-emption on the ground that he was an owner of the estate, while the vendees were not owners of the estate on that date. In my judgment Raja Ram, plaintiff, cannot succeed by showing that on the date of the sale he was an owner of the estate while the vendees were not and that he was a co-sharer in khewat No. 102 while the vendees were not on the date of the institution of the suit and the date of the decree of the Court of first instance. The right of pre-emption which is sought to be enforced is the right of pre-emption defined in section 15 (b) fourthly read with section 4 of the Act and the plaintiff cannot succeed in the suit unless he proves that he possessed that right on the date of the sale.

Mr Shamair Chand then argues that as a vendee is allowed to improve his status subsequent to the sale to defeat a pre-emptor, there is no reason to refuse that indulgence to a pre-emptor. As stated above in order to maintain his suit for pre-emption the plaintiff must possess the right of pre-emption on the date of the sale, the date of the institution of the suit, and the date of the first Court's decree. That being so, if the

(1) I. L. R. 14 Lah. 421

vendee possesses a status equal to that of the plaintiff on the date of the institution of the suit or on the date of the decree of the Court of first instance, the plaintiff must fail. On the other hand, a pre-emptor must show that the superior right to pre-empt was possessed by him on the three dates stated above. That this is so follows from the very definition of the right of pre-emption. On the 25th of July, 1942, Raja Ram did not possess the right of pre-emption which he seeks to enforce in civil suit No. 195 of 1944. Clearly, Raja Ram, plaintiff, cannot be allowed to enforce a right of pre-emption which he did not possess on the date of the sale. For an authority on this point reference may be made to *Faiz Mohammad v. Fajjar Ali Khan and another* (1). In that case Abdul Rehman, J. (Harries, C. J. and Teja Singh, J., concurring) said :—

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“ But as a vendee has been allowed to improve his position subsequent to the sale to defeat a pre-emptor, there is no reason to grant the same indulgence to a pre-emptor, particularly when the scheme of the pre-emption Act is opposed to it. Moreover, it must be remembered that the vendee is on the defensive and is entitled to arm himself with a shield in order to protect his right which had accrued to him on the basis of his contract. A pre-emptor is on the other hand an aggressor. It is he who wishes to dislocate the vendee and it is he, therefore, who must show that the superior right to pre-empt which he had at the date of the sale continued to remain superior at all relevant times. If he fails to show that, he must fail in his suit ”.

Finding as I do, that the pre-emptor did not possess the right of pre-emption defined in section 15 (b) fourthly read with section 4 of the Act on the 25th of July, 1942, I maintain the judgment

(1) I. L. R. 25 Lah. 473

Raja Ram and decree passed in civil appeal No. 302 of 1945 on
 v. the 9th of January, 1947, and dismiss Regular
Arjan Singh Second Appeal No. 807 of 1947.
 and others

Harnam Singh, Having regard to the circumstances of the
 J. case, I would leave the parties to bear their own
 costs in this Court.

KHOSLA, J. I agree.

1952

June 23rd

REVISIONAL CIVIL

Before Eric Weston, C.J.

CUSTODIAN, EVACUEES PROPERTY, PUNJAB,—
Petitioner,

versus

GUJAR SINGH AND OTHERS,—Defendants-Respondents.

Civil Revision No. 598 of 1950.

Administration of Evacuee Property Act (XXXI of 1950) Sections 7 and 46—General proclamation issued by Custodian vesting evacuee property in Custodian—Whether sufficient—Enquiry by the Custodian—Whether necessary to determine if a property is evacuee or not—Civil Court—Jurisdiction—Whether can determine if a person is evacuee or not.

Held, that a general proclamation issued by the Custodian vesting evacuee property in the Custodian is not sufficient. The several enactments relating to Administration of Evacuee Property from time to time provided that while there should be no enquiry by the Civil Courts there was to be an enquiry by the Custodian in the case of specific items of property said to be evacuee property. Where the Custodian assumed physical possession or assumed control by express notification, the enquiry was contingent upon objection raised by claimants, but in case of property of which no possession was taken, no control assumed by express notification or no enquiry made such as is contemplated by Section 7 of the Act, clearly there has been no determination that the particular property is evacuee property. Before an application is made under Section 17 of the Act to require the court to set aside orders affecting the evacuee property it must be a condition precedent to such application that there has been determination that the particular property is evacuee property. As this determination cannot be made by the Court it must be made by the Custodian himself under Section 7 of the Act or similar provisions of the earlier enactments.