

APPELLATE CIVIL

Before Prem Chand Pandit, J.

AMAR CHAND,—Appellant.

versus

PIARA SINGH,—Respondent.

Execution Second Appeal No. 1017 of 1962.

1963
Jan., 21st

Code of Civil Procedure (V of 1908)—S.47—Pre-emption decree—Execution of—Whether can be had against land allotted in lieu of the land pre-empted in consolidation proceedings.

Held, that the Executing Court has the jurisdiction to determine the land which has been allotted to the vendee in lieu of the land which was the subject matter of the pre-emption decree and to execute the decree against such allotted land. This matter relates to the execution, discharge and satisfaction of the decree which can be determined by the Executing Court under section 47 of the Code of Civil Procedure. By determining this matter, the Executing Court does not go behind the decree because, in law, the decree-holder is entitled to the possession of the land mentioned in the sale-deed. In case during the consolidation proceedings, certain other *khasra* numbers are allotted to the judgment debtor in lieu of this land, the decree-holder would be entitled to get possession of the same.

Execution Second Appeal from the order of Shri Jawala Nath Verma, Senior Sub-Judge, with enhanced appellate powers, Jullundur, dated the 28th May, 1962, reversing that of Shri Ranjit Singh, Sub-Judge Ist Class, Jullundur, dated the 13th January, 1962 and dismissing the the execution petition with costs.

ROOP CHAND, ADVOCATE, for the Appellant.

CHUNI LAL PANDIT, ADVOCATE, for the Respondent.

JUDGMENT

PANDIT, J.—On 10th December, 1957, Amar Chand filed a suit against Piara Singh for possession by pre-emption of the land measuring 12 *kanals* 17 *marlas* sold on 14th December, 1956. This suit was decreed on 2nd June, 1958 on payment of Rs. 1,800. Later on, the decree-holder applied for execution of the decree in which it was stated by him that during the consolidation proceedings some other land measuring 8 *kanals* 19 *marlas* had been allotted to the judgment-debtor in lieu of the land decreed and the possession of the same should be given to him. A number of objections were raised by the judgment-debtor, but we are in the present appeal concerned only with one of them, namely, that the decree could not be executed against the land which had been allotted to him in consolidation proceedings, because this land was different from the one in respect of which the suit of Amar Chand was decreed. This objection was not accepted by the Executing Court, but the same prevailed with the lower appellate Court, with the result that the execution application was dismissed with costs. Against this, the present second appeal has been filed by Amar Chand.

Pandit, J.

After hearing the counsel for the parties, I am of the view that this appeal must be accepted. It is clear from the evidence of Vasdev Patwari, D.H.W. 1, that repartition under section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, had taken place on 25th June, 1957 and possession had been delivered to the various land-holders on 27th June, 1957. It is also evident from the statement of Ved Vyas, J.D.W. 1, President of the Committee set up

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for consolidation purposes, that no appeals had been filed against the repartition scheme. The present suit was filed on 10th December, 1957 and Amar Chand could have easily mentioned in the plaint that in lieu of the land sold, Piara Singh had been allotted some other land in consolidation proceedings. The decree in that case would have been passed in respect of the new land which had been allotted to Piara Singh. But the question arises that if he failed to mention this fact in the plaint, would this make the decree inexecutable? In my opinion, it will not. It is undisputed that a right of pre-emption is merely a right of substitution of the pre-emptor's name in the sale-deed. The result of obtaining this decree was that Amar Chand's name was substituted in place of Piara Singh. The Executing Court was within its rights to determine as to what land had been allotted to Piara Singh in lieu of the land decreed. After having found that, the possession of the same should have been delivered to the decree-holder, the Executing Court in the present case found that the judgment-debtor possessed some other land also apart from the land which he obtained under the present sale-deed and the proportion of the latter was one-fourth of the other area possessed by him. He, consequently, issued warrant for possession of one-fourth share of the land obtained by the judgment-debtor during the consolidation proceedings. The lower appellate Court has dismissed the execution application on the ground that the Executing Court could not go behind the decree and execute the same in respect of the new *khasra* numbers which had been allotted to the judgment-debtor during the consolidation proceedings. According to it since the consolidation proceedings were over before the suit was filed, the decree-holder should have mentioned the new *khasra* numbers in the plaint. In my view, this is a

matter which could easily be decided by the Executing Court, because it was covered by section 47 of the Code of Civil Procedure and related to the execution, discharge and satisfaction of the decree. By determining this matter, the Executing Court was not going behind the decree, because, in law the decree-holder is entitled to the possession of the land mentioned in the sale-deed. In case during the consolidation proceedings, certain other *khasra* numbers are allotted to the judgment-debtor in lieu of this land, the decree-holder would be entitled to get possession of the same.

In view of what I have said above, I would accept this appeal, set aside the decree of the lower appellate Court and restore that of the Executing Court. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

HARCHARAN SINGH,—*Petitioner.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Writ No. 702 of 1961.

Punjab Security of Land Tenures Act (X of 1953)—S. 2(3)—Permissible area—Whether to be calculated in standard acres or ordinary acres.

1963

Feb., 12th

Held, that sub-clause (a) of clause (ii) of the proviso to sub-section (3) of section 2 of the Punjab Security of Land Tenures Act, 1953, means that if the holding is in terms of standard acres which would be taken into account

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