

keeping in view this somewhat important aspect. In the present case, it has apparently been ignored. Another allied matter to which I consider it proper to draw the attention of the Court below is that when an *Ahmad* chooses to record some note in the form of an order on the judicial file in the absence of the Presiding Officer of the Court, he should take care to express himself in proper, dignified, respectful and courteous language becoming of a responsible officer of a Court of law and justice, and avoid using expressions like "P.O. absent". This Court disapproves the use of such language.

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In view of the foregoing discussion, I am unable to uphold the order of the Court below which is not only contrary to law and tainted with material irregularity in the exercise of jurisdiction but is also manifestly and patently unjust. I would accordingly set aside the impugned order and send the case back to the Court below for further proceedings in accordance with law and in the light of the observations made above. The petitioner has been directed to appear in the Court below on 3rd May, 1965, when the parties would be summoned after a short date for further proceedings. As there is no representation on behalf of the respondents in this Court, there would be no order as to costs.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and D. K. Mahajan, J.J.

BHUPINDER SINGH, —*Appellant*

versus

SURINDER KAUR AND ANOTHER, —*Respondents*

Second Appeal from Order No. 45 of 1963.

Punjab Security of Land Tenures Act (X of 1953)—S. 19-A—Effect of —Pre-emptor already owning land which, together with the land pre-empted, will exceed permissible area—Whether entitled to obtain pre-emption decree—Matter relating to violation of S. 19-A—When to be decided.

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April, 5th.

Held, that section 19-A of the Punjab Security of Land Tenures Act, 1953, does prohibit the acquisition of land by an individual beyond the permissible area which is 30 standard acres but it does not prohibit an individual who already owns land which, together with the land sought to be pre-empted, will exceed the permissible area, from obtaining the pre-emption decree. The pre-emption decree, at the time it is granted, does not substitute the name of the pre-emptor for that of the vendee. It merely says that in case the amount in question is deposited by a certain date the pre-emptor would be entitled to possession, and it is impossible to say at the time of passing the decree whether the pre-emptor will or will not come to own the land for it can just as well happen, in case the pre-emptor chooses not to deposit the money or is for various reasons unable to do so, that the suit may stand dismissed. The granting of a pre-emption decree, therefore, does not violate nor has the effect of violating the provisions contained in section 19-A of the Punjab Security of Land Tenures Act, 1953. The question, whether the pre-emptor will or will not at any time hold more than the land he is allowed to under section 19-A of the Punjab Security of Land Tenures Act, can only be decided when after having deposited the pre-emption money in Court, he seeks assistance of the Court to obtain possession, for only if he does get possession of more than the permissible area will he be violating the law. It seems clear, therefore, that the question of the violation of section 19-A of the Punjab Security of Land Tenures Act can be properly decided only when the pre-emptor seeks to obtain possession of the suit land through execution. At that stage it would be open to the judgment-debtor to take objection and the question can be satisfactorily considered only at that stage.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 2nd September, 1964, to a Division Bench for decision owing to the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice D. K. Mahajan, on 5th April, 1965.

H. L. SARAIN, SENIOR ADVOCATE, WITH M. S. JAIN AND MISS ASHA KOHLI, ADVOCATES, for the Appellants.

S. L. PURI AND MUNISHWAR PURI, ADVOCATES, for the Respondents.

JUDGMENT

Dulat, J.

DULAT, J.—Sartaj Singh sold 138 Kanals, 19 Marlas of agricultural land to Shrimati Surinder Kaur, and the sale was pre-empted by Bhupinder Singh, a first cousin of the

vendor; alleging that as against the sale price of Rs. 24,500 mentioned in the deed only Rs. 21,500 had been paid. The suit was resisted on a number of grounds. It was denied that there was a superior right of pre-emption vesting in the pre-emptor and, that certain improvements had been made on the land by the vendee and also of course that full price had been paid and not merely Rs. 21,500. It was further alleged that the suit was collusive and had been brought for the benefit of the vendor. One of the main defences, however, was that the pre-emptor was a big landowner in the sense that if he is allowed to take possession of the land in suit, he will be owning more than 30 standard acres which, according to section 19-A of the Punjab Security of Land Tenures Act, nobody is entitled to own or possess. A plea was also raised that the right of pre-emption had been waived.

The trial Court was satisfied that the price mentioned in the sale-deed, that is, Rs. 24,500 had been paid and also that the vendee had subsequently made certain improvements on the land. The plea of waiver was overruled and so was the allegation regarding the collusive nature of the suit. On the main plea the Court, although holding that the pre-emptor owned already about 22 standard acres of land and the land in suit was about 20 standard acres and, therefore, the pre-emptor would be in this way owning more than 30 standard acres of land, found as a matter of law that this was not illegal and, in the result, decreed the pre-emptor's suit on payment of Rs. 28,640, the decree in terms being that the pre-emptor-decree-holder must deposit the amount in question by the 30th of September, 1963, and will then be allowed possession of the suit land but failing that deposit by the due date the suit will stand dismissed. Against that decree the vendee appealed to which cross-objections were filed on behalf of the pre-emptor. The cross-objections were dismissed but, while considering the appeal of the vendee, the learned Additional District Judge came to the conclusion that the pre-emption decree granted in this case violated the terms of section 19-A of the Punjab Security of Land Tenures Act and it was, therefore, not possible to maintain the decree in that form. The Court held that the pre-emptor was entitled to a decree only for that area of land which together with the land already owned by the pre-emptor would not exceed 30 standard acres, and, since the precise area had not been determined

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nor the price, the learned Judge made an order of remand directing the trial Court to go into the question of facts, the intention of the learned Additional District Judge being that a decree should be granted to the pre-emptor only for that much area of land which together with his already owned land would come to 30 standard acres, and this should be on payment of proportionate price. Against this judgment of the Additional District Judge directing a remand, both parties have filed appeals (S.A.O. 45 of 1963 and S.A.O. 10 of 1964), the pre-emptor-plaintiff claiming that no remand was necessary in this case and the decree, made by the trial Court, should stand, and, the vendee claiming that the suit should be dismissed and in any case compensation for improvements should have been more and also of course claiming that the direction of the lower Court, that a proportionate price of the land to be included in the pre-emption decree alone should be paid, is invalid. These appeals came in the first instance before one of us sitting alone but, as the question of law raised in the appeals appeared sufficiently important and a certain view of that matter had been taken in another case decided by Mehar Singh, J., sitting alone, it was decided that these appeals be heard by a larger Bench and they have in this manner come before us. Both these appeals can be decided together quite conveniently, as in substance the question involved is one and only one. I say this because the other matters sought to be raised on behalf of the vendee are concluded by findings of fact reached by the learned Additional District Judge, and Mr. Puri is unable to show any reason for disturbing those findings.

The question of law, which does require determination, turns on the effect of section 19-A of the Punjab Security of Land Tenures Act. That section says—

“19-A. (1) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, no person, whether as landowner or tenant, shall acquire or possess by transfer, exchange, lease, agreement or settlement any land which, with or without the

land already owned or held by him, shall, in the Bhupinder Singh
agregate, exceed the permissible area:

Provided that nothing in this section shall apply to
lands, belonging to registered co-operative
societies formed for purposes of co-operative
farming if the land owned by an individual
member of the society does not exceed the per-
missible area.

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- (2) Any transfer, exchange, lease, agreement or
settlement made in contravention of the provi-
sions of sub-section (1) shall be null and void."

The argument on behalf of the vendee is that since at the time of the suit and also at the time of the decree the plaintiff owned about 22 standard acres of land and he would be acquiring by this decree another 20 standard acres of land and will in this manner be violating the express provisions of section 19-A of the Punjab Security of Land Tenures Act, the Courts should not lend assistance to such violation of law. It does appear and is not disputed before us that the Punjab Security of Land Tenures Act, section 19-A, does prohibit the acquisition of land by an individual beyond the permissible area which admittedly is 30 standard acres, and, if we could be persuaded that the effect of the decree granted to the pre-emptor in this case is that the pre-emptor will necessarily acquire more than 30 standard acres, we would refrain from granting such a decree. Mr. Jain on behalf of the pre-emptor, however, points out that it is wrong to say that that would be the effect of the pre-emption decree, for all that the decree says is that on a particular contingency happening, namely, the deposit of a certain amount of money by a certain date, the pre-emptor-decree-holder would be entitled to take possession of certain area of land, which is very different from saying that on the date of the decree the pre-emptor either becomes the owner of or takes possession of any particular area of land. The learned Additional District Judge in this case was led to this conclusion by the consideration that a pre-emption decree at the time it is granted substitutes the name of the pre-emptor for that of the vendee. It is clear that it does not. The pre-emption decree merely says that in case the amount in question is deposited by a certain date the pre-emptor would be entitled to possession, and it is impossible to say at the time of passing the decree

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whether the pre-emptor will or will not come to own the land for it can just as well happen, in case the pre-emptor chooses not to deposit the money or is for various reasons unable to do so, that the suit may stand dismissed. We are, therefore, unable to hold as a matter of law that the granting of a pre-emption decree violates or has the effect of violating the provisions contained in section 19-A of the Punjab Security of Land Tenures Act and, that being so, there seems no reason why the pre-emptor should be debarred from obtaining the decree in terms in which it is framed. Mr. Puri in support of the vendee's appeal submits that although in law a pre-emption decree may not have the effect of making the pre-emptor the owner of the land in suit, it is in all probability likely to happen that the pre-emptor will take advantage of the decree and by taking possession of the land in suit he will come to own and possess more land than he is entitled to under the law. This is, however, to anticipate an event which may never come about, for it can just as well happen that by the time the pre-emptor comes to deposit the money in Court, he may have parted with all or a substantial part of his own holding. In any case, it is clear that the question, whether the pre-emptor will or will not at any time hold more than the land he is allowed to under section 19-A of the Punjab Security of Land Tenures Act, can only be decided when, after having deposited the pre-emption money in Court, he seeks assistance of the Court to obtain possession, for only if he does get possession of more than the permissible area will he be violating the law. It seems clear, therefore, that the question of the violation of section 19-A of the Punjab Security of Land Tenures Act can be properly decided only when the pre-emptor seeks to obtain possession of the suit land through execution. At that stage it would be open to the judgment-debtor to take objection and the question can be satisfactorily considered only at that stage. As I have mentioned, the decree granted to the pre-emptor in this case does not violate the terms of section 19-A of the Punjab Security of Land Tenures Act and the learned Additional District Judge was not right, therefore, in seeking to disturb that decree on that ground. On this view of the matter, the conflict that seemingly arises between section 19-A of the Punjab Security of Land Tenures Act and the right of pre-emption granted to certain persons under the Punjab Pre-emption Act is resolved as far as the terms of those statutes are concerned, and it can well happen that

in actual fact no violation of the Punjab Security of Land Tenures Act may occur by exercise of the right of pre-emption. ,

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The other questions, as I have already mentioned, are questions of fact which cannot be raised in second appeal.

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The result is that the appeal on behalf of the vendee fails and is dismissed while the appeal of the plaintiff-pre-emptor is allowed. The order of remand made by the learned Additional District Judge is set aside and the decree granted by the Court of first instance in favour of the plaintiff is restored. The parties will bear their own costs.

D. K. MAHAJAN, J.—I agree.

Mahajan J.

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REVISIONAL CRIMINAL

Before A. N. Grover and S. K. Kapur, J.J.

PARTAP SINGH,— *Petitioner*

versus

STATE,—*Respondent*

Criminal Revision No: 194-D of 1964:

Code of Criminal Procedure (Act V of 1898) —S. 145—Applicability and scope of—Whether applies to evacuee property acquired under S. 12 of the Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954).

1965
April, 6th.

Held, that the object of section 145 of the Code of Criminal Procedure is to bring to an end by a summary process disputes relating to properties which are in their nature, likely, if not supposed, to end in breaches of the peace. The section was enacted for the maintenance of public peace, law and order and the fact that the property vests in the Central Government would not have the effect of abrogating the provisions of section 145, Criminal Procedure Code. Section 145, Criminal Procedure Code, is designed to protect deprivation of possession by persons taking law into their own hands and has no concern with determination of any legal right to possession. It does not seek to perpetuate illegal possession but merely directs the subjects