APPELLATE CIVIL

Before Prem Chand Pandit, J.

SOHAN SINGH,—*Appellant*

versus

UDHO RAM AND OTHERS,—*Respondents*

Regular Second Appeal No. 851 of 1962

January 23, 1967

Punjab Pre-emption Act (I of 1913)—S. 15(1)(a) Fourthly—Pre-emptor, a tenant under the vendor at the date of sale but relinquishing possession before the date of suit—Whether entitled to pre-empt the sale of land under his tenancy.

Held, that a tenant who held the land sold under the tenancy of the vendor on the date of the sale has a right to pre-empt that sale even if he vacated the land of his own accord after the sale and before the date of the suit. In order to succeed he has not to retain this qualification on the date of the institution of the suit or at the time of the decrees, nay, it is not possible for him to retain that qualification after the sale as he ceases to be the tenant of the land under the vendor once it is sold.

Regular Second Appeal from the decree of the Court of Shri B. P. Puri, Additional District Judge, Hoshiarpur, dated 14th February, 1962 affirming that of Shri H. K. Mehta, Senior Subordinate Judge, Hoshiarpur, dated the 2nd June, 1961, holding that the plaintiff had no cause of action and rejecting the plaint under Order 7, Rule 11, C.P.C. and leaving the parties to bear their own costs.

J. C. VERMA FOR B. S. BINDRA, ADVOCATE, for the Appellant.

G. P. JAIN, ADVOCATE, for the Respondents.

JUDGMENT

PANDIT, J.—On 21st of April, 1960, by a registered deed, Ujagar Singh sold the land in suit to Udho Ram and Rattan Chand for Rs. 4,880. This sale led to a suit by Sohan Singh for possession of the land by pre-emption alleging that he, being the tenant of the vendor at the time of sale, had a preferential right to purchase this property as against the vendees. He also alleged that in fact the sale had been effected for Rs. 3,880 and not Rs. 4,880 as mentioned in the sale deed.

The suit was resisted by the vendees who denied the allegations made by the plaintiff and pleaded that he had no right of pre-emption.

Before the framing of the issues, the statements of the parties were recorded. The plaintiff stated that he was in possession of the land in suit as a tenant of the vendor at the time of sale, but on the date of the institution of the suit he had ceased to be in possession of the land. The vendees said that the plaintiff was not a tenant at will of the land in dispute either at the time of the filing of the suit or on the date when the statements were recorded. The trial judge was of the view that since the plaintiff, on his own admission, was not the tenant of the land in dispute on the date of the institution of the suit, he had lost his qualification to pre-empt the land. It was, according to the trial court, well established that the plaintiff's preferential right must not only exist at the time of sale, but it should also be in existence at the time of the suit as well as at the date of the decree. As a result he came to the conclusion that the plaintiff had no cause of action and he rejected the plaint under the provisions of Order 7, rule 11, Code of Civil Procedure.

Against this decision, the plaintiff went in appeal before the learned Additional District Judge, Hoshiarpur. The argument raised by his counsel before the learned Judge was that the wording of the amended section 15(1) (a) Fourthly showed that it was not possible for the tenant to continue holding the land sold under the tenancy of the vendor after the date of sale. This contention was repelled by the learned Judge by saying "this argument does not, however, cover a case where the tenant has altogether ceased to be a tenant on the land after the sale, be it under the vendor or the vendee. There is no allegation that the plaintiff has been dispossessed in any high-handed manner and it had been said at the bar by the vendees' counsel that the plaintiff had vacated the land under some private arrangement or settlement." The learned Judge went on to say "the principle of law is well established that the plaintiff in a pre-emption suit has to show his superior right on three crucial dates, namely, the date of sale, the date of institution of suit and the date of decree. As the plaintiff could not show his superior right of pre-emption at the date of the institution of the suit, the suit, according to the lower appellate Court, had been rightly thrown out by the trial court. In the opinion of the learned Judge, the more proper way for the trial Judge was to have dismissed the suit rather than reject the plaint under Order 7, rule 11, Civil Procedure Code. The appeal was accordingly dismissed.

Against this decision, the present second appeal has been filed by the plaintiff Sohan Singh.

The relevant part of section 15 of the Punjab Pre-emption Act runs thus:—

"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, * * * * *

Secondly, * * * * *

Thirdly, * * * * *

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

* * * * *"

The facts on which the courts below have proceeded are that the plaintiff was holding the land in suit under the tenancy of the vendor at the time of sale, but on the date when he filed the suit, he was not in possession of the land either as a tenant of the vendor or the vendee. There was no allegation that the plaintiff had been forcibly dispossessed from the land in suit. On these facts, could it be said that the plaintiff had no cause of action to bring the suit which should be dismissed on that ground alone? According to section 15(1)(a) Fourthly, a tenant who holds the land under the tenancy of the vendor at the time of sale has a right of pre-emption. According to the facts of the case, as mentioned above, the plaintiff had a right of pre-emption at the date of the sale. The Punjab Pre-emption Act nowhere says that the pre-emptor should retain his qualifications for pre-empting the land till the date of the decree. It is true that the decisions have laid down that the plaintiff's preferential right must exist on the three important dates, viz., of sale, suit and decree. These rulings were, however, given before the legislature gave the right of pre-emption to a tenant of the vendor. It is undisputed that after the sale the tenant cannot hold the land sold under the tenancy of the vendor, because the vendor no longer remains the owner of the property and the title in the same passes to the vendee. It is a different matter that after the sale the vendee may still retain him as his own tenant, but even if he becomes the tenant of the vendee that does not afford him a ground for pre-empting the land, because as already mentioned above, it is only the tenant of the *vendor* who holds the land sold, who has a right of pre-emption. If the well settled principle of law relied upon

by the courts below were to be applied to the case of a tenant pre-emptor as well, then it would be depriving him of his right of pre-emption given by the statute. The legislature could not have intended this result, because it is supposed to know the well settled principles of law when it amended the Punjab Pre-emption Act and gave the right of pre-emption to the tenant of the vendor. As I have said, it would not have made any difference if at the date of the institution of the suit, the plaintiff had become the tenant of the vendee instead of the vendor, as perhaps the learned Additional District Judge seemed to think. Similarly, even if the plaintiff had been forcibly dispossessed from the land, that too would not change the situation, because in that case also it could not be said that he was the tenant of the vendor at the time of the institution of the suit. Thus, the tenant who holds the land sold under the tenancy of the vendor had a right of pre-emption and in order to succeed he has not to retain this qualification on the date of the institution of the suit or at the time of the decree.

The view that I have taken above finds support in the decision of D. K. Mahajan, J., in R.S.A. 425 of 1964 (*Chuhar Ram* v. *Shri Kashmiri Lal*), decided on 21st December, 1964, where the learned Judge remarked:—

> "The requirement of the statute is that a tenant when he wants to pre-empt the sale has only to show that he is the tenant of of the vendor and not that he must continue to be a tenant of the vendee. Therefore, the argument of the learned counsel that the plaintiff did not possess the requisite qualification on the date of the decree is pointless."

In view of what I have said above, this appeal succeeds and the judgments and the decrees of the courts below are set aside. The case is remanded to the trial court for proceeding in accordance with law. There will, however, be no order as to costs. The parties have been directed to appear before the trial court on 27th March, 1967.

B.R.T.