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therefore, it is not possible to say as to what amount had become due and payable under the policies to the assesseees during the course of the relevant assessment years. The Wealth-tax Authorities may proceed to calculate the Wealth-tax on the basis referred to above, if the law so permits. But since my conclusion is that the policies of the assesseees are covered by the exemption clause of section 5(1)(vi) of the Wealth Tax Act as the whole amount under the policies has not become due, therefore, the questions referred to us in these Wealth Tax References for our opinion have to be answered in affirmative in favour of the assesseees and the same are hereby answered in the affirmative in favour of the assesseees. Keeping in view the facts and circumstances of these references, there will be no order as to costs.

Pandit, J.—I agree to the answer proposed.

B. S. G.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

SHMT. HARBANS KAUR,—Appellant

versus

SARDARA SINGH, ETC.,—Respondents.

Letters Patent Appeal No. 130 of 1972.

May 2, 1973.

Punjab Pre-emption Act (1 of 1913 as amended by 11 of 1973)—Sections 2 and 3 of the amending Act—Decree for pre-emption—Whether can be passed after the enforcement of the amending Act—Pending vendees' appeals against decrees of pre-emption—Whether have to be allowed merely because of the provisions of section 3.

Held, that after coming into force of the Punjab Pre-emption (Repeal) Act, 1973, repealing the Punjab Pre-emption Act, 1913, no decree for pre-emption can be passed in favour of a pre-emptor. The appeals filed by the pre-emptors against the dismissal of their suits have to be disallowed because if they are accepted, the appellate Court will be passing decrees of pre-emption in their favour, which cannot be done in view of section 3 of the amending Act.

Held, that when an appeal of a vendee against the decree passed in favour of a pre-emptor is pending in the appellate Court, it has to be accepted, because if the appellate Court dismisses the appeal, it passes a decree of pre-emption in favour of the pre-emptor, although it amounts to mere affirmance of the decree of the Court below. Since a decree of pre-emption cannot be passed after the enforcement of the amending Act, the vendees' appeals have to be accepted in order to comply with the provisions of the Act. They cannot be decided on merits.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Prem Chand Jain, passed in R.S.A. No. 165 of 1971, dated 15th December, 1971, reversing that of Shri Pritpal Singh 1st Additional District Judge, Ferozepore, dated the 13th January, 1971 (whereby he, Additional District Judge, affirmed with costs that of Shri Dina Nath, Sub-Judge 1st Class, Muktsar, dated 27th February, 1970, granting the plaintiff a decree for possession by pre-emption of the land measuring 35 Kanals, 7 Marlas as described in the heading of the plaint on payment of Rs. 24,630 and further ordering that Rs. 2,000, already lying deposited in Court and the remaining amount of Rs. 22,630 be deposited by the plaintiff on or before 15th May, 1970, and in case the amount is not so deposited, the suit of the plaintiff would stand dismissed with costs), dismissing the plaintiff's suit.

M. L. Sethi and S. B. Lall, Advocates, for the appellant.

K. C. Puri and V. M. Jain, Advocates, for Devinder Singh, minor, for respondents.

JUDGMENT

Judgment of the Court was delivered by :—

TULLI, J.—This order will dispose of Letters Patent Appeals Nos. 130 of 1972 (*Harbans Kaur v. Sardara Singh and others*), 332 of 1972 (*Sardari Lal v. Sain Dass and another*), 338 of 1972 (*Garja Singh v. Chhaja Singh and others*), 519 of 1972 (*Mukhtiar Singh v. Ajmer Singh and others*), 119 of 1973 (*Balwant Singh v. Smt. Mango and others*), 173 of 1972 (*Tara Singh and others v. Bedi Jaswant Singh and others*) and 358 of 1972 (*Chhota Singh v. Babu Singh*). The first five appeals are by the pre-emptors while the other two appeals are by the vendees.

(2) The point for determination is whether after the coming into force of the Punjab Pre-emption (Repeal) Act, 1973 (Punjab Act No. 11 of 1973), hereinafter called the Act, any decree for pre-emption.

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can be passed in favour of a pre-emptor. Section 2 of this Act repeals the Punjab Pre-emption Act, 1913, and section 3 provides that on and from the date of commencement of the Act, no Court shall pass a decree in any suit for pre-emption. The date of commencement of the said repealing Act is April 9, 1973. Prior to the enactment of the Act, the Governor of Punjab had issued the Punjab Pre-emption (Repeal) Ordinance, 1973 (Punjab Ordinance No. 1 of 1973), which was repealed by this Act. Section 2 of the Ordinance reads as under:—

“2. The Punjab Pre-emption Act, 1913, is hereby repealed:

Provided that such repeal shall not affect—

- (a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or
- (c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if this Ordinance had not been promulgated.”

It is apparent that under section 2 of the Ordinance, suits for pre-emption and the appeals arising therefrom, which had been filed prior to the date of commencement of the Ordinance, were to be tried as if no change in the law of pre-emption had been made. Not only this, the transactions entered into prior to the date of commencement of the Ordinance could also be made the subject-matter of pre-emption suits. A conscious departure from that provision was made when the Punjab Pre-emption (Repeal) Act, 1973, was enacted. The intention of the Legislature is quite clear that after April 9, 1973, no decree for pre-emption can be passed in favour of a pre-emptor. The appeals of the pre-emptors must, therefore, fail because their suits have been dismissed and if those appeals are now accepted, this Court will be passing decrees of pre-emption in their favour, which cannot be done in view of section 3 of the Act.

(3) Letters Patent Appeals Nos. 130, 332, 338, and 519 of 1972, and 119 of 1973 are consequently dismissed but the parties are left to bear their own costs throughout because this decision has been

made on the change in law effected by an amending Act, which came into force during the pendency of these appeals.

(4) The next question to be determined is whether the vendees' appeals have to be allowed merely because of the provisions of section 3 of the Act or they can be decided on merits. This point is concluded by various judgments of the Supreme Court which may now be noticed.

(5) The Punjab Pre-emption (Amendment) Act, 1960, (Punjab Act No. 10 of 1960) substituted sections 15 and 16 of the Punjab Pre-emption Act, 1913, so as to restrict the right of pre-emption to certain categories of relations or tenants only, and certain categories of persons were deprived of the right of pre-emption. New Section 31 was inserted by this amending Act reading as under:—

“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.”

Evidently, “1959” is a misprint for “1960”, and this mistake seems to have crept in because the bill was prepared in 1959 and the Act was passed in 1960.

(6) The applicability of the Punjab Act No. 10 of 1960 to the pending litigation came up for consideration before a Division Bench of this Court in *Ram Lal v. Raja Ram and another* (1). In that case, the plaintiffs filed a suit for pre-emption on the ground of vicinage, which was dismissed by the trial Court holding that there was no custom of pre-emption in the locality where the property was situate. On appeal, the lower appellate Court reversed the decision of the trial Court and decreed the plaintiff's suit holding that the custom of pre-emption prevailed in that locality. Against that decision, the vendee filed a second appeal in this Court and during the pendency of that appeal, the Punjab Pre-emption (Amendment) Act, 1960, came into force which took away the right of pre-emption on which the plaintiff's suit had been decreed. It was held that—

(1) 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

(1) 1960 (62) P.L.R. 291.

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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;

- (2) an appeal is a continuation of the original proceedings and a re-hearing of the matter ; and
- (3) the Punjab Pre-emption (Amendment) Act, 1960, 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.

Dealing with the appeal of a vendee (Civil Appeal No. 510 of 1961), the Supreme Court in *Ram Sarup and others v. Munshi and others* (2), approved of the judgment of this Court in *Ram Lal's case* (supra) and held in para 28 of the report that—(1) section 31, even according to the respondent, has to be given effect to, not merely by a trial Court but also by an appellate Court, (2) the nature of an appeal under the Indian procedural law is that of a rehearing, and (3) a Court of appeal, being not a court of error merely, the finality attaching to the decree appealed against disappears and even when an appellate Court dismisses an appeal, it passes a decree. On these grounds, the appeal of the vendees was accepted although it was expressly stated that “if, therefore, the matters had stood as under the law as enacted in section 15 of the Act, the appeal would have to be dismissed” (para 26). The Act mentioned in this observation is Punjab Pre-emption Act, 1913.

(7) In *Amir Singh and another v. Ram Singh and others* (3), the pre-emptors had filed suits on the ground that they were owners of agricultural land in the *patti* in which the land sold was situate. That right of pre-emption under section 15(c)(ii) and (iii) of the Punjab Pre-emption Act, 1913, was taken away by the Punjab Pre-emption (Amendment) Act, 1960 and the right of pre-emption for the first time was vested in the tenants of the land. Their Lordships of the Supreme Court considered the effect of retrospective operation of section 31 introduced by the said amending Act of 1960 in the parent Act of 1913, and held that “when a decree is passed in a pre-emption matter pending before the appellate Court, that Court

(2) 1963 (65) P.L.R. 531.

(3) (1963) 3 S.C.R. 884.

must refuse to recognise the right to pre-empt which was recognised by the unamended Act (Punjab Pre-emption Act, 1913), but has been dropped by the amending Act (Punjab Act No. 10 of 1960) just as much as it must recognise rights which were not recognised by the unamended Act, but have been created by the amending Act. The retrospective operation of section 31 necessarily involves effect being given to the substantive provisions of section 15 retrospectively and that will apply as much to the extinction of the old rights as to the creation of new ones". Accordingly, the appeals of the vendees were accepted but the pre-emptors were allowed to amend their plaints so as to plead the right of pre-emption as tenants under the vendor given by the amending Act of 1960 and a direction for the trial of the suit as amended was issued. This decision clearly leads to the conclusion that the appeal of the vendees were accepted because on the right of pre-emption pleaded in the suits, the decrees passed in favour of the plaintiff-pre-emptors could not be sustained.

(8) The matter was again considered by the Supreme Court in *Chanan Singh and other v. Smt. Jai Kaur* (4), and it was held that,—

"The language used in section 31 was comprehensive enough so as to require an Appellate Court to give effect to the substantive provisions of the Amending Act whether the appeal before it was one against a decree granting pre-emption or one refusing that relief. Although section 31 was inserted in the Act for all times, the phraseology employed therein does not show that its language was meant to cover those amendments which would be made subsequent to the Amendment Act of 1960. The word 'said' can have reference in the context only to the enactment of 1960 and to no other. It would not be legitimate for the Courts to give an extended effect to a provision which has retrospective operation unless the language used and words employed warranted such a course being followed."

Reliance for this observation was made on *Ram Sarup's case* (supra).

(9) From the judgments referred to above, it is evident that when the appeal of a vendee against the decree passed in favour of the pre-emptor is dismissed, the appellate Court passes a decree of pre-emption in favour of the pre-emptor, although it amounts to mere

(4) A.I.R. 1970 S.C. 349.

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affirmance of the decree of the Court below. Since a decree of pre-emption cannot be passed after April 9, 1973, the vendees' appeals have to be accepted in order to comply with the provisions of the Act.

(10) In the case of appeals by the vendees, it has been contended by the learned counsel for the pre-emptors that while disposing of an appeal under clause X of the Letters Patent, this Court does not pass a decree and, therefore, if the appeals filed by the vendees are dismissed, there will be no contravention of the provisions of the Act. Apart from the statement of the learned counsel, no precedent has been quoted. On the other hand, the learned counsel for the vendees have referred to the judgment of the Privy Council in *Sevak Jeranchod Bhogilal and others v. The Dakore Temple Committee and others* (5), wherein it was held that "the term 'judgment' in the Letters Patent of the High Court means in Civil cases a decree and not a judgment in the ordinary sense". A Division Bench of this Court (Khosla and Kapur, JJ) in *Ahsan Elahi v. Mehr Elahi and others* (6), held that "A Letters Patent Appeal is in the nature of a re-hearing in the same Court in which all that has to be seen is whether the judgment of the Single Judge on the facts and law as presented to him was correct and whether the learned Judge had taken into account any irrelevant fact or failed to take into account any material one or whether he had applied any erroneous principle of law".

(11) It is thus obvious that this Court passes a decree while disposing of a Letters Patent appeal whether in favour of the appellant or against him. In case the vendees' appeals are dismissed, a decree of pre-emption in favour of the pre-emptors will be passed for which there is complete prohibition in the Act. We have, therefore, no option, but to accept the appeals filed by the vendees and dismiss the suits of the pre-emptors.

(12) Accordingly, Letters Patent Appeals Nos. 173 and 358 of 1972 are accepted and the suits filed by the plaintiff-pre-emptors are dismissed, but the parties are left to bear their own costs throughout, since this decision has been rendered on the amended law which amendment has been made during the pendency of the appeals.

K. S. K.

(5) A.I.R. 1925 P.C. 155.

(6) A.I.R. (37) 1950 (East) Pb. 302.