Not being recorded in the revenue records as occupancy tenants on the date of the enforcement of the Occupancy Tenants (Vesting of Proprietary Rights) Act, they will not be able to take advantage of the rights conferred by that Act but they can certainly take the position that by virtue of sub-section (3) of section 4, of the Punjab Village Common Lands (Regulation) Act, 1961, this land does not vest in the Gram Panchayat. I would, therefore, accept this appeal, set aside the judgment of the Court below and decree the suit of the plaintiffs declaring that the land in dispute does not vest in the Panchayat and that the Panchayat should not interfere in their possession and enjoyment as heretofore.

So far as the other appeal is concerned it is conceded that the points involved are the same and the plaintiffs in that case are also similarly situated. Consequently, that appeal is also accepted and a similar decree granted. As the point was not very clear, the parties are left to bear their own costs throughout in both the appeals.

K.S.K.

FULL BENCH

Before Shamsher Bahadur, P. C. Pandit and P. D. Sharma, JJ.

MOTI RAM AND OTHERS,—*Appellants*

versus

BAKHWANT SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 340 of 1964.

September 29, 1967

Punjab Pre-emption Act (I of 1913)—Ss. 13 and 15—Brother—Whether includes step or half brother—Son—Whether includes step-son—Pre-emptor related to some of the vendors—Whether can—pre-empt the sale of the share of the vendor to whom he is not so related as to give him right of pre-emption.

Held, that the term "brother" includes step or half brother in the context of section 15 of the Punjab Pre-emption Act, 1913. Brother includes 'half-brother' in all systems of jurisprudence and a contrary intention has expressly to be provided for. The mere exclusion of a step-brother will not in any way further the accepted

objects and restrictions on the law of pre-emption which has been described as a piratical right. Where the statute has given protection to a brother and indeed to more distant relations than a half-brother, a step brother could not have been the object of exclusion. 'Brother' as a category has been given the right to pre-empt which includes a step or half brother.

Held, that under clause (b) of sub-section (2) of section 15 of the Punjab Pre-emption Act, 1913 as amended by the Punjab Pre-emption (Amendment) Act, 13 of 1964, a son of the husband of the female vendor from another wife has the right to pre-empt the sale by such female of the land or property which she inherited from her husband.

Held, that a pre-emptor, in order to succeed, has to establish his relationship with the vendor and in case of a joint sale with each of the vendors. The right of pre-emption, however, is generally limited to the extent of the pre-emptors right and he is not entitled to claim the whole bargain when his right of pre-emption extends only to a part of the property sold. In the case of a joint sale by more than one vendors, a pre-emptor is entitled to pre-empt the share only of the vendor or vendors to whom he is related or through whom he claims his right.

Case referred by the order of the Bench consisting of the Hon'ble Mr. D. Falshaw, Chief Justice and the Hon'ble Mr. Justice H. R. Khanna, dated 14th April, 1966 to a Full Bench for decision of an important question of law involved in the case. The case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur, the Hon'ble Mr. Justice P. C. Pandit and the Hon'ble Mr. Justice P. D. Sharma, on the 29th September, 1967.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment and decree of the Hon'ble Mr. Justice D. K. Mahajan, passed in R.S.A. No. 1478 of 1962 on 18th September, 1964.

DALIP CHAND GUPTA, AND JATINDER VIR GUPTA, ADVOCATES, for the Appellants.

K. L. SACHDEV AND B. R. KAPOOR, ADVOCATES, for the Respondents.

JUDGMENT OF THE FULL BENCH

SHAMSHER BAHADUR, J.—Being of the view that some questions calling for decision in this Letters Patent appeal from the judgment of Mahajan, J., involve points of difficulty, the Bench of Chief Justice Falshaw and Khanna, J., has referred it to a Full Bench for disposal.

Land measuring 12 Bighas and 10 Biswas in Khasra Nos. 871 and 877 in village Thullewal was sold by Ind Kaur and her two sons

Balkar Singh and Nachhatar Singh (born from Tarlok Singh) to Moti Ram and Rikhi Ram for a sum of Rs. 5,000 on 23rd of December, 1959. This sale was sought to be pre-empted by Bakhwant Singh and Mohinder Singh minor sons of Tarlok Singh, through their mother Karam Kaur, also a widow of Tarlok Singh, in a suit instituted by them for this purpose on 16th of December, 1960. The pre-emptors claimed their right both as co-sharers with the vendors in the Khatas of the land sold and brothers of Balkar Singh and Nachhatar Singh. The pre-emptors asserted that the land had been sold for Rs. 3,200 only though the ostensible price mentioned in the sale-deed was Rs. 5,000. It may be mentioned that the suit was brought, presumably through inadvertence, in respect of Khasra Nos. 871 and 872 instead of 871 and 877 which were sold.

The trial Court found that the pre-emptors were not entitled to succeed on the first ground as it had not been established that they were co-sharers in the disputed land, On the second ground, however, the trial Court found in favour of the plaintiffs and it was held that though step-brothers of Balkar Singh and Nachhatar Singh, they were all the same entitled to rank in parity with them under the relevant provisions of the Punjab Pre-emption Act, to which I would shortly advert. In the result, a decree was granted in favour of the pre-emptors in respect of two-thirds of the land sold, it having been held that they could not pre-empt the share of Ind Kaur, not being her sons. The trial Court being of the view that no valid suit had been brought in respect of Khasra No. 877, a decree could be passed only for land under Khasra No. 871. The suit was accordingly decreed for two-third share in this Khasra number on payment of the proportionate price which was found to be Rs. 3,200.

From this decree there was an appeal by the pre-emptor while the vendees filed cross-objections to challenge the market price and the plaintiffs' right to pre-empt. The lower appellate Court on 10th of September, 1962, held that the omission of Khasra No. 877 was inadvertent and if the suit had to be decreed he would have allowed an amendment at that stage, but in his view the suit could not be decreed as Karam Kaur's marriage with Tarlok Singh had not been proved. It appears that before the District Judge, Barnala, hearing the appeal, the pre-emptors did not press their claim for pre-emption on ground of co-ownership. The District Judge further affirmed the finding of the trial Court that the real price of the disputed land was Rs. 3,200 and not Rs. 5,000. In the result, the appeal of the pre-emptors was dismissed and the vendees' cross-objections partially allowed.

In further appeal to the High Court, Mahajan, J., on 12th of March, 1964, framed an additional issue and the trial Judge was required to determine "whether the plaintiffs are the sons of Tarlok Singh from Ind Kaur or Karam Kaur ?" The issue was intended by Mahajan, J., who framed it, to include the question whether Karam Kaur had been validly married to Tarlok Singh. The learned Subordinate Judge Shrimati Harmohinder Kaur, reported on 16th of June, 1964, that Karam Kaur had been validly married to Tarlok Singh, and Mahajan, J., on 18th of September, 1964, allowed the appeal and decreed the suit *in toto* even with regard to the share of Ind Kaur on payment of Rs. 5,000, the learned Judge having accepted the report of the Local Commissioner of 29th of November, 1961, which formed a part of the Court record, according to which the price of the disputed land was found to be Rs. 400 per Bigha. Mahajan, J., in decreeing the suit with regard to Ind Kaur's share relied on a judgment of Gurdev Singh, J., in *Nathi Singh* v. *Lakhmi Chand,* R.S.A. No. 1616 of 1960, decided on 20th of March, 1962, which subsequently was affirmed in Letters Patent appeal by Dulat and R. P. Khosla, JJ. in *Jangli and others* v. *Lakhmi Chand and another* (1). In the view of the Letters Patent Bench, "the right which has been given to the sons under the Punjab Pre-emption Act is the right to pre-empt the 'sale' and not a part of the sale. Thus, each of the sons of all the vendors would be entitled to sue for the recovery of the possession of the entire property sold on the basis of his pre-emptive right". It may be mentioned in parenthesis that Mahajan, J., acceded to the request of the vendees' counsel to grant leave under clause 10 of the Letters Patent as the judgment of Gurdev Singh, J., in *Nathi's* case was the subject-matter of appeal.

Before the Letters Patent Bench of Chief Justice, Falshaw and Khanna, J., the contention of the vendees' counsel that the plaintiffs were not entitled to succeed as brothers of the vendors because they were half-brothers did not find favour and the learned Chief Justice, with whom Khanna, J., concurred, observed thus on this aspect of the case :—

> " . . I have no hesitation in holding, even in the absence of any authority, that in this context where a landowner has sons by more than one wife all the sons are brothers for the purpose of 'secondly' and therefore, the plaintiffs

(1) I.L.R. (1965) 2 Punj. 823=1965 P.L.R. 919.

could certainly pre-empt the sale so far as it concerned the two-thirds shares of their half brothers."

The Chief Justice, however, being doubtful about the correctness of the decision of Gurdev Singh, J., in *Nathi Singh's case,* as also of the Letters Patent Bench which affirmed it, thought that these require re-consideration. The Bench further considered it a difficult question of law to decide whether the amendment introduced in the Punjab Pre-emption Act by Punjab Act No. 13 of 1964 gave retrospective right of pre-emption to the step-sons of Ind Kaur ? The Letters Patent Bench accordingly referred the appeal to a Full Bench for disposal.

Before us, the question on which Chief Justice Falshaw in the referring order of the Bench felt no difficulty has also been vigorously canvassed and in order to appreciate this point, as also the questions on which the Bench found itself confronted with difficulty, it is necessary to set out the relevant provisions of the Punjab Pre-emption Act, 1913, as amended by the Acts of 1960 and 1964.

Section 15 of the Punjab Pre-emption Act, 1913 (Punjab Act I of 1913) deals with the right of pre-emption in respect of agricultural land and village immovable property, and in cases where the sale is of share out of joint land or property the right vests in the lineal descendants of the vendor in the order of succession in the first place, and thereafter in the co-sharers who are agnates and lastly in the co-sharers. This right has been severely curtailed by the amendments introduced by Punjab Act No. 10 of 1960 (hereinafter called the Act), and the amended section reads as under :—

"15. (1) The right of pre-emption in respect of agricultural land and village immovable property shall vest—

(a) where the sale is by a sole owner,—

FIRST, in the son or daughter or son's son or daughter's son of the vendor;

SECONDLY, in the brother or brother's son of the vendor;

THIRDLY, in the father's brother or father's brother's son of the vendor;

FOURTHLY, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,—

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors;

SECONDLY, in the brothers or brother's sons of the vendor or vendors;

THIRDLY, in the father's brothers or father's brother's sons of the vendor or vendors;

FOURTHLY, in the other co-sharers;

FIFTHLY, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof;

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly,—

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendors;

SECONDLY, in the brothers or brother's sons of the vendors;

THIRDLY in the father's brothers or father's brother's sons of the vendors;

FOURTHLY, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(2) Notwithstanding anything contained in sub section (1)—

(a) Where the sale is by a female of land or property to which she has succeeded through her father or

brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest,—

(i) if the sale is by such female, in her brother or brother's son;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors;

(b) Where the sale is by a female of land or property to which she had succeeded through her husband, or through her son in case the son has inherited the land or property sold from his father, the right of pre-emption shall vest,—

FIRST, in the son or daughter of such female;

"SECONDLY, in the husband's brother or husband's brother's son of such female."

By the Punjab Pre-emption Act, 1964 (Act 13 of 1964) paragraph 'FIRST' in clause (b) of sub-section (2) of section 15 now reads as under:—

"FIRST, in the son or daughter of such husband of the female".

The salient feature to be observed is that while in the principal Act the pre-emptive right is given to lineal descendants and agnates, the Act has restricted this right to the closest relations. The pre-emptive right to tenants is a new feature of the Act and in the case of sale of joint holdings co-sharers also enjoy the right when sale is of a share out of joint land or property and is not made by all the co-sharers jointly. We are, however, concerned in the present case with the sale of land under clause (c) of sub-section (1) of section 15 of the Act, the sale having been made by the joint owners Ind Kaur, Balkar Singh and Nachhatar Singh. The plaintiffs claim the pre-emptive right by virtue of sub-clause (secondly) of clause (c) of sub-section (1) under which such a right vests in the brothers or brother's sons of the vendors. Chief Justice Falshaw, in the passage which has already been cited, considered that even in the absence of any authority, a brother includes half-brother, and the matter so far as the referring Bench is concerned ended there. Before us, it has been very strenuously urged by Mr. Dalip Chand Gupta, the learned

counsel for the vendees appellants, that the proposition enunciated by the learned Chief Justice is not accurate and goes against the tenor and purpose of sub-clause (secondly) of clause (c) of sub-section (1) of section 15 of the Act. It is first submitted by Mr. Gupta as a general proposition that no equities exist in favour of a pre-emptor whose sole object is to disturb a valid transaction by virtue of the rights created in him by a statute. He has relied on *Radhakishan* v. *Shridhar* (2), in which Mr. Justice Kapur, for the Court, spoke thus at page 1372:—

> "To defeat the law of pre-emption by any legitimate means is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of pre-emption by all lawful means . . . . The right of pre-emption is a weak right and is not looked upon with favour by courts and, therefore, the courts could not go out of their way to help the pre-emptor".

All that can be spelled out from this authority is that the pre-emptive right embodied in statute has to be construed strictly and no Court is entitled to travel beyond its ambit. The ruling of this decision does not require, in our opinion, that the language of the statute itself is to be strained in every way to give a construction which is favourable to the vendee and adverse to the pre-emptor when it said that the Court has not to go out of its way to help the pre-emptor, nor do we understand it to be the meaning of the Supreme Court authority that the statutory right of pre-emption given either expressly or by necessary intendment should be curbed or moderated, the right of pre-emption itself being a "weak" one.

Mr. Gupta on the basis of another decision of the Supreme Court in *Gulraj Singh* v. *Mota Singh* (3), where it was said that "son or daughter" under section 15(2) (b) of the Act means "only legitimate son or legitimate daughter of the female vendor and will not include illegitimate son or daughter", submits that on a parity of reasoning a step or half brother will not be included in the term "brother in sub-clause (secondly) of clause (c) of sub-section (1). I think the status of an illegitimate son or daughter cannot be equated with that of a step-brother or step-sister. It has to be borne in mind that the

(2) A.I.R. 1960 S.C. 1368.
(3) A.I.R. 1965 S.C. 608.

primary purpose of the restricted right of pre-emption is to retain the property amongst the closest relatives of the vendor and it cannot acceptedly be urged that this purpose would be promoted or served by excluding step-brothers or step-sisters like the illegitimate issues. It has been very forcibly pressed upon us that the Act has in contemplation a drastic curtailment of the list of prospective pre-emptors and the purpose of the Legislature was to eschew inclusion of half brother as a "brother", which term in its strict and generic sense should, in the counsel's view, be confined to mean a brother of the full blood. We may state at once that the extended meaning of the word "brother" is not calculated to frustrate any such objective, especially when the pre-emptive right is given under sub-clause (thirdly) of clause (c) of sub-section (1) of section 15 to a person like father's brother's son of the vendor who is remoter in relationship than a step-brother.

"Brother" in Bouvier' Law Dictionary (1914 edition), Volume I, is defined to be a person "who is born from the same father and mother with another, or from one of them only. Brothers are of the whole blood when they are born of the same father and mother, and of the half-blood when they are the issue of one of them only . . . when they are the children of the same father and mother, they are called *brothers germain;* when they descend from the same father but not the same mother, they are *consanguine brothers;* when they are the issue of the same mother, but not the same father, they are *uterine brothers.* A half-brother is one who is born of the same father or mother, but not of both . . .". In a *Corpus Juris Secundum* (1938 edition) Volume XII, "brother" has been defined as "a male person who has the same father and mother with another person, or who has one of them; he who is born from the same father and mother with another, or from one of them only." What is of importance to note is that in Corpus Juris Secundum, it has been stated that the term, when used without any qualifying words, may include a brother of the half-blood. In Stroud's Judicial Dictionary (Third edition) Volume I, it is stated that "brother shall include a brother of the half blood" under the Marriage Act, 1949. According to Stroud, a gift to brothers and sisters includes the half-blood and so with regard to every other degree of relationship. In Halsbury's Laws of England (Third edition) Volume 19, at page 782, the relevant provisions of the Marriage Act, 1949, are cited to show that a man may not marry, *inter alia,* his sister and a woman may not marry her brother, and both the expressions 'brother' and 'sister' include a brother and sister of the half-blood. "Brother",

according to Shorter Oxford English Dictionary (1961 edition) Volume I, is "male being related to others (male or female) as the child of the same parents or parent. In the latter case, he is more properly called a half-brother, or brother of the half blood."

Section 27 of the Indian Succession Act says that—

"For the purpose of succession, there is no distinction—

(a) between those who are related to a person deceased through his father, and those who are related to him through his mother; or

(b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or

(c) . . . . ."

The only distinction in the matter of inheritance, according to Mulla's Hindu Law (13th edition) page 111, is that brothers of the whole blood succeed before those of the half-blood.

In the statute law of pre-emption there is no distinction made between a brother and a half-brother, but Mr. Gupta has contended that the Act having brought a drastic reduction in the number of persons eligible to pre-empt, it must be inferred that half-brothers are to be excluded from exercising the right. Whenever a distinction is sought to be made between a brother and a half-brother, it is so specified, otherwise the "brother" includes "half-brother" who may be either consanguine or uterine. The Legislature has been fully alive to brothers of full blood, half-blood and uterine. In fact, these terms are separately defined in clause(e) of sub-section (1) of section 3 of the Hindu Succession Act. As in the law of succession, the conferment of the right to purchase under the Pre-emption Act is based on the degree of relationship of the vendor with the person to whom the right is accorded, consanguinity being the test. If the right of pre-emption was intended to be confined to full brothers alone, the restriction would have been specifically noted and, as we observed before, when the father's brother's son has been given the right, there is no conceivable reason why a step-brother, who is nearer in consanguinity, should have been excluded. Such a right cannot be denied on the mere ground that the right of pre-emption is piratical or that it disturbs the sanctity of contract and erodes the right of freedom to contract. The pre-emptive right has been recognised

and a particular relative who is otherwise eligible to pre-empt cannot be excluded from this benefit simply for the reason that a brother of full blood has a better right in the matter of succession than a brother of the half-blood. The correct perspective to the problem, in our view, is that a step-brother is a brother not having been excluded by the Legislature from exercising his right of pre-emption.

Mr. Gupta has brought to our notice a recent Division Bench judgment of Mahajan and Narula JJ. in *Surjan Singh* v. *Harcharan Singh* (4), where it has been held that the word "brother" in section 15(1)(a) SECONDLY denotes a "real brother" and not a "step-brother" or a "uterine brother". The Bench was considering the case of a sale by a sole owner and undoubtedly the construction placed on the word "brother" in sub-clause (secondly) would apply *mutatis mutandis* to sub-clause (secondly) of clause (c) of sub-section (1) of section 15 with which we are concerned in the present case. Mahajan J., with whom Narula J. concurred, considered that the expression "brother" in the context of section 15 denotes a real brother, and not a step-brother or a uterine brother, the reason being that the law of pre-emption is a piratical law and has to be strictly construed. In the view of the learned Judge, "if two interpretations are possible, the one, which restricts its operation, is to be preferred rather than the interpretation which widens its operation." Mahajan J. further relied on the later part of the definition in Bouvier's Law Dictionary, to which I have already adverted. Mahajan J. was moreover influenced by the consideration that "the expression 'brother' normally to an Indian mind, indicates a real brother, though the word has been used even for the relationship whether it is of a step or a uterine brother." The learned Judge in the judgment observed that the conclusion was based on "first impression" as it involved a question which was bare of authority.

With great respect to the learned Judges, we are unable to agree with the reasons which impelled the Bench to reach the conclusion in favour of excluding the half brother from the benefit of the right of pre-emption. "Brother" includes 'half-brother' in all systems of jurisprudence that we know of and a contrary intention has expressly to be provided for. We do not see how the mere exclusion of a step-brother will further the accepted objects and restrictions on the law of pre-emption which has been described as a piratical right. Where the statute has given protection to a brother and indeed to more distant relations than a half-brother, we cannot be persuaded to think

(4) 1967 Cur. L.J. (Pb. & Hry.) 275.

that a step-brother was the object of exclusion. Indeed, we are inclined to the view that if such was the object it should have been specifically provided for. Nor do we see our way to accede to the argument that two interpretations being there, the one in favour of restricting the right of pre-emption should be preferred to the one which tends to widen it. "Brother" as a category has been given the right to pre-empt and we do not see how two interpretations are possible and consequently the question of preference of one over the other does not arise.

It remains to mention that in *Surjan Singh's case*, Mahajan J., speaking for the Court, had made reference to two decisions, one of *Gulraj* v. *Mota Singh* (3) of the Supreme Court, of which mention has already been made, and the other of *Ujagar Singh* v. *Rattan Singh* (5) in which the learned Judge himself sitting singly held that a *pichhlag* son had no right to pre-empt the sale of land effected by his mother where the land was inherited by her from her husband who was not the father of the pre-emptor. I think the case of a *pichhlag* son is quite distinguishable from a son of the same father, he having no claim on ground of consanguinity.

The next point taken by Mr. Gupta is that even if the sale is pre-emptible at the instance of the step-brothers, the share of Ind Kaur at least was not pre-emptible. Reliance is placed on section 13 of the Punjab Pre-emption Act, 1913, according to which :—

> "Whenever according to the provisions of this Act a right of pre-emption vests in any class or group of persons the right may be exercised by all the members of such class or group jointly, and, if not exercised by them all jointly by any two or more of them jointly, and, if not exercised by any two or more of them jointly, by them severally."

There can be no manner of doubt that a pre-emptor, in order to succeed, has to establish his relationship with the vendor and in case of a joint sale with each of the vendors. The question is whether a pre-emptor can claim the entire property sold on basis of relationship when it is found that he is not related to one or more of the vendors? In *Nathi Singh* v. *Lakhmi Chand*, R. S. A. No. 1616 of 1960, decided on 20th of March, 1962. Gurdev Singh J. was of the view that as the object of pre-emption was the sale, the entire transaction could be pre-empted even if the relationship with some

(5) 1965 P.L.R. 258.

of the vendors was not established. Sohan Lal and his nephews (brother's sons) Khillu and Faqiria in the case in point had sold their joint holding of agricultural land to Nathi Singh and others. Kiranpal son of Khillu and Lakhmi Chand, son of Faqiria brought a suit for pre-emption claiming a right of pre-emption on ground of relationship with the vendors. The case was decided in favour of the plaintiffs under clause (c) of sub-section (1) of section 15 of the Act by the lower appellate Court but as Kiranpal and Lakhmi Chand were held entitled only to pre-empt the shares of their respective father, a decree was passed with respect to 5/8th share, the remaining 3/8th share being that of Sohan Lal whose share the pre-emptors could not claim by relationship. Gurdev Singh J. allowed the appeal of the pre-emptors and decreed the suit for the entire property including Sohan Lal's share on the ground that each of the plaintiff's was entitled to pre-empt the entire sale. This decree was affirmed in *Jangli* v. *Lakhmi Chand* (1) by Dulat and R. P. Khosla JJ. It is the ruling of this decision whose correctness has been doubted by the referring Bench as certain earlier decisions reported in Ellis's Treatise on the Law of Pre-emption have not been taken account of.

The proposition that the right of pre-emption is generally limited to the extent of the pre-emptor's right is not open to challenge. What flows from this doctrine is that a pre-emptor is not bound to claim the whole when his right of pre-emption extends only to a part. There is a decision of the Full Bench of the Punjab Chief Court, *Sanwal Das* v. *Gur Parshad* (6), where the Bench of six Judges held that when two houses which adjoin each other are sold jointly, the right of pre-emption of the owner of a house which adjoins only one of the two houses sold extends to that one house only and not to both the houses sold. The owner of the adjoining houses can sue for pre-emption only in respect of the house to which his right extends. In another Division Bench case of *Uttam Chand* v. *Lahori Mal* (7), it was held that "a bargain of distinct properties by a person having preferential rights only to a portion of such bargain does not give him a right of pre-emption as regards the simultaneously purchased other portion". It is of course true that the pre-emptor has to take the bargain in its entirety and not in parts. From the doctrine that a pre-emptor is not bound to claim the whole of the bargain when his right of pre-emption extends only to a portion of the property sold flows another proposition that a pre-emptor is not entitled to claim more than what his right extends to.

(6) 90 P.R. 1909.
(7) 112 P.R. 1907.

In *Ram Rakha Mal* v. *Devi Das and others* (8) decided by Chatterji and Johnstone JJ., it was held that "where a bargain consisted of several distinct properties and the pre-emptor's preferential right of purchase extended only to a portion of such bargain, the pre-emptor was not entitled to take the whole bargain but only that portion over which he had superior right". In *Dulla* v. *Harikishen Das* (9), which is a judgment of Johnstone and Shadi Lal JJ., it was held that "where a sale, in respect of which a suit of pre-emption has been brought is by two vendors and indivisible from certain points of view inasmuch as it does not state the amount of purchase money paid to each vendor, the vendee is notwithstanding entitled to retain that part of the property sold in respect of which his rights are equal to that of the pre-emptor". The Division Bench relied on a number of rulings and the *ratio decidendi* of *Dulla* v. *Harikishen Das* (9) has not been dissented at any time. This principle has also been recognised by the Lahore High Court in the Full Bench decision of *Ghulam Qadir* v. *Ditta* (10), where it is said "that a pre-emptor must always claim the maximum to which he is entitled or has a superior title and his failure to do so would result in a dismissal of his claim on the ground that he was suing for partial pre-emption". The only discordant note was struck in an old ruling of the Chief Court reported in *Wariam* v. *Desu*, 64 Punjab Record of 1886, but this had been dissented from in the subsequent ruling to which reference has been made. The language of section 13 of the Punjab Pre-emption Act, 1913, has always been the same and it seems that the Bench of Dulat and R. P. Khosla JJ in *Jangli* v. *Lakhmi Chand* (1) which took the view that the sale by joint owners was pre-emptible in its entirety even if the plaintiff-pre-emptor established relationship with some of the co-vendors, did not take into account the earlier decisions. Section 13 of the Punjab Pre-emption Act, 1913, has always been construed to mean that a pre-emptor is entitled to pre-empt in case of joint sale the share of the vendor or vendors through whom he claims his right. It seems to us that the decision in *Jangli's* case being in conflict with settled principles is not correctly decided. It may be mentioned in passing that in the view which we have taken on the other aspects of the case, it is really not necessary to go into the question about the correctness of the decision in *Jangli's* case but as in the view of the referring Bench, the case requires reconsideration, we feel bound to pronounce our views on this aspect as well.

(8) 89 P.R. 1905.
(9) 6 P.R. 1915.
(10) 1945 P.L.R. 224 (F.B.).

The third submission raised in this appeal is whether the share of Ind Kaur can be pre-empted by the plaintiffs under paragraph (First) of clause (b) of sub-section (2) of section 15 of the Act. Admittedly, the sale made by Ind Kaur would be governed by sub-section (2) which is concerned with the sales made by female of land or property to which she has succeeded either through her father, husband, son or brother. It is common ground that the sale of Ind Kaur's share was in respect of property to which she had succeeded through her husband and consequently the case is governed by clause (b) of this sub-section. In such a situation the right of pre-emption vests in the son or daughter of such female. It is submitted on behalf of the respondents that the son or daughter claiming the right to pre-empt need not be born from the womb of the female vendor, as such a claimant though not her own issue would still be entitled to claim pre-emption in respect of property which has devolved on the vendor from "such husband" on ground of consanguinity. Support for this contention is sought from paragraph (Secondly) which vests the right in the husband's brother or husband's brother's son of the female. It is argued that if the husband's brother or the husband's brother's son of Ind Kaur had a right, it is scarcely conceivable that the Legislature would have deprived the son of her husband from a different wife from claiming the right of pre-emption. In this context, it is pointed out that the amendment introduced by Punjab Act 13 of 1964 by adding the words "husband of the" between "such" and 'female' merely clarified what had been clearly the intention though not so expressed in the Act.

On behalf of the appellants it is pointed out by Mr. Gupta that the well-settled principle of pre-emption as recently reiterated by their Lordships of the Supreme Court in *Sundar Singh* v. *Narain Singh* (11) is that "the pre-emptor must have a right of pre-emption at the date of the sale, at the date of the suit and finally at the date of the decree". It is conceded by him that on the date of sale, which took place on 23rd of December, 1959, the pre-emptors had a right of pre-emption regarding Ind Kaur's share because under the un-amended law the plaintiffs were in the line of succession to the estate of Tarlok Singh. It is, however, submitted by him that on 16th of December, 1960, when the suit was filed, the amended Act had come into force, having been published in the Official

(11) A.I.R. 1966 S.C. 1977.

Gazette on 4th of February, 1960. Under the amendment, according to the submission of the learned counsel, the right of pre-emption does not repose in the pre-emptor's they not being the sons of Ind Kaur under paragraph (First) of clause (b) of sub-section (2) of section 15. Likewise, when the decree of the trial Court was passed on 31st of January, 1962, the plaintiff's suffered from the same disability. A judgment of Pandit J. in *Chanan Singh* v. *Jai Kaur*, R. S. A. No. 345 of 1960, decided on 26th October, 1960, has been relied upon for the proposition that the son, contemplated in paragraph (First) must be born of that female. Pandit J., in this judgment, was dealing with the case of a daughter and in the view held by him, "there is no escape from the conclusion that the pre-emptor must have been born from her womb, and it is only then that she can be called her daughter". *Mutatis mutandis* the same argument would apply in the case of sons which the plaintiffs claim to be. Though the principle of this decision was affirmed by the Letters Patent Bench of Dulat and R. P. Khosla JJ, in L.P.A. No. 91 of 1961, decided on 10th May, 1965, the appeal was allowed on account of the amendment introduced by Punjab Act 13 of 1964, the Bench having found that the plaintiff Jai Kaur answered to the description of persons in the amended clause which vested the right "in the son or daughter of such husband of the female". In the submission of Mr. Sachdeva, the amending Act has to be given retrospective operation and it should be deemed to be on the statute book when the Act came into force on 4th of February, 1960. Reliance is placed on the following principle of retrospective operation enunciated in Maxwell on Interpretation of Statutes (Eleventh edition) at page 204 :—

> "It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

It is submitted that though there is no express provision about the retrospective operation of Punjab Act 13 of 1964, it has to be so construed by necessary and distinct implication. It is submitted that Punjab Act 13 of 1964 is a remedial or a curative Act as is apparent from its objects and reasons, to which I would shortly advert. A curative Act is a statute passed to cure defects in a prior law and it is submitted that as the words "in the son or daughter of such female" were capable of some uncertainty the words "husband of the" were inserted between the words "such" and "female". There is undoubtedly force and cogency in this argument. A remedial or

a curative Act, according to the counsel, has retroactive or retrospective operation and he has relied on the following statement of law contained in Southerland on Statutory Construction (3rd edition) Volume 2 at page 243:—

> "The presumption, however, is that all laws operate prospectively only and only when the legislature has clearly indicated its intention that the law operate retroactively will the courts so apply it. Retroactive operation will more readily be ascribed to legislation that is curative or legalizing than to legislation which may disadvantageously, though legally, affect past relations and transactions."

Earlier, at page 135 of the same treatise, it is stated :—

> "Where the statute effects inchoate rights or is remedial in nature, it will be construed retroactively if the legislative intent clearly indicates that retroactive operation is intended."

A close analysis of paragraphs (First) and (Secondly) of clause (b) of sub-section (2) of section 15 before the amendment introduced by Punjab Act No. 13 of 1964 would demonstrate that a son of the husband of a female vendor though not born from her womb would be entitled to pre-empt, particularly when the husband's brother and even the son of the husband's brother of that female are accorded the right of pre-emption. To reiterate, the right of pre-emption is accorded manifestly on the principle of consanguinity, the property of the female vendor being that of her husband, and there is no reason why the step-son should be excluded and the nephew of the husband included. From this alone it must be inferred that the Legislature had intended to include a step-son and consequently retrospective operation had to be given to the amending Act as such a construction appears to be in consonance and harmony with the purpose and purport of the Act. It is mentioned in the Statement of Objects and Reasons added to the Bill which eventually became Punjab Act 13 of 1964 that :—

> "It appears that the intention of the Legislature in enacting section 15(2) of the Punjab Pre-emption ,(Amendment) Act, 1960 (Punjab Act No. 10 of 1960) was to vest the right of pre-emption in the off springs of the husband in regard to the property to which a female had succeeded

> through such husband. But this intention is not clear from the words used in clause (b) of section 15(2) * * *. Another flaw in the provision is that the offsprings of the same husband through another wife are excluded by the wording used in existing provisions which seems to have resulted inadvertently."

Making due allowance for the language used in the Bill which was "a private member's Bill", it seems clear that the main object of passing the amending Act was to clarify what had always been intended before. It is true that the Statement of Objects and Reasons is not a permissible aid in construing the true meaning and effect of the substantive provisions of the statute as observed by Chief Justice Sinha in *State of West Bengal* v. *Union of India* (12), but such a statement, as observed by Mr. Justice Shah in another Supreme Court decision in *Gujrat University* v. *Shri Krishana*, (13) "may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a statute." In other words, the Statement of Objects and Reasons though it cannot be used as a guide for interpretation of a statute can yet enable us to determine the *raison d'etre* of legislation. Viewed in this light, it appears to us that the Statement of Objects and Reasons at least makes this clear that a lacuna had existed in paragraph (First) of clause (b) of sub-section (2) of section 15 and the amending Act was intended to cure or remedy that defect. The theory that a son or daughter must be born from the womb of the female vendor is unsustainable as a '*pichhlag*' issue though born from her womb is not an eligible pre-emptor as held by Mahajan J. in *Ujagar Singh* v. *Rattan Singh* (5) and the same principle has been impliedly accepted even by Pandit J. in *Chanan Singh* v. *Jai Kaur*, R. S. A. No. 345 of 1960. The possibility of such a misapprehension is stated in the Objects and Reasons to be the principal aim of the Bill which culminated in Punjab Amending Act 13 of 1964.

Piecing together our conclusions, we hold that the term "brother" includes step or half brother in the context of the law of pre-emption and that *Surjan Singh* v. *Harcharan Singh* (4), has not been correctly decided. We are further of the view that Ind Kaur's share was pre-emptible under First paragraph of clause (b) of sub-section (2) of section 15 of the Act and the amendment introduced by Punjab Act 13 of 1964 has made clear what may have been somewhat uncertain or ambiguous before and in the circumstances of the case the

(12) A.I.R. 1963 S.C. 1241.
(13) A.I.R. 1963 S.C. 703.

amendment has to be given retrospective effect. Lastly, decision of *Jangli* v. *Lakhmi Chand* (1), does not seem to be correctly decided.

In view of these conclusions, this appeal must be dismissed. As mentioned earlier while Khasra Nos. 871 and 877 were sold the suit was brought by inadvertence for Khasra Nos. 871 and 872. The trial Judge had decreed the suit only with regard to Khasra No. 871, as in his opinion no valid suit in respect of Khasra No. 877 had been brought. The lower appellate Court held that it would have allowed the amendment but as the suit was being dismissed on other grounds no formal order was passed on the application for amendment which was actually made before it on 10th of Febraury, 1962. No ground was ever taken by the vendees against this amendment which was virtually allowed by the lower appellate Court. In the circumstances, we make a formal order allowing the plaintiffs the amendment which had actually been sought in the application submitted to the lower appellate Court There is, and indeed there can be no objection to this course and in fact neither any mention is made of it in the grounds of appeal nor in the argument addresse d by Mr. Dalip Chand Gupta at the bar.

In the result, this appeal is dismissed and the suit of the pre-emptors is decreed in its entirety. In the circumstances, there would be no order as to costs.

PANDIT, J.—Towards the close of the referring order, Falshaw, C.J., with whom Khanna, J. agreed observed as under:—

> "A difficult point also arises on the alternative case on the point whether the plaintiffs otherwise enjoyed a right of pre-emption in respect of the share of Ind Kaur under the provisions of sub-section (2) of section 15. It would seem in the present case that Ind Kaur's share of the land came to her from her husband and sub-section (2) (b), as amended in 1960, read—
>
> "Where the sale is by a female of land or property to which she had succeeded through her husband or through her son in case the son had inherited the land or property sold from his father, the right of pre-emption shall vest—
>
> First, in the son or daughter of such female ....."

By Act XIII of 1964 this was amended so that now it reads . . .

"First, in the son or daughter of such husband of the female." If the first clause is construed literally as it stood after the amendment in 1960, the plaintiffs, being only the step-sons of Ind Kaur would not enjoy a right of pre-emption regarding the land sold by her in spite of the fact that it would appear that the intention of the legislature was that the sons in case of this kind were entitled to derive their right of pre-emption from the fact that the land had belonged to their father. The question thus arises whether the amendment of 1964 was a mere clarification of the original intention and also whether, if it was not, the existing decree could still be maintained in this appeal in favour of the plaintiffs on the basis of the amendment."

The question whether the plaintiffs in the instant case had a right to pre-empt the sale made by their step-mother, Ind Kaur, of the property to which she had succeeded through her husbands, Tarlok Singh, was argued at considerable length before us. Its answer would depend on whether a 'step-son' was included in the word 'son' occurring in section 15(2) (b) First of the Punjab Pre-emption Act, 1913 as it stood before the amendment of this clause by Punjab Act No. XIII of 1964. Initially, I must confess, I felt some difficulty in agreeing with the submission of the learned counsel for the plaintiffs, because, according to the statute as it stood then, the right of pre-emption was given to the 'son or daughter of *such female*', and the language employed was legitimately capable of the construction that it would only be the son from the body of such female vendor, who would have a right of pre-emption. The subsequent amendment in this clause by Punjab Act XIII of 1964 has, however, made it clear what the intention of the legislature was and now I am of the view that a step-son was also included in 'son' even in the un-amended clause. My reasons for coming to this decision are these—

(1) It is common ground that the word 'son' has not been defined in the Act and, therefore, we have to go by its ordinary dictionary meaning. The Shorter Oxford Dictionary defines 'son' as 'a male child or person in relation to either or both of his parents'. Similary in the Webster dictionary, the definition of this word is given as 'a male child in relation to his parent or parents'. Thus it would be seen that according to its ordinary meaning 'son' includes a 'step-son' also.

(2) If the legislature wanted that a 'step-son' should not be included in a 'son' in this clause, it could have said so in the Act and could have specifically placed that limitation on its meaning. But that has, admittedly, not been done.

(3) The legislature was supposed to know the distinction between a 'son' and a 'step-son'. Knowing that, if it did not excluded a step-son, its intention seems to be clear that it wanted that in such circumstances, the step-son should also be able to pre-empt the sale made by his step-mother. Where the legislature wanted to exclude a step-son, it has actually said so in the statute itself, For instance, in the Hindu Succession Act, in section 18, it has been made clear that heirs related by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

(4) Section 15(2)(b) First was, for the first time, introduced in the Punjab Pre-emption Act, 1913, by Punjab Act X of 1960. Before, that, the right of pre-emption in respect of agricultural land and village immovable property, where the sale was made by a sole owner, or in the case of land or property jointly owned, by all the co-sharers jointly. vested in the person in the order of succession who, but for such sale, would have been entitled, on the death of the vendor or vendors, to inherit the land or property sold. In other words, if the sale had been made by Mst. Ind Kaur before the Act was amended by Punjab Act X of 1960, the plaintiffs could pre-empt the sale, because they were also heirs of their step-mother. The legislature was aware of this state of law, when it passed the Punjab Act X of 1960 and if it wanted to take away this right of the heirs, something more specific was needed than the language employed in this sub-clause introduced by the amendment.

(5) It is pertinent to mention that the property which was the subject-matter of the sale, in this sub-clause, was the one inherited by the female from her husband or through her son who in his turn had inherited the same from his father. The emphasis seems to be on the source from which the property sold was inherited by the female. This would

further be clear from the provisions of sub-section 2(a) under which if the sale by the female was of property to which she had succeeded through her father or brother, the right of pre-emption had been given to her brother or brothers' son, and if the sale of such property had been by her son or daughter after they had inherited that property from her, such a sale could be pre-empted by the female's brother or her brother's sons. The right of pre-emption in sub-section 2(b) Secondly has admittedly been given to the husband's brother and the husband's brother's son of such female, meaning thereby that the property should remain with the near relations of the husband. In the First, the right is given to the son or the daughter and failing them, to the persons mentioned in Secondly. From that it appears that the intention of the legislature was that in first were included the sons and daughters of the husband of such female and not only his son and daughter from the body of such female.

(6) It does not stand to reason that the legislature intended that the husband's son or daughter, though from a different wife, should not have the right to pre-empt the sale of the land inherited by the female from that husband, when admittedly in secondly, the husband's brother or the husband's brother's son, who were distantly related to the husband than his son or daughter, had been given such a right.

(7) After the amendment made in this sub-clause by the Punjab Pre-emption (Amendment) Act XIII of 1964, the right is in the son or daughter of such husband of the female. No room for doubt is now left that the intention of the legislature from the very beginning was that the right of pre-emption under First should be given to the son or daughter of such husband of the female vendor. This amendment has merely clarified the position and the intention of the legislature, because the language employed previously was capable of the other interpretation as well. This would also be clear from the statement of objects and reasons of the Bill leading to this amendment, where it was stated—

"It appears that the intention of the Legislature in enacting section 15(2) of the Punjab Pre-emption (Amendment)

Act, 1960 (Punjab Act No. 10 of 1960), was to vest the right of pre-emption in the off springs of the husband in regard to the property to which a female had succeeded through such husband. But this intention is not clear from the words used in clause (b) of section 15(2). The clause as it now stands may well include the son or daughter of such female by some other husband as also the brother or brother's son of a husband of such female other than the one through whom she succeeded to the property.

Another flaw in the provision is that the offsprings of the same husband through another wife are excluded by the wording used in existing provisions which seems to have resulted inadvertently."

In *Chanan Singh and others* v. *Smt. Jai Kaur*, R.S.A. 345 of 1960, which was decided by me on 26th of October, 1960, after the Punjab Pre-emption (Amendment) Act X of 1960 had come into force and long before the 1964 amendment was introduced, while interpreting section 15(2)(b) First, I had held that the right of pre-emption had been given only to the son or daughter from the womb of such female. In that case, the step-daughter of the female was wanting to pre-empt the sale by her step-mother, and I had held that she had no such right. As I have already said, the language employed in First was capable of the construction I had placed on the expression 'daughter of such female' occurring in First. It is also note-worthy that in Secondly, husband's brother's son and not the husband's brother's daughter of such female had been given the right of pre-emption. This decision of mine was confirmed by the Letters Patent Bench on 10th of May, 1965. During the course of the judgment, the learned Judges observed—

"On the reading of these provisions (as they stood before the 1964 amendment) obviously the learned Single Judge had no option but to hold that the plaintiff Mst. Jai Kaur not being from the body of Mst. Sobhi had no right of challenge."

The Letters Patent Appeal was, however, allowed on account of the amendment introduced by Punjab Act XIII of 1964, giving the right of pre-emption to the son or daughter of such husband of the female.

After the matter had been thrashed out before us in this Full Bench, I am of the view that that decision of mine was not correct.

With these observations, I agree with my learned brother, Shamsher Bahadur, J. that the appeal should be dismissed with no order as to costs.

SHARMA, J.—I agree that the appeal should be dismissed with no order as to costs, I have nothing to add.

B.R.T.

FULL BENCH

Before Shamsher Bahadur, P. C. Pandit and P. D. Sharma, JJ.

UNION OF INDIA AND OTHERS,—*Petitioners*

versus

HARI RAM,—*Respondent*

Civil Revision No. 240 of 1959.

September 29, 1967

Code of Civil Procedure (Act V of 1908)—Administration of Evacuee Property Act (XXXI of 1950)—Ss. 4, 28, 46 and 48—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 21, 27, and 36—Suit by a lessee of evacuee property for a declaration that the lease was illegal, ineffective and not binding on him, that it stood cancelled by orders of the State of Patiala and as such no liability under the same was enforceable against him and for an injunction restraining the defendants from recovering any sum on account of the lease and from taking any steps in that behalf—Whether maintainable.

Held, that in view of the provisions of sections 4, 28, 46 and 48 of the Administration of Evacuee Property Act, 1950 and sections 21, 27 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, a civil court has no jurisdiction to determine whether the lease of evacuee property granted to the plaintiff was illegal, ineffective and not binding on him and that it stood cancelled by the order of the State of Patiala and no liability under the same was enforceable against him. Similarly a civil court has no jurisdiction to issue an injunction against the defendants restraining them from recovering any sum on