

P.E. That being so, the bare knowledge of the fact that his licence stood cancelled would not in law help the prosecution in proving the charge of storage of vegetable ghee for sale without licence against him.

For the above reasons, we dismiss the appeal.

MAN MOHAN SINGH GUJRAL, J.—I agree.

B.S.G.

APPELLATE CIVIL

Before S. C. Mital, J.

CHARAN SINGH,—Appellant.

versus

JAGIR SINGH ETC.,—Respondents.

Regular Second Appeal No. 840 of 1968.

February 8, 1971.

The Punjab Security of Land Tenures Act (I of 1953)—Sections 2(6) and 17-A(1)—The Punjab Tenancy Act (XVI of 1887)—Section 4(5)—Sale of land to a tenant of mortgagee with possession—Pre-emption suit—Whether such sale protected by section 17-A.

Held, that a perusal of sections 2(6) and 17-A(1) of the Punjab Security of Land Tenures Act, 1953, read with section 4(5) of the Punjab Tenancy Act, 1887, shows that the tenant of a mortgagee with possession nowhere figures. Besides, the exclusion of a mortgagee of the rights of a landowner from the definition of 'tenant' in section 4(5) of the Punjab Tenancy Act leads to the conclusion that a 'tenant' of a mortgagee could never be intended to be included in the term 'tenant'. Moreover, the classes of tenants, namely, a sub-tenant, a self-cultivating lessee, and a joint tenant to whom the legislature intended to give protection of section 17-A of the Punjab Security of Land Tenures Act, 1953, have been specifically mentioned. Hence a sale made to a tenant of mortgagee with possession is not protected by section 17-A of the Act and a suit for pre-emption against a sale to the mortgagee's tenant lies. (Para 3)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Ludhiana, dated the 27th day of March, 1968 modifying that

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of the Sub-Judge, 1st Class, Samrala, Jagraon, dated the 4th August, 1965 (granting the plaintiff a decree of 5/11th share of 997/1437 share of the land sold on payment of Rs. 4,104 to defendants No. 1 to 3 by 15th October, 1965 failing which the suit in whole of the plaintiff would be deemed to have been dismissed with costs and further ordering that in case Rs. 4,104 was paid or deposited within the specified time costs would be borne by the parties to the suit) to the extent that the decree granted by the trial Court in favour of the plaintiff is extended up to 5/11th share of the whole land in dispute on payment of Rs. 5,910 and the plaintiff would deposit this amount in the trial Court on or before 27th May, 1968 after deducting the amount already deposited by him under this decree and then he would be able to get possession of 5/11th of the suit land if this deposit was not made by the said date, then the whole suit of the plaintiff would stand dismissed and leaving the parties to bear their own costs throughout.

Y. P. GANDHI, ADVOCATE, for the appellant.

H. S. TOOR, ADVOCATE, for the respondents.

JUDGMENT

S. C. MITAL, J.—(1) Facts relevant to the question of law involved in this regular second appeal are that after the death of Tara Singh, his heirs sold the land in dispute on 15th June, 1963, to defendants Nos. 1 to 4. A part thereof had been under mortgage with possession with Karnail Singh, and at the time of the sale the mortgage subsisted. In the year 1961, it was Karnail Singh who inducted defendant No. 4 as a tenant therein. Jagir Singh claiming to be the brother's son of Tara Singh deceased and also a co-sharer in the joint *khata* with the vendors, filed the suit for possession of the entire land by pre-emption. In respect of the land held by defendant No. 4 as a tenant of Karnail Singh mortgagee also, the trial Court decreed the suit, but its decision in this behalf was reversed by the lower appellate Court. Feeling aggrieved, defendant No. 4 (Charan Singh) has preferred this appeal.

(2) Upon the facts set out above, the sole question canvassed before me is: Whether the sale in favour of defendant No. 4 of the land comprising his tenancy is protected by section 17-A of the Punjab Security of Land Tenures Act, 1953? Sub-section (1) of section 17-A lays down:—

“Notwithstanding anything to the contrary contained in this Act or the Punjab Pre-emption Act, 1913, a sale of land comprising the tenancy of a tenant made to him by the

landowner shall not be pre-emptible under the Punjab Pre-emption Act, 1913, and no decree of pre-emption passed after the commencement of this Act in respect of any such sale of land shall be executed by any court :

Provided that for the purposes of this sub-section the expression tenant includes a joint tenant to whom whole or part of the land comprising the joint tenancy is sold by landowner."

Sub-section (6) of section 2 of the Act aforesaid defines 'tenant' as under :—

" 'Tenant' has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1887), and includes a sub-tenant and self-cultivating lessee, but shall not include a present holder as defined in section 2 of the Resettlement Act."

Coming to the definition of 'tenant' as given in sub-section (5) of section 4 of the Punjab Tenancy Act, 1887, we find that—

" 'Tenant' means a person who holds land under another person, and is, or but for special contract would be, liable to pay rent for that land to that other person; but it does not include—

- (a) an inferior landowner, or
- (b) a mortgagee of the rights of a landowner, or
- (c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or
- (d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it."

(3) From a perusal of the provisions of law quoted above it is clear that the tenant of a mortgagee with possession nowhere figures. Besides, the exclusion of a mortgagee of the rights of a landowner from the definition of 'tenant' in section 4(5) of the Punjab Tenancy

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Act, 1887, leads to the conclusion that a 'tenant' of a mortgagee could never be intended to be included in the term 'tenant'. Another aspect of the matter is that the classes of tenants, namely, a sub-tenant, a self-cultivating lessee, and a joint tenant to whom the legislature intended to give protection of section 17-A of the Punjab Security of Land Tenures Act, 1953, have been specifically mentioned.

(4) In support of his contention that the 'tenant' referred to in section 17-A primarily means the tenant of the landowner, learned counsel for the pre-emptor cited *Niranjan Singh v. Ram Partap* (1), a Division Bench ruling of this Court wherein section 8-A of the Pepsu Tenancy and Agricultural Lands Act, 1955, was considered. Sub-section (1) of section 8-A enacts :—

“Notwithstanding anything to the contrary contained in the Punjab Pre-emption Act, 1913, a sale of land comprising the tenancy of a tenant made to him by the landowner shall not be pre-emptible under the Punjab Pre-emption Act, 1913, and no decree of pre-emption passed after the commencement of this Act in respect of any such sale of land shall be executed by any Court.”

It was held by the learned Judges that the words “a sale of land comprising the tenancy of a tenant made to him by the landowner” refer only to a sale by a landowner to his own tenant. Having regard to the fact that section 17-A of the Punjab Act is very much analogous to section 8-A of the Pepsu Act, I have no hesitation in accepting the contention. It may, however, be added that a joint tenant and others already mentioned have been included in the expression “tenant” by the Punjab Act.

(5) For the above reasons, I am of the view that the appeal merits dismissal but the parties should be left to bear their own costs.

K.S.K.

(1) 1961 P.L.R. 641.