

## APPELLATE CIVIL

Before Gurdev Singh, J.

VED PARKASH ETC.,—Appellants.

versus

FAQIR CHAND ETC.,—Respondents.

**Regular Second Appeal No. 80 of 1965**

May 9, 1972.

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 8-A—Sale of land in favour of tenants thereon and non-tenants—Suit to pre-empt the sale by relations of the vendor—Tenants vendees by joining non-tenants in the sale—Whether sink to the level of strangers and lose the statutory protection under section 8-A—Code of Civil Procedure (Act V of 1908)—Order 20 rule 14—Decree in pre-emption suits—Whether to be for possession—Nature of such possession—Whether to be determined by the executing Court—Decree for symbolic possession—Whether can be passed.*

*Held*, that section 8-A of Pepsu Tenancy and Agricultural Lands Act, 1955 declares that no sale of agricultural land made in favour of a tenant shall be pre-emptible. The bar created by section 8-A to pre-emption of property in possession of the tenants is absolute. Where the sale of agricultural land is in favour of tenants thereon and non-tenants, the doctrine that a vendee by associating himself a stranger sinks to the level of stranger, does not apply. The doctrine will apply to that type of cases where the contest is between the persons each of whom claims superior right to acquire the property himself and if in that contest the vendee proves that his right is equal or superior to that of the pre-emptor, the suit would fail. But where the vendees do not claim any right superior or equal to that of the plaintiffs to purchase the land in dispute, but they rely upon the exemption created in their favour by section 8-A of the Act, the doctrine will obviously not apply. By joining non-tenants with them in the sale, the tenants do not lose their right to resist the claim of pre-emption with regard to their share in the land of which they are the tenants on the plea that share in the property is non-pre-emptible.

*Held*, that pre-emption decree under order 20 rule 14 of the Code of Civil Procedure, in all cases is to be for possession. The nature of possession that the pre-emptor will be entitled to obtain under the decree in his favour will, however, have to be determined by the Executing Court at the time the decree is sought to be executed. If the land was in possession of a tenant, but on the date the decree is executed, the tenant has ceased to be in possession, there can be no bar, to the delivery of actual possession in the execution of the decree, but if the tenant continues in lawful possession then the tenant has to be evicted in accordance with law before actual

Ved Parkash etc. v. Faqir Chand etc. (Gurdev Singh, J.)

possession can be obtained. A decree for symbolic possession in a suit for pre-emption cannot be passed if the land is in possession of a tenant.

*Regular Second Appeal from the decree of the Court of Shri P. N. Thukral, District Judge Sangrur, Camp at Narnaul, dated the 29th October, 1964, modifying that of Shri Banwari Lal Singhal, Senior Sub-Judge, Narnaul, dated the 23rd January, 1964, (granting the plaintiffs a decree against Jai Parkash and Naresh Parkash Vendees for possession by pre-emption to the extent of one half share in the land in dispute on payment of Rs. 400 as one half share in the sale money Rs. 55.50 N.P. on account of half share of expenses of registration, Rs. 455.50 N.P. in all to these vendees and dismissing the plaintiffs' suit against Ved Parkash and Atam Parkash vendees and further ordering that the plaintiffs will not however be competent to take actual possession of the land otherwise than in due course of law applicable in the circumstances as Ved Parkash and Atam Parkash shall remain in possession as tenants of that land and further ordering that the plaintiffs will deposit this amount in this court after adjustment of the 1/5th the sale price already deposited by them on or before 23rd March, 1964 and in case the amount is not so deposited their suit shall stand dismissed and leaving the parties to bear their own costs) to the extent that the plaintiffs would be entitled to symbolical possession can not be maintained and however a decree for possession of only one half share is being granted, the plaintiffs in execution of the decree would naturally get symbolical possession till they claim actual possession by partition, and leaving the parties to bear own costs.*

A. N. Mittal, Advocate, for the appellants.

Kesho Ram Mahajan, Advocate, for the respondents.

#### JUDGMENT

GURDEV SINGH, J.—This judgment will dispose of two cross-appeals, R.S.As. 80 and 298 of 1965, directed against the appellate decree of the learned District Judge, Sangrur (at Narnaul), dated 29th October, 1964. They arise out of the suit brought by Faqir Chand and Smt. Lajwanti for pre-empting the sale, dated 16th April, 1962, of 14 *Bighas* 18 *Biswas* of land situate in the revenue limits of Narnaul made by Bhopat Ram in favour of Ved Parkash, Atam Parkash, Jai Parkash and Naresh Parkash in equal shares for Rs. 800. The pre-emptors claim on the basis of their relationship with the vendor being his son and daughter, respectively. The vendees other than Ved Parkash contested the suit and it was pleaded, *inter alia*, that Ved Parkash and Atam Parkash vendees were tenants of the vendor at the time of the sale and, consequently, the suit to the extent of their one-half share was not competent. The vendees also claimed to have spent Rs. 1,800 on the improvements of

the land. It was further pleaded that even if the plaintiffs established their superior right of pre-emption, they would not be entitled to take actual possession of the land even with respect to the share of Jai Parkash and Naresh Parkash vendees. The learned trial Judge found it established that out of the four vendees Ved Parkash and Atam Parkash were tenants of the disputed land and in view of the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955, the sale with respect to the share of these two vendees was not pre-emptible. Accordingly he decreed the plaintiffs' claim to the extent of the half share of the other vendees, Jai Parkash and Naresh Parkash, on payment of Rs. 455.50, but directed:

"The plaintiffs will not, however, be competent to take actual possession of the land otherwise than in due course of law applicable in the circumstances as Ved Parkash and Atam Parkash shall remain in possession as tenants of that land".

(2) The plaintiffs feeling aggrieved appealed to the Court of District Judge. They challenged not only the finding that Ved Parkash and Atam Parkash held the land as tenants at the time of the sale, but also urged that they were entitled to actual possession of the land. The learned District Judge, while affirming the finding of the trial Court that at the time of sale Ved Parkash and Atam Parkash were holding the land as tenants-at-will and the sale so far as it related to their share in the property was not pre-emptible, however, held that their tenancy rights did not remain intact after the sale. In view of this later finding, the decree of the trial Court was modified and it was directed that the plaintiffs in execution of the decree would obtain symbolic possession till they claimed actual possession by partition. Both the parties being dissatisfied have preferred these cross-appeals.

(3) In the plaintiffs' appeal (R. S. A. 298 of 1965), besides disputing the finding that Ved Parkash and Atam Parkash were in possession of the land as tenants at the time of the sale, it is urged that by joining the other vendees with them in the sale they had sunk to the level of the strangers and thus were not entitled to resist the claim for pre-emption in respect of their share in the land sold. The finding that Ved Parkash and Atam Parkash were holding the land as tenants cannot be reopened in second appeal especially when there is no complaint that any evidence has been ignored or misread. The other contention that these tenants had lost the statutory protection granted to them against pre-emption was never

Ved Parkash etc. v. Faqir Chand etc. (Gurdev Singh, J.)

raised in any of the Courts below. Even if it is permitted to be raised at this stage, I find no substance in it. It is not the case of a vendee losing his preferential right by associating with him a stranger in the sale, but of enforcing the statutory protection granted to the tenant by the Pepsu Tenancy and Agricultural Land Act. The relevant provision makes the sale in his favour non-pre-emptible. The doctrine that a vendee by associating with himself a stranger sinks to the level of the stranger, which has been upheld by a Full Bench of this Court in *Garib Singh v. Harnam Singh* (1), does not apply to this situation. In the latter type of cases the contest will be between the persons each of whom claims superior right to acquire the property himself and if in that contest the vendee proves that his right is equal or superior to that of the pre-emptor, the suit would fail. In the case with which we are dealing, Atam Parkash and Ved Parkash vendees do not claim any right superior or equal to that of the plaintiffs to purchase the land in dispute, but they rely upon the exemption created in their favour by section 8-A of the Pepsu Tenancy and Agricultural Lands Act, which declares that no sale of agricultural land made in favour of a tenant shall be pre-emptible. In these circumstances, I do not find it possible to accede to the contention that by joining non-tenants with them Ved Parkash and Atam Parkash had lost their right to resist the claim for pre-emption even with regard to their share in the property sold on the plea that the sale of their share in the property is not pre-emptible. The bar created by section 8-A to pre-emption of property in possession of the tenants is absolute. It has been recently imposed by statute as a part of the scheme granting security of tenures to the tenants. I thus find no merit in the plaintiffs appeal (R.S.A. 298 of 1965).

(4) The cross-appeal (R.S.A. 80 of 1965) is by two out of the four vendees, namely, Ved Parkash and Atam Parkash alone, who were holding the land as tenants. They have challenged the grant of symbolic possession to the plaintiffs and pray that the decree of the trial Court be restored. It is contended on their behalf that in view of the finding that they were in possession of the entire land as tenants at the time of the sale, they had the right to hold the land and continue in possession till they are ejected in due process of law. I do not see much difference between the two decrees. Once a plaintiff makes out his claim for pre-emption, he is entitled to a decree.

(1) I.L.R. 1972(1) Pb. & Hr. 342 (F.B.) = A.I.R. 1972 Pb. & Hr. 99 (F.B.)

The form of the decree is prescribed under Order 20, rule 14, Civil Procedure Code, and the decree granted is for possession on payment of the purchase money, etc. The question whether the actual possession can or cannot be obtained in pursuance of this decree will depend on the further question, whether the person in actual possession is the vendee or tenant or some one else, who has a right to hold the property. By sale of the property, the tenancy rights do not come to an end. This has been recently held by their Lordships of the Supreme Court in *Bhagwan Das v. Chet Ram* (2), wherein it has been observed as follows:

“It must be remembered that a sale alone does not and cannot divest the tenant of his right to hold the land of which he is in possession by virtue of his tenancy under the vendor. But if his tenancy is determined by a decree for eviction he loses his status of a tenant.”

(5) The matter may be examined from another angle. Take the case where the property sold is in possession of a mortgagee. As a right of pre-emption is a right of substitution, and it is settled that a pre-emptor steps into the shoes of the vendee, he cannot have better rights than the vendee himself. If the vendee could not obtain possession because of the property being in possession of a mortgagee without redeeming the mortgage, obviously actual possession of the property cannot be delivered to the pre-emptor on his obtaining a decree for pre-emption, as the rights of the mortgagee cannot be adversely affected by the sale of that property or by the pre-emptor who steps into the shoes of the vendee.

(6) The pre-emption decree in all cases, however, is to be for possession. The nature of possession that the pre-emptor will be entitled to obtain under the decree in his favour will, however, have to be determined by the Executing Court at the time the decree is sought to be executed. If on that date the tenant has ceased to be in possession there can be no bar to the delivery of actual possession in the execution of the decree, but if the tenant continues in lawful possession then the tenant has to be evicted in accordance with law before actual possession can be obtained. In these circumstances, I find that the proper decree that had to be passed in this case is that prescribed under Order 20, rule 14, Civil Procedure Code, leaving it to the Executing Court to determine the nature of possession that

(2) A.I.R. 1971 S.C. 369—1970 P.L.J. 780:

Gurdial Singh v. The State of Punjab etc. (Gujral, J.)

can be delivered to the decree-holders at the time the execution of the decree is sought. I accordingly modify the decree under appeal accordingly and accept R.S.A. 80 of 1965 to this extent. The cross-appeal, R.S.A. 298 of 1965, is, however, dismissed, but there will be no order as to costs in both the appeals.

K. S. K.

ORIGINAL CRIMINAL

Before A. D. Koshal and Man Mohan Singh Gujral, JJ.

GURDIAL SINGH,—Petitioner.

versus

THE STATE OF PUNJAB ETC.,—Respondents.

**Criminal Original No. 33-M of 1972**

May 11, 1972.

*Maintenance of Internal Security Act (XXVI of 1971)—Sections 3(1) (a) (i), 3(1) (a) (ii), 3(1) (a) (iii), 3(1) (b), 8, 9 and 14—Constitution of India (1950)—Article 22—Activities of a person covering the subject matter of sections 3(1) (a) (ii), 3(1) (a) (iii) as well as 3(1) (a) (i)—District Magistrate—Whether debarred from passing an order of detention of such person—Manner of dealing with the representations of detenus—Principles as to—Stated.*

*Held*, that provisions contained in section 3 of Maintenance of Internal Security Act, 1971 show that if the Central Government or the State Government finds that the activities of any person are covered by the three clauses of section 3(1) (a) or by 3(1) (b), it may make an order directing that person's detention with a view to preventing his activities. Sub-section (2) of section 3 further provides that this power can also be exercised by the District Magistrate or other officers mentioned in this sub-section provided that they are satisfied that the activities of the person to be detained are covered by clauses (i) and (ii) of section 3(1) (a). In the wording of this sub-section there is no indication that if the grounds of detention are such which relate to the defence of India, the relations of India with foreign powers or the security of India, the District Magistrate has no power to order the detention even if those grounds disclosed activities prejudicial to the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community. Before passing an order for detention, all that the District Magistrate has to be satisfied about is that the ground of detention related to the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community. As long as