taken a different view in *Prabhu Dayal* v. *Milap Chand* (4), *Pukhraj* v. *Ummaidram and others* (5), and *Ramdutt and others* v. *State of Rajasthan and others* (6). Those judgments are not applicable because the provisions of the Rajasthan Panchayat Act, 1953, are different and not in *pari materia* with the provisions of the Punjab Gram Panchayat Act.

(6) Even the second ingredient of Section 197 of the Code is missing in this case. The alleged acts of embezzlement and falsification of accounts cannot be said to have been committed by the respondent in the discharge of his official duties. This matter has been dealt with by Shamsher Bahadur, J., in *Basant Lal* v. *Net Ram* (1) (supra) and with respect I find myself in complete agreement with what has been said by the learned judge.

(7) For the reasons given above, I hold that the sanction of the Punjab Government for the prosecution of the respondent under Section 197 of the Code was not required. I, therefore, accept this petition and set aside the order of the learned trial court and the Appellate Court dismissing the complaint. The trial court is directed to proceed to decide the complaint in accordance with law. The parties, through their counsel, have been directed to appear before the learned trial court on July 10, 1972.

N.K.S.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J., and Bal Raj Tuli, J.

BAKHSHISH SINGH,—*Appellant.*

versus

GURCHARAN SINGH, etc.,—*Respondents.*

Letters Patent Appeal No. 272 of 1970.

July 13, 1972.

Punjab Pre-emption Act (1 *of* 1913)—*Section* 15(1)(*b*) *Fourthly*—*Particular khasra numbers comprised in specified square out of joint*

(4) A.I.R. 1959 Raj. 12.
(5) A.I.R. 1964 Raj. 174.
(6) A.I.R. 1966 Raj. 125.

land sold—Such sale—Whether of a share out of the joint land—Purchaser—Whether becomes a co-sharer with the other co-sharer of the land.

Held, that the important words in clause (b) of section 15(1) of Punjab Pre-emption Act, 1913 are that the sale which is liable to be pre-empted under this clause, must be a sale "of a share out of joint land". If the sale is not of a share out of the joint land, then there is no right of pre-emption under this clause and a co-sharer cannot have any superior right of pre-emption. Where particular khasra numbers comprised in a specified square out of joint land are sold, the sale is not a sale of a share out of the joint land within the meaning of section 15(1)(b) of the Act. The purchaser does not become a co-sharer with the other co-sharer of the land and, therefore, has no superior right of pre-emption.

Appeal under Clause X of the Letters Patent of the Punjab and Haryana High Court against the judgment of the Hon'ble Mr. Justice D. K. Mahajan, dated the 8th January, 1970, passed in R.S.A. No: 329 of 1969, whereby his Lordship reversed the decree of the Court of Shri Jagwant Singh, Additional District Judge, Amritsar, dated the 31st day of January, 1969, affirming that of the Court of Shri H. S. Munder, Sub-Judge II Class, Patti, dated 21st day of May, 1968 (decreeing the suit of the plaintiff) and dismissing the plaintiffs' suit and ordering that there would be no order as to costs throughout.

D. N. Aggarwal, Advocate, with B. N. Aggarwal, Advocate, *for the appellant.*

G. S. Virk and R. L. Aggarwal, Advocates, *for the respondents.*

JUDGMENT

Judgment of the Court was delivered by—

HARBANS SINGH, C. J.—The facts giving rise to this appeal under Clause 10 of the Letters Patent may briefly be stated as under:—

(2) Katha Singh and Batha Singh were two brothers. Bakhshish Singh, appellant before us, is the son of Katha Singh. Batha Singh and Bakhshish Singh were co-sharers of some land. On 26th April, 1958, Batha Singh sold specific Khasra numbers comprised in square No. 68 and Killas Nos. 5/2, 23, 24 and 25, the total area being 31 Kanals 3 Marlas in favour of Saudagar Singh and Des Raj in equal shares. In this sale-deed, Exhibit D. 1, it was specifically mentioned that these killa numbers had come to the vendor in private partition. He had further stated that out of the land sold Killa No. 25 was already in possession of Des Raj in lieu of some amount

taken from him and that the remaining three Killas were in possession of Saudagar Singh in lieu of certain other advance.

(3) Some eight years thereafter, i.e., on 29th April, 1966, Saudagar Singh sold his share in the land which was the subject-matter of the earlier sale-deed, to Gurcharan Singh and others. Bakhshish Singh brought a suit for possession of the land so sold by Saudagar Singh by way of pre-emption on 28th April, 1967. The claim was made on the basis of being a co-sharer with Saudagar Singh.

(4) The defence taken was that Batha Singh was the exclusive owner of the Killa numbers originally sold to Saudagar Singh and Des Raj and as a result of the sale Bakhshish Singh did not become co-owner with Saudagar Singh in the killa numbers sold to him and that, consequently, Bakhshish Singh cannot claim any superior right of pre-emption. In support of the partition effected by Batha Singh, a deed which was marked 'A' was produced. This was on Rs. 1/8/- stamp and is dated 26th October, 1957, executed between Bakhshish Singh and Batha Singh. It contained the factum of partition and the allotment of the disputed Killa numbers to Batha Singh.

(5) An objection was, however, taken that this deed was inadmissible, because it was not properly stamped or registered. This objection prevailed and the trial Court as well as the lower appellate Court held that it had not been established that there was a partition and, consequently, Bakhshish Singh was a co-sharer in the Killa numbers in dispute and had superior right to pre-empt. This decision was set aside by the learned Single Judge on the ground that a sale of specific Killa numbers does not make the purchaser a co-sharer in the joint Khata and that by the sale of specific Killa numbers by Batha Singh to Saudagar Singh, Saudagar Singh did not become a co-sharer in these Killa numbers and, therefore, the sale of these Killa numbers by him was not pre-emptible on the ground of Bakhshish Singh being such a co-sharer. For this reliance was placed on a Full Bench decision of this Court in *Lachhman Singh* v. *Pritam Chand and another* (1).

(6) So far as the partition deed marked 'A' was concerned, the learned Single Judge was of the view that, in the light of the decision of the Bombay High Court in *Ramlaxmi Ranchhodlal* v. *Bank*

(1) I.L.R. (1970) II Pb. and Hr. 359.

of Baroda Ltd., (2), such an unregistered deed can be looked at for a collateral purpose to prove the status in which the land was occupied by Batha Singh. However, inasmuch as this document was also not stamped, the learned Single Judge held that it is not admissible.

(7) As regards the question of payment of stamp duty and penalty at the stage of second appeal, the learned Single Judge observed as follows:—

> "It was the duty of the defendants to offer the stamp duty and penalty at the trial but they had not done so. Not only that, they failed to pay them at the stage of the first appeal. It is well settled that at the stage of second appeal, a party is not entitled to pay the stamp duty and penalty in order to get a document admitted into evidence."

For this, reliance was placed on *Lakshmandas Raghunathdas* v. *Rambhau Manzaram* (3), *Champabaty* v. *Bibi Jibun and another* (4), and *Rup Chnad* v. *Thakur Dial* (5).

(8) In view of the finding on the first point, the appeal was accepted and the suit of the pre-emptor was dismissed, leaving the parties to bear their own costs.

(9) In this appeal filed by the plaintiff pre-emptor, it was urged by the learned counsel for the appellant that the Full Bench decision in *Lachhman Singh's case* (1) has no bearing on the facts of this case. In that case one of the co-sharers sold his one-fourth share in two specific Khasra numbers. Later, on a sale by another co-sharer, of his share in another Khasra number, the first vendee claimed the right of pre-emption as a co-sharer. It was in that context that it was held by the Full Bench that although the vendee had become a co-sharer with the other two co-sharers in the specific Khasra numbers sold to him, yet by such a sale he did not become a co-sharer in the other Khasra numbers. The learned counsel contended that the present case was a converse one. Here Bakhshish Singh was a co-sharer with Batha Singh and when Batha Singh sold

(2) A.I.R. 1953 Bom. 50.
(3) I.L.R. (1896) 20 Bom. 791.
(4) I.L.R. (1879) 4 Cal. 213.
(5) 1883 A.W.N. 98.

the specific Killa numbers, Bakhshish Singh continued to be a co-sharer with the vendees, Saudagar Singh and Des Raj, and the mere fact that he did not pre-empt the sale would not make any difference and that when Saudagar Singh sold his share of the land purchased by him from Batha Singh, Bakhshish Singh still continued to be a co-sharer in these Killa numbers.

(10) Having heard the learned counsel at length we find that there is no force in the argument. The pre-emptor in this case claims a right under sub-clause Fourthly of section 15(1)(b) of the Punjab Pre-emption Act, 1913. The relevant part of sub-section (1) of section 15 is to the following effect:—

> "The right of pre-emption in respect of agricultural land and village immovable property shall vest—
>
> (a) * * * *
>
> (b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,
>
> * * * * *
>
> * * * * *
>
> FOURTHLY, in the other co-sharers.
>
> * * * * .".

The important words in this clause are that the sale which is liable to be pre-empted under this clause, must be a sale "of a share out of joint land". If the sale is not of a share out of the joint land, then there is no right of pre-emption under this clause and a co-sharer cannot have any superior right of pre-emption. We have, therefore, to see whether the sale originally made by Batha Singh in favour of Saudagar Singh and Des Raj was or was not a sale "of a share out of joint land". If that sale was not of a share out of the joint land, then that sale was not pre-emptible by Bakhshish Singh as a co-sharer and if that sale is not pre-emptible, further sale by Saudagar Singh would also not be pre-emptible.

(11) As already indicated, Exhibit D. 1, the original sale deed by Batha Singh, does not mention anywhere what his share in the land was and there is not the slightest reference to the fact that he was entitled to sell any share in any joint land. He sold four specific Killa numbers and asserted and claimed to be the exclusive owner thereof. From the above it is clear that it being not a sale of a share

either in the entire Khata or even in the Killa numbers sold, there is no question of Saudagar Singh becoming a co-sharer of Bakhshish Singh even in these four specific killa numbers and conversely Bakhshish Singh could not be treated as a co-sharer of Saudagar Singh. A similar matter came up before Dhillon, J., in *Mst. Gurnam Kaur* v. *Ralla Ram and others* (6). The head note of this case runs as under:—

> "The provisions of section 15(1) (b) of the Punjab Pre-emption Act presuppose that there should be a sale of a share out of the joint land. If no share is sold out of the joint land, there will be no preferential right of pre-emption.
>
> Where the vendor sold specific Khasra numbers of land out of his own share from the joint Khata but did not sell a specific share in the whole of the joint Khata, held, the vendee did not become a co-sharer in the joint Khata, therefore the co-sharers of the vendor cannot claim a superior right of pre-emption under section 15(1) (b), as the sale is not of a share out of the joint Khata."

We respectfully agree with the above view.

(12) The learned counsel for the respondents urged that there is another way of looking at the thing. Under the pre-emption law the pre-emptor cannot challenge the title of the vendor or the vendee and he has to take the bargain as its stands. His argument was that if Bakhshish Singh wanted to pre-empt the sale by Batha Singh in favour of Saudagar Singh, he could not challenge the right of Batha Singh to sell those four specific Killa numbers on the ground that those had not fallen to Batha Singh's share by partition. If he wanted to challenge this fact, he was bound to file a separate suit for a declaration to the effect that Batha Singh is not the sole owner of those Killa numbers. Inasmuch as Gurcharan Singh's sale is derived from the original sale made to Saudagar Singh, the same principle will apply and Bakhshish Singh cannot challenge the fact that the four killa numbers purchased by Saudagar Singh were exclusively owned by Batha Singh, which Killa numbers have further been transferred by Saudagar Singh to Gurcharan Singh.

(6) 1970 P.L.J. 687.

For this, reliance was placed on *Sabodra Bibi* v. *Bageshwari Singh and another* (7), and *Gujjar* v. *Auliya and others* (8).

(13) In *Sabodra Bibi's case* (7) (supra) the vendor had sold his share in two properties. The pre-emptor sought to pre-empt the whole of one property but only a portion of the other property on the ground that the vendor was entitled to a much smaller share in the second property that he purported to sell. He also added in the plaint that in case the Court found the vendor to be entitled to the whole of the second property sold, he would be willing to pre-empt that as well. The Courts below dismissed the suit and on an appeal by the pre-emptor the Bench held as follows:—

> "A pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he purports to sell. The principle of pre-emption is substitution. A pre-emptor is therefore bound to take the title which the vendee was ready to take. He is not entitled to say to the vendor, I will take all the property to which you prove you have a title but I will not take property which you fail to prove belongs to yourself."

The learned Judges specifically held that they are not deciding the question whether the vendor is entitled fraudulently to insert property, to which he has no title, and then went on to say as follows:—

> "In the present case it is perfectly clear from what took place in the court below that the vendor has (or *bona fide* thinks he has) some title not necessarily a perfect title, to the property which the plaintiff in the present suit claims belongs to his son."

(14) It was urged that the present case is on all fours with the *case of Sabodra Bibi* (7) (supra). Here Batha Singh specifically purported to sell four Killa numbers claiming that they had fallen to his share by private partition and for 8 long years Bakhshish Singh did not move his little finger to challenge this. The *bona fide* claim of Batha Singh cannot, therefore, be doubted. This is so even if we leave out of consideration altogether the deed of partition of

(7) I.L.R. (1915) 37 All. 529.
(8) 78 P.R. 1914.

1957 which has been held to be inadmissible for non-payment of stamp duty and penalty.

(15) In *Gujjar's case* (8) (supra), a widow sold the property. This sale was challenged by one Dula, a Collateral of the widow's husband and obtained a declaratory decree that the sale will not affect his reversionary rights. About the same time, another collateral Gamun filed a suit for pre-emption of the sale made by the widow. The suit was decreed in favour of Gamun but he failed to pay the money, so his suit was dismissed. Some time later, before the demise of the widow, Gamun transferred his reversionary rights to Dula. On the demise of the widow, Dula filed a suit to get the possession of the entire land which was the subject-matter of the original sale. It was, however, held that, so far as Gamun's share is concerned, he by bringing a suit for pre-emption must be taken to have admitted that the sale was valid and that, consequently, he had no right of inheritance left in the property which was the subject-matter of sale, which he could transfer to Dula by the deed of release.

(16) The ratio of these two decisions does lend good deal of support to the argument of the learned counsel and we feel that the judgment of the learned Single Judge has to be upheld, on this ground as well.

(17) In the light of the view that we have taken, it is not necessary to deal with the argument addressed by the learned counsel for the respondents that, in any case, the learned Single Judge could not shut out the respondents from paying the stamp duty and penalty in the second appeal. He tried to distinguish the cases relied upon by the learned Single Judge on the ground that, in all those cases, the Courts below had determined the stamp duty payable and the penalty and had called upon the parties to pay the same, but they had failed to do so in the Courts below whereas in the present case at no stage stamp duty and penalty were determined and the respondents were never called upon to pay the same. As already stated, it is not necessary to go into this question.

(18) For the reasons given above, we find no force in this appeal and dismiss the same with costs.

N.K.S.