THE

INDIAN LAW REPORTS

PUNJAB SERIES

LETTERS PATENT APPEAL.

Before Eric Weston, C. J., and Harnam Singh, J.

1952

October, 9th

Ch. GHASI RAM,—*Plaintiff-Appellant.*

versus

GURBACHAN SINGH,—*Defendant-Respondent.*

Letters Patent Appeal No. 32 of 1949.

Pre-emption—Village Salimpur, Delhi State—Wajib-ul-Arz—" Hissadaran Gaon ", *meaning of—Purchaser of an isolated plot of land, whether* " Hissadar Gaon "—*United Provinces Land Revenue Act (XIX of 1873) Section 146 —Agra Pre-emption Act, 1922—Sections 4(1) and 4(7)—Effect of.*

Held, that the words "*Hissadaran Gaon*" occurring in the *Wajib-ul-Arz* of 1871 of the Village Salimpur, Delhi Province, have the same meaning as the word "proprietor" occurring in Section 146 of the United Provinces Land Revenue Act (XIX of 1873), and that there is no justification to assign to these words the meaning given to the word "*cosharer*" in section 4(i) read with section 4(7) of the Agra Pre-emption Act, 1922, which came into force in the Province of Agra on 17th February 1923 while the Village Salimpur was included in the Province of Delhi on 1st April 1915. Therefore a purchaser of an isolated plot of land is a *Hissadar* within the meaning of *Wajib-ul-Arz* giving a right of pre-emption to "*Hissadaran Gaon*".

Letters Patent Appeal under Clause 10 of the Letters Patent from the decree of Mr. Justice Falshaw of the High Court of Judicature for the State of Punjab at Simla, passed in Regular Second Appeal No. 2649 of 1946 (Chaudri Ghasi Ram v. *Gurbachan Singh), on the 22nd day of December 1948, affirming that of Mr Maqbool Ahmed, Senior Subordinate Judge, with enhanced appellate powers, Delhi, dated the 30th August 1946, who reversed that of Chaudri Mohd. Abdullah Cheema, Sub-Judge, 1st Class, Delhi, dated the 9th April 1946, and dismissed the plaintiff's suit with costs throughout.*

TEK CHAND, for Appellant.

F. C. MITAL and BISHAN NARAIN, for Respondent.

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JUDGMENT.

HARNAM SINGH J. On the 11th of August, 1944, Fateh Singh, Defendant No. 2 sold the land in suit to Gurbachan Singh, defendant No. 1. On the 31st of August, 1945, Ghasi Ram, Plaintiff instituted Civil Suit No. 648 of 1945, for possession by pre-emption of the land in suit. In the plaint it was stated that the plaintiff was a co-sharer in the village while the defendant-vendee was a stranger and that according to the provisions of the *wajib-ul-arz* the plaintiff had a right to pre-empt the sale against the vendee. Village Salimpur where the land in suit is situated was formerly part of the Meerut District in the United Provinces of Agra and Oudh and was, by proclamation published in Notification No. 984-G, dated the 22nd day of February 1915, included in the province of Delhi, with effect from the 1st of April, 1915. Schedule III read with Section 3 of the Delhi Laws Act, 1915, provides *inter alia* that the United Provinces Land Revenue Act, 1901, shall continue to be in force in the territory added to the Province of Delhi and which was formerly included within the United Provinces of Agra and Oudh.

Gurbachan Singh, Defendant No. 1 resisted the suit pleading *inter alia* that the plaintiff had no right of pre-emption inasmuch as he was also a co-sharer in the village.

In deciding the suit the trial Court found that the plaintiff had a preferential right to purchase against the vendee. In the Court of first instance it was not disputed that on the date of sale the defendant-vendee was owner of *khasra* No. 319/46 in Village Salimpur. On appeal the Senior Subordinate Judge found that the purchaser of an isolated plot of land is a co-sharer within the provisions of the *wajib-ul-arz*. In the result, the Senior Subordinate Judge allowed the appeal and dismissed the suit of the plaintiff with costs throughout.

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From the decree passed by the Senior Subordinate Judge on the 30th August, 1946, Ghasi Ram, Plaintiff appealed under Section 100 of the Code of Civil Procedure.

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By judgment, dated the 2nd of December, 1948, Falshaw, J. has dismissed Regular Second Appeal No. 2649 of 1946.

In these circumstances Ghasi Ram plaintiff has come up under Clause 10 of the Letters Patent from the judgment of Falshaw, J. in Regular Second Appeal No. 2649 of 1946.

In these proceedings we are concerned with the correctness of the decision given on the following issue :—

> " Whether the plaintiff has got a preferential right of pre-emption. "

Basing himself on the provisions of section 4(1) and section 4(7) of the Agra Pre-emption Act, 1922, Mr Tek Chand appearing for the plaintiff-appellant urges that the words *Hissadaran gaon* occurring in the *wajib-ul-arz* prepared in the settlement of 1871, Exhibit P.1, mean persons entitled to any interest in the joint lands of the village or to take part in the administration of its affairs. In my opinion, there is no justification to assign to the words *Hissadaran gaon* occurring in the *wajib-ul-arz* Exhibit P.1, the meaning given to the word 'co-sharer' in section 4(1) read with section 4(7) of the Agra Pre-emption Act, 1922. That Act came into force in the Province of Agra on the 17th of February, 1923, while Village Salimpur was included in the province of Delhi with effect from the 1st of April, 1915.

Section 72 of the United Provinces Land Revenue Act, 1901, hereinafter referred to as the Act, provides *inter alia* that if, in a *mahal* in which the land is held in severalty, the Settlement Officer has decided to make the settlement with all the proprietors under section 65, any *co-sharer* refuses or fails, within thirty days from the date of the declaration by the Settlement Officer under

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Section 64, to accept the assessment so declared, the Settlement Officer may transfer the share of the person so refusing or failing, for a term not exceeding fifteen years, to all or any of the remaining co-sharers in the *mahal* who may be willing to accept the transfer.

From the provisions of section 72 of the Act it appears that the proprietors holding land in a village in severalty are regarded as co-sharers in the village within section 72 of the Act.

Section 142 of the Act provides that all the proprietors of a *mahal* are jointly and severally responsible to Government for the revenue for the time being assessed thereon, and all persons succeeding to proprietary possession therein, otherwise than by purchase under section 160, shall be responsible for all arrears of revenue due at the time of their succession. The Explanation appended to that section defines the word "proprietor" to mean *inter alia* any person in proprietary possession for his own benefit.

Indisputably, Gurbachan Singh on the date of the sale was a proprietor within the meaning of section 142 of the Act. If so, Gurbachan Singh was a person who was responsible under section 142 of the Act for the revenue for the time being assessed upon the *mahal* and that being the case, he became a person who would be a defaulter within the meaning of section 146 of the Act if the land revenue in respect of the land held by him was not paid. Clearly, Gurbachan Singh should be regarded to be a co-sharer in the village.

In a long course of decisions dating from 1939 the Allahabad High Court has held that where a person purchased a plot of land situate within a village, he was to be deemed a *Hissadar gaon* for the purposes of pre-emption.

In *Safdar Ali* v. *Dost Muhammad and another* (1), the *wajib-ul-arz* of a village gave a right of

(1) I.L.R. 12 All. 428

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pre-emption to "-co-sharers in the *mahal.*" One of the co-sharers brought a suit for pre-emption which the defendant resisted on the ground that he also was a co-sharer in the *mahal*, and the plaintiff had, therefore, no preferential right. This contention was based on a former purchase by the defendant under a deed of sale executed by a co-sharer and comprising an isolated plot of land in the *mahal.* On these facts a Full Bench of five Judges of the Court found that the defendant-vendee had become a co-sharer in the *mahal* prior to the date of the purchase which was in question in the suit and, therefore, the plaintiff had no preferential right of pre-emption.

In *Dakhni Din* v. *Rahim-un-Nissa and another* (1), Edge, C. J. and Banerji, J. found that the word "co-sharer" occurring in the *wajib-ul-arz* giving a right of pre-emption to co-sharers in the village included a person who had acquired lands in the village. In that case the decision that the vendee was a co-sharer in the village within the meaning of the *wajib-ul-arz* proceeded on the basis that the defendant-vendee was a person who was responsible under section 146 of Act No. XIX of 1873 for the revenue for the time being assessed upon the *mahal.* Section 146 of Act No. XIX of 1873 corresponded to section 142 of the Act.

In *Ali Husain Khan* v. *Tasadduq Husain Khan and another* (2), Banerji, and Richards, JJ. found that the owner of isolated plots of land in a village is a co-sharer in the village and may as such possess rights of pre-emption, although he does not own a share in the *zamindari* of the village.

In *Ram Gobind Pande* v. *Danna Lal and others,* (3), Kanhaiya Lal, and Lindsay, JJ. held that a person who had purchased a plot of land situated within a village possessed the status of *hissadar mauza* within the meaning of the *wajib-ul-arz.*

(1) I.L.R. 16 All. 412
(2) I.L.R. 28 All. 124
(3) A.I.R. 1924 All. 305

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Indeed, it was said in I.L.R. 16 All. 412 that the word "*hissadar*" occurring in the *wajib-ul-arz* has the same meaning as the word "proprietor" occurring in section 146 of Act No. XIX of 1873.

From what I have said above it follows that the purchaser of an isolated plot of land in a village is a *hissadar* within the meaning of the *wajib-ul-arz* giving a right of pre-emption to *hissadaran gaon.* That being the situation of matters, I think that Regular Second Appeal No. 2649 was correctly decided by Falshaw, J.

In the result, I would dismiss with costs Letters Patent Appeal No. 32 of 1949.

WESTON, C. J.—I agree.

APPELLATE CIVIL

Before Eric Weston, C. J., and Harnam Singh, J.

GIANI RAM SINGH,—*Plaintiff-Appellant.*
versus
DALIP SINGH and OTHERS,—*Respondents.*

1952
October, 9th

Letters Patent Appeal No. 45 of 1949.

Court Fees Act (VII of 1870) Section 7(v)and (vi)—Suit for pre-emption—Court fee payable—Relevant date for purposes of valuation—Improvements made by vendee—Pre-emptor whether to pay court-fee on value thereof—Right of pre-emption—Nature of.

Held, that the right of pre-emption being one of substitution the pre-emptor is only entitled to the property as it existed on the date of the sale. The value of the property for the purposes of Court fee, however, is to be computed at the date of the suit and not at the date of the sale, and in accordance with section 7(v) read with section 7(vi) of the Court Fees Act, without reference to the value of improvements made by the vendee because Section 7(vi) of the Act cannot be read entirely apart from the particular pre-emption law under which a suit for pre-emption is brought.

Held further, that there is nothing to debar a vendee from removing any improvements made by him and restoring the property to its state at the date of the sale. In most cases a vendee who has made improvements would