to declare that the impugned electoral roll is not valid, having not been prepared in conformity with the rules 8A to 8K of the Municipal Election Rules, 1952, and the election in question held on its basis in October, 1959, is also invalid and is, therefore, quashed. As the petitioners did not approach this Court before the elections were held, they are in my opinion not entitled to costs of these proceedings.

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Dua, J.

DULAT, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before G. D. Khosla, C. J., and S. S. Dulat, J.

RAM LAL,—*Appellant.*

versus

RAJA RAM AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 830 of 1957.

1960

Feb., 17th

Punjab Pre-emption (Amendment) Act (X of 1960)—Section 31—Effect of on pending suits and appeals.

Held, that the effect of section 31 introduced by the Punjab Pre-emption (Amendment) Act, 1960, is that whatever the law which governed sales at the time the sale was effected and the law which was in force when a suit was brought, a Court cannot pass a decree in a suit for pre-emption where the ground, upon which the suit was based, is no longer available to a pre-emptor under the new Act. It also follows that where a pre-emptor's suit is dismissed on some ground and he appeals, and the appeal is heard after the new Act has come into force, the appellate Court cannot pass a decree for pre-emption upon a ground which existed only under the old law and no longer exists under the new law, because by so doing the appellate Court will be acting in direct contravention of the provisions of section 31 introduced by the Punjab Pre-emption (Amendment) Act, 1960. Similarly, where a decree for pre-emption has been passed

by a Court in accordance with the law then in force, the appellate Court has to consider whether by the passing of the new Act that decree should be set aside. If the High Court were to affirm the decree passed by the District Judge, it would be passing a decree in contravention of the provisions of section 31 introduced by the amending Act of 1960. An appeal is not only a re-hearing of the matter but a continuation of the original proceedings before the lower Courts and a change in law after the decision of the trial Court must be given effect to by the appellate Court, more so in pre-emption cases with regard to which the law is 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. The amending Act, therefore, must be given effect to not only in first suits filed or suits pending but also in those cases in which appeals are pending and have not been decided.

Case referred by Hon'ble Mr. Justice Daya .Krishan Mahajan, on 8th February, 1960, to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by a division bench consisting of Hon'ble Mr. Chief Justice G. D. Khosla and Hon'ble Mr. Justice Dulat, on 17th February, 1960.

Regular Second Appeal from the decree of the court of Shri B. L. Goswamy, Additional District Judge, Karnal, dated 30th May, 1957, reversing that of Shri Raghbar Singh, Sub-Judge, III Class, Panipat, dated the 30th October, 1956, and passing a decree to the effect that if the plaintiff deposits in court a sum of Rs. 1,900 inclusive all the sums, if any, already deposited by him, within three months of the date of judgment for payment to the defendant-vendee the plaintiff will be entitled to possession of the house in suit in exercise of his right of pre-emption.

D. N. AGGARWAL and RAJINDER NATH AGGARWAL with MR. ROOP CHAND, for the Appellant.

ABNASHA SINGH, with SURJIT SINGH DHINGRA, for the Respondents.

JUDGMENT

G. D. Khosla, C. J.,

KHOSLA, C. J.—This matter came in the original instance before Mahajan J. sitting singly. He

considered it desirable to refer it to a Division Bench in view of the Punjab Pre-emption (Amendment) Act, 1960 (Act X of 1960), whereby certain grounds, upon which a suit for pre-emption could be brought, were abrogated.

The facts briefly are that a decree for pre-emption on the ground of contiguity was passed in favour of Raja Ram plaintiff-respondent by the Additional District Judge, on appeal. The vendee brought a second appeal to this Court, and in the meantime the Punjab Pre-emption (Amendment) Act of 1960 was passed. Under this Act the ground of contiguity is no longer available to a pre-emptor, and it has been urged before us that in view of section 31 of this Act this appeal must be allowed as a decree in favour of a pre-emptor on the ground of contiguity can no longer be passed or affirmed by an appellate Court.

Simply stated the question is whether the provisions of the Punjab Pre-emption (Amendment) Act apply to pending proceedings, and whether, when an appeal had been filed against a decree for pre-emption, the new law must be applied by the appellate Court, or the law which was in force at the time the suit was brought or the decree was passed. By the amending Act, section 31 has been added to the principal Act, namely, the Punjab Pre-emption Act of 1913. The new section (31) is in the following terms:—

> "31. 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."

The figure "1959" is obviously a misprint for "1960" because the reference is to Punjab Act X

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of 1960. It is, therefore, clear that whatever the law which governed sales at the time the sale was effected and the law which was in force when a suit was brought, a Court cannot pass a decree in a suit for pre-emption where the ground, upon which the suit was based, is no longer available to a pre-emptor under the new Act. It also follows that where a pre-emptor's suit is dismissed on some ground and he appeals, and the appeal is heard after the new Act has come into force, the appellate Court cannot pass a decree for pre-emption upon a ground which existed only under the old law and no longer exists under the new law, because by so doing the appelate Court will be acting in direct contravention of the provisions of section 31. We are now left with the case where a decree for pre-emption has been passed by a Court in accordance with the law then in force, and the appellate Court has to consider whether by the passing of the new Act that decree should be set aside.

The argument of Mr. Aggarwal, who appears on behalf of the vendee-appellant, is that by the filing of an appeal the entire matter becomes *sub-judice* once again. The appeal is a continuation of the proceedings in the trial Court and amounts to a re-hearing of the matter. That being so (so it was argued before us), the proceedings before the appellate Court must be taken to be a continuation of the proceedings before the original Court, and, since the decree passed by the appellate Court takes the place of the decree passed by the lower Court, the appellate Court in affirming the decree will be passing a decree of its own, and to do so would be to contravene the provisions of section 31. On the other hand, it has been contended on behalf of the respondents, that the affirming of a decree cannot be said to amount to passing of a

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decree, and, therefore, where a decree was passed in accordance with the law originally in force, the appellate Court despite the change in law must affirm the decree because the order affirming the decree cannot be interpreted as an order passing a fresh decree.

The fallacy in the argument urged on behalf of the respondents is that it loses sight of the fact that an appeal in this country has always been taken to be not only a re-hearing of the matter but a continuation of the proceedings before the lower Courts. This principle has been reiterated several times and was enunciated quite clearly in a decision of the Federal Court in *Lachmeshwar Prasad Shukul and others* v. *Keshwar Lal Chaudhrui and others* (1). In that case the Federal Court was considering the applicability of the Bihar Money-lenders Act. Section 7 of that Act introduced new law giving new rights to debtors. While dealing with the change in the law, their lordship observed:—

> "* * * even assuming that this Court is not directly bound by the provisions of the Bihar Act, the appellants will still be entitled to claim that this Court is bound to pronounce the judgment which the High Court would have pronounced, if it were hearing the appeal at this moment. There can be no doubt that if the High Court at Patna had now to deal with this case, it would have to govern itself by the provisions of section 7 of the Act of 1939."

Again it was observed:—

> "Once the decree of the High Court had been appealed against, the matter

(1) A.I.R. 1941 F.C. 5

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> became *sub-judice* again and thereafter this Court had seisin of the whole case, though for certain purposes, e.g., execution, the decree was regarded as final and the Courts below retained jurisdiction."

These observations are contained in the judgment of Varadachariar, J., Gwyer, C.J., while agreeing with Varadachariar, J., drew attention to the American rule on the subject and he quoted with approval the observations of Hughes, C.J., in *Patterson* v. *State of Alabama*, (1):—

> "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

Mr. Abnasha Singh has read before us the provisions of section 7 of the Bihar Money-lenders Act, and he has drawn our attention to the fact that the wording of that section makes specific reference to appeals and revisions. He has, therefore, argued that as far as section 7 of the Bihar Money-lenders Act was concerned, all pending appeals and revisions were expressly governed by the new amendment introduced. He argues that this is not the case with the Punjab Pre-emption (Amendment) Act which is under our consideration. The observations of the Federal Court, however, are not limited to those cases in which appeals

(1) (1934) 294 U.S. 600

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and revisions are specifically mentioned in the amending Act, and the quotations which I have cited above are general principles upon which the decision of that case was based. These observations apply with equal force to the case before us. I may quote another passage from the same judgment which is pertinent to the matter before us—

> "It is also on the theory of an appeal being in the nature of a re-hearing that the Courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

A Division Bench of this Court considered a somewhat similar matter in *Messrs British Medical Stores and others* V. *L. Bhagirath Mal and others* (1), and the view expressed in that case clearly was that pending judicial proceedings are governed by the change in law, and judicial proceedings include an appeal in a matter which was decided before the change in the law was made. There is also a Madras case, *G. Kanakayya* v. *Janardhana Padhi and two others* (2), in which similar observations were made. In that case the expression used in the statute was "final decree". I do not, however, see that "final" makes any difference, because, wherever a decree is made the subject-matter of an appeal, the final decree is the decree of the appellate Court.

The referring order has made mention of one or two cases in which a contrary view appears to

(1) A.I.R. 1955 Punj. 5
(2) I.L.R. 1936 Mad. 439

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have been taken. I find that at least in one case, which was heard by the Lahore High Court (*Mohindar Singh* v. *Arur Singh and others* (1), it was held by a Division Bench that where a right of pre-emption is taken away by a Government notification during the pendency of the appeal, the case must be decided on the basis of the law which existed at the time the sale took place. With great respect to the learned Judges who dealt with this case, I find myself unable to subscribe to the proposition laid down by them. 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, and the decision of the Division Bench in *Mohinder Singh* v. *Arur Singh and others* (1), would be contrary to this principle which has been consistently recognised in this State. There are one or two other cases of a similar kind *Kaju Mal and others* v. *Salig Ram* (2), and *Niaz Ali* v. *Muhammad Ramzan and another* (3), but in another Division Bench case *Bishan Singh* v. *Ganda Singh and others* (4), the notification which changed the law was given effect to, and this last mentioned case, therefore, is according to the view expressed by the Federal Court in the case referred to above.

Taking the view, therefore, that an appeal is a continuation of the original proceedings and a re-hearing of the matter, I am quite clear in my mind that if this Court were to affirm the decree

(1) I.L.R. 3 Lahore 267
(2) 91 P.R. 1919
(3) 130 P.R. 1916
(4) 10 P.R. 1913

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passed by the District Judge, it would be passing a decree in contravention of the provisions of section 31 introduced by the amending Act. The amending Act, therefore, 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.

That being so, this appeal must be allowed and the suit of Raja Ram plaintiff-respondent dismissed. In the circumstances of the case, I would make no order as to costs.

Dulat, J.

DULAT, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before Tek Chand and Shamsher Bahadur, JJ.

THE PUNJAB CO-OPERATIVE BANK, LTD.,—*Appellant.*

versus

NARANJAN DASS BUDWAR,—*Respondent.*

Execution First Appeal No. 230 of 1951.

1960

March, 1st

Displaced Persons (Legal Proceedings) Act (XXV of 1949)—Sections 2 and 7—Co-operative Bank having its Head Office in Amritsar and branch office in Lahore and other places in Pakistan—Whether a displaced person—Decree in favour of the Bank passed by Lahore Court before Partition —Whether can be executed in India after Partition if the judgment-debtor resides in India—Indian Limitation Act (IX of 1908)—Articles 181 and 182 (5)—Application for execution in India of a decree passed by Lahore Court prior to Partition—Period of limitation and terminus a quo *for such application—Application for having a decree transferred—Whether step-in-aid of execution.*

Held, that the Co-operative Bank having its Head Office in India and branch offices in Pakistan is a "displaced person" as defined in section 2 of the Displaced Persons (Legal