

Kishan Devi
 v.
 Delhi Development
 Authority
 Pandit, J.

Secondly, in case of betterment fee, the lands are indirectly benefited by the scheme, while in the cases governed by section 64-A, the lands are directly benefitted. In the latter type of cases, naturally, the lands would receive more advantages by the scheme, because of their situation. Thirdly, as to how much increase there has been in the value of the land by virtue of the scheme, as mentioned in the provisions of section 64-B of the Act, would still be a discretionary matter with the Trust and no hard and fast rules can be laid down for the determination of the same.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs in this Court.

Dulat, J.

S. S. DULAT, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Bofere D. Falshaw, C.J., and Harbans Singh, J.

KAKU SINGH AND OTHERS,—Appellants.

versus

KAPUR SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 195 of 1962:

1963
 Nov., 7th.

Code of Civil Procedure (Act V of 1908)—S. 144—Pre-emption decree passed, pre-emptor depositing the entire purchase money in Court and obtaining possession of the major portion of the land—Vendees filing appeal and not withdrawing purchase money from the Court—Appeal succeeding and vendees claiming restitution—Whether entitled to claim mesne profits from the pre-emptor.

Held, that since the vendees could have withdrawn the purchase money from the Court and enjoyed the use

of it until their appeal was accepted without in any way prejudicing the success of their appeal and the interest on that amount at 6 per cent per annum would have exceeded the amount calculated as compensation for the land occupied by the pre-emptor during the same period, no amount can be allowed to the vendees as compensation for the occupation of the land during the period in question.

Letters Patent appeal under clause 10 of the Letters Patent against the order of the Hon'ble Mr. Justice H. R. Khanna, dated 1st June, 1962 passed in E.F.A., No. 278 of 1961 reversing that of Shri Rajinder Lal Garg, Sub-Judge 1st Class, Nabha, dated 19th May, 1961, passing an order for the payment of Rs. 4,491.88 nP., in favour of Kapur Singh and others vendes and against Kaku Singh and other plaintiffs.

B. R. AGGARWAL AND S. K. AGGARWAL, ADVOCATES, for the Appellants.

D. C. GUPTA AND J. V. GUPTA, ADVOCATES, for the Respondents.

JUDGMENT

FALSHAW, C.J.—This is an appeal under clause 10 of the Letters Patent against the order of a Single Judge accepting an execution appeal and ordering the appellants to pay Rs. 4,491.88 nP. to the respondents as compensation under section 144 Civil Procedure Code. Falshaw, C.J.

The facts are that a decree for possession of certain land by pre-emption was passed on the 21st of June 1956 on payment of Rs. 20,3000. The balance of the sale price was deposited by the pre-emptors in Court within the time specified in the decree. The impugned sale had been in favour of a number of vendees, three of whom filed a regular first appeal in the Pepsu High Court. The right of pre-emption of the plaintiffs had been based merely on the ground of

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ownership in the estate where the land in suit was situated, and during the pendency of the appeal as the result of the enactment of Punjab Act No. X of 1960 this ground of pre-emption was abolished. The vendees' appeal was accordingly accepted by the High Court on the 4th of August, 1960, and the plaintiffs' suit was dismissed.

It does not appear that the vendee-appellants had obtained any order for stay of execution when they filed the appeal in the High Court and the decree-holders accordingly obtained possession of part of the land on which there were no crop standing on the 10th of September 1956, and they also got possession of the remainder of the land on the 21st of September 1956. A belated stay order was obtained from the High Court on the 20th of September 1956, but this order had not been communicated when possession of the second instalment of the land was obtained. However, by an order of the District Judge, Patiala, possession of the land taken on the 21st of September, 1956, was restored to the vendees, but the possession of the remaining land, amounting to three-quarters of the whole, remained with the pre-emptors until after the decision of the appeal in this Court. . .

After the dismissal of the pre-emption suit in appeal the vendees applied to the executing Court under section 144 Civil Procedure Code for mesne profits with regard to the area of land which had remained in possession of the pre-emptors from September, 1956 to the 11th of January, 1961, claiming Rs. 12,000 on this account.

The application was resisted by the pre-emptors and it was held by the executing Court that since the pre-emptors had been in possession of the land under a decree which was lawful at the time when it was

passed, there could be no question of mesne profits, but the vendees were entitled to damages or compensation which was assessed at one-third of the total produce of three-quarters of the land in suit. From the evidence the learned Subordinate Judge held that the total produce from the land during the period in question was valued at Rs. 17,954.49 nP. and he further calculated that the amount to which the vendees would be entitled on the above basis was Rs. 4,491.88 nP. At the same time he held that the vendees could not claim this amount on account of the fact that the sum of Rs. 20,300 deposited by the pre-emptors had remained locked up in Court for the period from the 21st of August, 1956 to the 4th of August 1960, when the pre-emptor at last became entitled to withdraw it on the dismissal of their suit, and interest on this amount calculated at 6 per cent per annum would exceed the amount of compensation calculate as above.

The learned Single Judge disagreed with the view of the executing Court that the fact that the pre-emptors' money had remained locked up in Court during this period debarred the vendees from the right to claim compensation to which they were otherwise entitled. He was of the view that the fact that the pre-emptors had lost interest on the money during the period in question made no difference, since the vendees also had not derived any benefit from it, their position throughout being merely that they wanted their land back and did not want the plaintiffs' money. He accordingly ordered the payment of Rs. 4,491.88 nP. by the pre-emptors to the vendees.

There does not appear to be any decided case which is directly applicable to the facts of this case. The case chiefly relied on by the learned counsel for the appellants is *Dalu Ram Gobardhan Das v.*

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Kaku Singh and others and *Ramanand Jurimull* (1), a decision of Fazl Ali and Chatterji J. The facts in that case were that a plaintiff obtained a decree for damage for breach of contract for Rs. 4,850 with interest at 6 per cent per annum and costs. The defendant appealed and when the successful plaintiff proceeded to execute his decree obtained an order from the High Court staying execution on the judgment-debtor's furnishing cash security to the extent of the decretal amount including costs and interest. The necessary amount was deposited in Court on the 14th of March 1924, and it was withdrawn by the decree-holder after furnishing adequate security for restoration on the 11th of December, 1924.

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The defendant's appeal in the High Court was successful and thereafter he applied for restitution, claiming not merely the refund of the amount actually deposited by him, but also interest from the date of the deposit, the 14th of March, 1924.

The main point in dispute before the learned Judges was whether interest was to be allowed on the amount refunded from the date of the deposit or from the date of the withdrawal by the decree-holder, namely, the 11th of December, 1924. The case of *Hirabhai Dahyabhai v. Manik Lal Ranchhod* (2), was relied on as an authority for the proposition that a party could not resist a claim for interest on the ground that it had acquired no benefit from the money during the period when it was lying in Court. In the course of the judgment it was observed:—

“The definition of the expression ‘mesne profits’ in the Civil Procedure Code Section 2, sub-section (12), also throws some light in a case like this. It provides

(1) A.I.R. 1929 Patna 593.
 (2) A.I.R. 1925 Bom. 313.

that 'mesne profits' mean the profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received together with interest on such profits. Therefore the fact that the decree-holder did not withdraw the deposit is immaterial. If he could with ordinary diligence have received the amount, there is no reason why he would not be liable to pay interest to the party who was by reason of his action deprived of the benefit of his money."

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It was accordingly held that the defendant was entitled to interest from the date when the decretal amount was deposited in Court.

With respect I agree with the view that if the money is deposited in Court for the withdrawal by the opposite party, it makes no difference as regards the right of the party making the deposit to claim interest on restitution whether the other party withdraws the amount or leaves it lying in Court. It seems therefore that in the present case the crux of the matter is whether during the pendency of the appeal against the pre-emption decree by some of the vendees they could, after the pre-emptors had obtained possession of the land in execution of their decree, have withdrawn the money and enjoyed the use of it up to the time when their appeal was accepted without losing their right to pursue the appeal. On this point there appears to be no doubt that the vendees could have withdrawn the amount deposited without becoming estopped from pursuing the appeal. This matter was considered in *Iftikhar Ali and others v. Thakar Singh and another* (3), a decision by Rattigan and Shah Din, JJ., who held that the fact that the

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vendee had withdrawn the money paid into the lower appellate Court under its decree by the pre-emptor did not debar the vendee from appealing against that decree. The same point arose before Tek Chand, J. in *Mehdi v. Mt. Nadran and another* (4), in which the earlier decision was followed, and also the decision in *Mt. Qudrat-Un-Nissa Bibi v. Abdul Rashid and another* (5). In that case Sulaiman and Banerji, JJ approved of the decision in *Iftikhar Ali's case*.

It seems to me in these circumstances that since the vendee could have withdrawn the sum of Rs. 20,300 and enjoyed the use of it until their appeal was accepted without in any way prejudicing the success of their appeal, and the interest on this amount at 6 per cent per annum would have exceeded the amount calculated as compensation for the land occupied by the pre-emptors during the same period, the correctness of which is not now contested, the view of the executing Court was correct, and no amount should have been allowed as compensation for the occupation of the land during the period in question. The result is that I would accept the appeal and restore the order of the executing Court. The parties may, however, be left to bear their own costs.

Harbans Singh,
J.

HARBANS SINGH, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

HARTEJ BAHADUR SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No: 1910 of 1963.

1963
Nov., 11th.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 43—Whether applicable where the possession of

(4) A.I.R. 1929 Lah. 137.

(5) A.I.R. 1926 All. 661.