

the principles set forth in this order. In the peculiar circumstances of the case, where the petitioner has succeeded on mere technicality, I would leave the parties to bear their own costs in these proceedings.

INDER DEV DUA, J.—I agree.

K. S. K.

LETTERS PATENT APPEAL

Before S. S. Dulat and R. P. Khosla, JJ.

JANGLI AND OTHERS,—Appellants

versus

LAKHMI CHAND AND ANOTHER,—Respondents

L.P.A. 277 of 1962.

Punjab Pre-emption Act (I of 1913)—S. 15(1)(c)—Three joint owners of land selling it—Sons of two vendors bringing suit for pre-emption—Pre-emptors—Whether entitled to pre-empt the entire sale.

Held, that as respects village immovable property, right of pre-emption has no nexus to the quantum of share heritable from the vendor or vendors. The right of challenge appears to have been given to a class or group of persons bound together by the tie of relationship with the vendor. Before the amendment of the Punjab Pre-emption Act large number of persons in respect of their relative preferential proximity to the vendor had been selected. By the amendment, however, that group has been cut down to closer relationship by blood. Obviously, therefore, any one or more of that class or group could impugn the sale successfully and obtain possession on payment of the total sale price.

Appeal under clause 10 of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice Gurdev Singh, dated the 20th day of March, 1962, passed in R.S.A. 1615 of 1960, modified on cross-objections filed by the plaintiffs, that of Shri Ishar Singh Hora, Senior Sub-Judge with enhanced appellate powers, Gurgaon, dated the 20th July, 1960, to the extent that the decree of Shri Harnarain Singh Gill, Trial Court (Sub-Judge, 1st Class), Palwal, dated the 27th January, 1960, granting the plaintiffs a decree for possession of the land in dispute against the defendants and ordering the plaintiffs to deposit the amount of Rs 3,000 after deducting 1/5th of the sale price in the Court on or before 15th March, 1960, failing which the suit shall stand dismissed, be and the same is hereby restored. The parties are left to bear their own costs before the single Judge of this Court and both the Courts below.

ROOP CHAND, ADVOCATE, for the Appellants.

D. N. AGGARWAL AND G. R. MAJITHIA, ADVOCATES, for the Respondents.

The Workmen
of the Oswal
Weaving Factory
v.

The State of
Punjab

Narula, J.
Dua, J.

1965

May, 21st.

JUDGMENT

The following judgment of the Court was delivered by—

Khosla, J.

KHOSLA, J.—This appeal under clause X of the Letters Patent is from judgment, dated 20th of March, 1962, of Gurdev Singh, J., in Regular Second Appeal, 1615 of 1960.

The dispute arose out of the pre-emption suit maintained by two sons of two out of three vendors. The question was whether the suit at the instance of the plaintiffs was maintainable and if so, whether the possession could be effectuated of the entire land, subject matter, on payment of the total price.

On 21st of May, 1958, Sohan Lal and his brother's sons Khillu and Faqiria sold by means of registered sale deed village immovable property described with particularity in the plaint, jointly owned, to Jangli and others, defendants Nos. 1 to 4, for Rs. 3,000. The suit for possession by pre-emption giving rise to the present proceedings was filed on 4th of November, 1958, by Kiran Pal and Lakhmi Chand, sons of the vendors Khillu and Faqiria, Sohan Lal vendor not joining. The trial Court (subordinate Judge) decreed the plaintiffs' suit on payment of Rs. 3,000. In vendees' appeal against the said decree Senior Subordinate Judge, in view of the provisions of clause (c) of subsection (1) of section 15 of the Punjab Pre-emption Act as amended, held Kiran Pal and Lakhmi Chand plaintiffs entitled to joint possession by pre-emption of 5/8th share of the suit land which belonged to their respective fathers on payment of the proportionate amount of the sale consideration, i.e. 5/8th of Rs. 3,000. The vendees challenged the judgment of the learned Senior Subordinate Judge in further appeal to this Court. The plaintiffs-respondents preferred cross-objections seeking restoration of the decree of the trial Court granting possession by pre-emption of the entire land. The learned Single Judge on hearing parties came to the conclusion that each of the plaintiffs was entitled to pre-empt the sale in entirety on payment of the whole amount of consideration, i.e., Rs. 3,000. In support of the said conclusion the learned Single Judge observed—

“Admittedly, the land in suit is the joint property of Sohan Lal, Khillu and Faqiria, and all of them jointly sold it to defendants 1 to 4.”

"Kiran Pal and Lakhmi Chand, the plaintiffs in the present case, are the sons of Khillu and Faqiria, respectively, who are two of the three joint vendors, and as such, they fall within the first group of persons who are entitled to pre-empt the sale."

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"The right to pre-empt the entire sale no doubt vests in the sons of the vendors, but this does not mean that the sons of each of the vendors can pre-empt only that share of the property which was held by his father."

"In my opinion, the right of pre-emption in case of a sale by all the co-sharers jointly of a joint property vests in each of the persons included in a particular group, and each one of them can exercise his right individually irrespective of the fact whether other members of the same group do or do not join in the suit for pre-emption."

"In view of this provision, it is abundantly clear that all the sons of all the vendors, in the case of a joint sale by all the co-sharers, need not join in a suit for pre-emption, and it will be open to one or more of them to pre-empt the sale."

"The right which has been given to the sons under this clause 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."

As respects village immovable property, right of pre-emption has no nexus to the quantum of share heritable from the vendor or vendors. The right of challenge appears to have been given to a class or group of persons bound together by the tie of relationship with the vendor. Before the amendment of the Punjab Pre-emption Act large number of persons in respect of their relative preferential proximity to the vendor had been selected. By the amendment, however, that group has been cut down to closer relationship by blood. Obviously, therefore, in our view any one

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or more of that class or group could impugn the sale successfully and obtain possession on payment of the total sale price. Learned counsel for the appellants brought to our notice the observations made in *Niranjan etc. v. Kehru etc.*, Letters Patent Appeal No. 339 of 1961, decided on 10th of April, 1963. That case, with respect, seems to have been decided on its own facts and no specific rule on any proposition of law was intended to have been laid. The impugned judgment of the learned Single Judge is cogent and correct, and does not call for interference. This appeal, thus fails and is dismissed. In the circumstances, however, we are inclined to leave the parties to their own costs.

B. R. T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

RAKESH KUMAR,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 720 of 1965.

1965
May, 21st.

Punjab Education Code (1956)—Clause 192—Order suspending a student for misconduct—Whether amounts to expulsion or rustication—Period for which such an order can be passed—Whether can exceed one academic year—Order passed without affording an opportunity of being heard to the student—Whether valid—Principles of natural justice—Whether to be observed.

Held, that the only penalty which can be imposed against a student for misconduct under clause 192 of the Punjab Education Code (1956) is one of expulsion or rustication. The order purporting to be of suspension is in substance that of rustication or expulsion and it cannot be passed for an indefinite period. The period of expulsion or rustication cannot exceed one academic year.

Held, that an order of suspension or expulsion passed against a student without affording him an opportunity of being heard, violates an essential principle of natural justice and is, therefore, invalid. The student is entitled to be heard on the principle of *audi alteram partem* as it affects his future, more so when there are two separate versions of the incident itself and the whole matter